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Denbighshire County Council

Planning Services

Planning Compliance policy and procedure

Contents

Introduction	2
Making an enforcement complaint	2
Making a complaint about planning services.....	2
Making an complaint to the Ombudsman.....	2
Planning Compliance aims	3
Organisation and management	3
Service objectives.....	3
Public information.....	4
User feedback.....	4
Dealing with complaints and investigating breaches of planning control	4
Complaints investigated.....	4
Prioritising complaints.....	5
Registering and acknowledging complaints.....	5
Non-planning complaints	6
Other information we will need.....	6
Initial assessment.....	6
Site visits.....	6
Resolving complaints and taking enforcement action	7
No breach of planning control	7
Breach of planning control	7
If a planning condition has been broken.....	7
Planning control is no longer being breached.....	8
Planning application for development already carried out.....	8
Taking enforcement action.....	8
Solving the problem by moving the development.....	8
Enforcement action against unacceptable development.....	8
Urgent action.....	9
Prosecutions.....	9
Direct action.....	9
Other planning compliance investigations	10
Advertisements.....	10
Listed buildings and conservation areas.....	10
Condition of land affecting the area.....	10
Section 106 planning obligations.....	10
Building Control.....	10
Other investigations.....	10

DRAFT

Contacting the person who made the complaint 11

Appendix 12

Introduction

- 1.1 The Planning Compliance Section investigates breaches of planning control (this is where development does not have planning permission or does not meet planning conditions) and aims to resolve the breach. The purpose of this document is to give you information on what we do and how we are managed.
- 1.2 When we investigate planning compliance complaints, we will decide whether or not there is or has been a breach of planning control, and what action to take. This document provides information on our various enforcement powers, but is not a statement of law and does not describe every type of breach of planning control or enforcement action. There is more guidance on planning enforcement in the documents referred to in the appendix.

Making an planning compliance complaint

- 1.3 If you want to make a complaint to us about a breach of planning control, or you have any questions about our planning compliance policy, you should contact the Planning Compliance Section, Planning Services, Caledfryn, Smithfield Road, Denbigh LL16 3RJ. The offices are open from 9am to 5pm Monday to Thursday, and from 9am to 4.45pm on Fridays.
- 1.4 We do not normally investigate verbal or anonymous complaints. You should make your complaint in writing to the above address, or by e-mail to planning@denbighshire.gov.uk, providing details of your name and address.
- 1.5 If you want to discuss an enforcement complaint informally, you can contact a Compliance Officer (phone 01824 706727). If you would like to discuss an existing complaint, you may contact the Compliance Officer who is dealing with the matter, although you may rest assured that the officer will update you when the case has been resolved. If you feel you need to contact the Planning Compliance Section Manager, you may contact the Development Control Manager on 01824 706727 or by e-mail at planning@denbighshire.gov.uk

Making a complaint about planning services

- 1.6 We have a separate complaints procedure if you wish to make a complaint about the quality of any of our services, or about the behaviour of a member of staff of any department. Such matters are investigated by the Corporate Complaints Officer, who may be contacted by telephone (01824 706101), by e-mail (complaints@denbighshire.gov.uk), or by letter addressed to the Corporate Complaints Officer, County Hall, Wynnstay Road, Ruthin, Denbighshire LL15 1YN.

Making an complaint to the Ombudsman

- 1.7 You can also make a complaint to the Public Services Ombudsman, who will investigate if we have failed to do something we should have done. The

DRAFT

Ombudsman can examine how we make decisions. This type of complaint could include cases where we have acted incorrectly, or failed to react to an enforcement complaint, or have acted unfairly or caused an unfair delay. You can get a copy of the Ombudsman's complaint form from:

- this office;
- the Public Services Ombudsman For Wales, 1 Ffordd yr Hen Gae, Pencoed, CF35 5LJ (phone 01656 641150, fax 01656 641199); or
- the Public Services Ombudsman For Wales website at www.ombudsman-wales.org.

Planning Compliance aims

2.1 Our aims are to:

- deliver an effective enforcement service that responds to the needs of our customers, maintain an up-to-date enforcement policy and set clear standards;
- make sure that our planning policies and decisions are followed;
- work in line with clear and well-publicised enforcement processes, procedures and standards;
- promote awareness of the planning enforcement system and the related planning laws;
- promote joint working with other related council services;
- protect the interests of public amenity from significant harm; and
- monitor, review and improve the enforcement service.

Organisation and management

- 3.1 We are responsible for all aspects of planning enforcement within the County of Denbighshire.
- 3.2 We have a scheme of delegation, which authorises the Head of Planning Services to carry out various planning functions, including planning enforcement. However, our planning functions which do not fall under the scheme of delegation are reported to our Planning Committee.
- 3.3 The Planning Compliance Section is part of the Development Control Service within Planning Services and is based in the Council Offices, Caledfryn, Smithfield Road, Denbigh LL16 3RJ.
- 3.4 The Planning Compliance Section informs Councillors about new enforcement complaints, new enforcement notices, appeals, prosecutions and decisions of the courts.

Service objectives

We will try to:

- record and acknowledge all written complaints of a breach of planning control within five working days of receiving them;
- investigate reports of alleged breaches of planning control quickly;
- quickly decide whether enforcement action is needed, and advise the complainant what action will be taken;

DRAFT

- resolve complaints about breaches of planning control as quickly as practicable (enforcement complaints are considered to be resolved when one of the outcomes defined in the national performance standards is achieved – see section 5.1 below);
- justify decisions to issue enforcement notices at appeal;
- prosecute offenders where it is in the public interest, proportionate (reasonable considering the circumstances) and there is a reasonable chance of a conviction;
- promote the service and act upon feedback from our customers when appropriate to do so;
- promote closer working relationships with the Building Control Service and other related council services; and
- monitor performance of the service and review performance targets.

Public information

3.6 Our performance is monitored nationally in relation to:

- the number of complaints received;
- the number of complaints resolved within 12 weeks;
- the number of enforcement notices issued;
- the number of injunctions applied for; and
- maintaining an up-to-date enforcement policy.

3.7 We keep a Statutory Register of Enforcement and Stop Notices, which may be inspected by members of the public. The Register contains information relating to all Enforcement Notices issued in relation to land within the County of Denbighshire. The Register is held at the offices of the Planning Services, Caledfryn, Smithfield Road, Denbigh LL16 3RJ

3.8 Under the Freedom of Information Act 2000, members of the public and other organisations have a right to look at and make copies of information we hold. However, members of the public cannot see certain types of information, as set out in the Act, and a number of these exemptions apply to Planning Compliance investigations. The exemptions include information held for the purpose of criminal investigations and proceedings, information likely to affect regulatory enforcement or civil proceedings, personal information and information provided in confidence. Requests to see information under the Freedom of Information Act must be made in writing.

Dealing with complaints and investigating breaches of planning control

4.1 This section describes how we deal with and investigate complaints.

Complaints investigated

4.2 We do not have the resources to check that all new development has planning permission and meets planning conditions; we target our resources in order to monitor specific developments and have developed a database of certain types of development. Section 6 (Other enforcement investigations) contains more information on the enforcement investigations that we carry out.

4.3 However, we do investigate all complaints about breaches of planning control made in writing, or by e-mail with the name and address of the person making

DRAFT

the complaint. Complaints from members of the public only made verbally, or anonymously, will be assessed and a decision taken on further investigation. This will depend upon whether the circumstances warrant an investigation, such as a complaint of damage being caused to a Listed Building, or a tree covered by a Tree Protection Order. The circumstances under which the complaint is made and the relationship between the complainant and the contravenor, may also be a deciding factor.

- 4.4 Making a complaint in writing is preferred due to the fact that we will have a reliable record of the date and nature of the complaint.
- 4.5 The name and address of the person making the complaint are important and allow us to inform the complainant on the progress we are making in resolving the matter. Sometimes, we may need to contact the complainant to obtain further information. We will treat the names and addresses of complainants as confidential information and will not pass such detail to anyone else, unless complaints become part of court proceedings and their identity may have to be revealed by law.

Prioritising complaints

- 4.6 We will record all the complaints we receive in writing and pass them to a Compliance Officer. As part of the initial vetting process, enforcement complaints are given a high, medium or low priority, depending on how serious the matter is. We will prioritise complaints in line with the following categories.

High – matters that need an urgent, immediate or exceptional investigation or action, such as a development that is likely to result in:

- irreversible harm to a building or area of national importance;
- irreversible harm to a protected building or area of local importance, or protected trees; or
- other very serious harm to amenity (including harm to residential areas, road safety and nature conservation).

Medium – other matters that could result in significant harm to amenity (including harm to residential areas, road safety and nature conservation).

Low – other complaints and investigations about matters that are unlikely to result in any significant harm to amenity. For example, complaints about non-planning matters, such as boundary or land-ownership disputes.

Registering and acknowledging complaints

- 4.7 Details of complaints are recorded on enforcement files and on our computerised database. All recorded complaints are given a complaint reference number.
- 4.8 We aim to acknowledge all written complaints within five working days of receipt. The acknowledgement letter gives the name and contact details of the Compliance Officer dealing with the complaint, together with the complaint reference number. The letter also states that at the conclusion of an investigation we will advise the person who made the complaint on the outcome.

DRAFT

Non-planning complaints

- 4.9 If we receive a complaint which is not essentially a breach of planning control, but about another Council service, we will forward the complaint letter to the relevant department. We will advise the complainant accordingly.

Other information we will need

- 4.10 In many cases, we need to check relevant planning history as part of the investigation into a complaint. We may also ask the person who made the complaint for more information.
- 4.11 Other Council departments and other organisations may hold information relevant to the investigation of an enforcement complaint. We keep a list of contact details within other Council departments and other organisations, and will carry out appropriate consultations to obtain relevant information.
- 4.12 When necessary, we will use our powers to serve a legal notice on a person to gather information about how the land is used, or to get information about who has an interest in the land. If we suspect a breach of planning control, we may serve a Planning Contravention Notice on a person who:
- is the owner or occupier of the land;
 - has any other interest in it;
 - is carrying out work on the land; or
 - is using it for any purpose.

We also have the power to serve other types of legal notices to get information.

Initial assessment

- 4.13 Following initial investigations into a complaint, we will assess whether there has been a breach of planning control, whether further investigations are needed and whether any enforcement powers should be used. We may need to carry out further investigations to obtain information, including consultations, site visits or by formally writing to people with an interest in the land. We will reassess the initial priority given to the complaint.
- 4.14 We will tell the person who made the complaint the outcome of initial investigations and how we will resolve the matter.

Site visits

- 4.15 A Compliance Officer will normally have to carry out site visits to find out:
- whether there is, or has been a breach of planning control;
 - whether we should use any enforcement powers; and
 - how these powers should be used.
- 4.16 During a site visit, an Enforcement Officer may need to record information. This may include taking measurements of land and buildings, levels and photographs. A Compliance Officer may also need to carry out discussions with the owner or occupier of the land, or other people on the site.

DRAFT

- 4.17 Individual Compliance Officers have the right to enter land without a warrant for enforcement purposes. Depending on circumstances, a Compliance Officer may contact the owner or occupier of land to arrange a site visit, but in some cases the site visit will not be arranged beforehand. On arriving at a site, a Compliance Officer will contact an appropriate person on the site (if available) to explain the purpose of the site visit. A Compliance Officer will be able to produce identification and explain that they are entitled to enter the site.
- 4.18 We will consider prosecuting any person who wilfully prevents a Compliance Officer from entering any site. We may also apply to a Justice of the Peace for a warrant to enter land and when appropriate, we will ask the police to accompany our Officers.
- 4.19 A Compliance Officer will carry out site visits in line with our staff safety policies and procedures. We will record site visits, including the expected time of return, and report any delays. We will record and report any violent behaviour towards a Compliance Officer, together with potentially dangerous sites.

Resolving complaints and taking enforcement action

- 5.1 Under national performance standards, we will consider enforcement complaints to be resolved when we achieve one of the following possible outcomes:
- We have decided that planning control has not been breached.
 - The breach of planning control has stopped.
 - An application for planning permission has been made in relation to the breach of planning control.
 - We have decided not to take formal enforcement action.
 - We have served an appropriate notice.
 - Court proceedings have started.

Each of these circumstances is explained below.

No breach of planning control

- 5.2 In some cases, enforcement investigations may show that there is, or has been, no breach of planning control. In these circumstances, we will advise the person who made the complaint and close the file.

Breach of planning control

- 5.3 If planning control has been breached, we will contact the person or persons responsible with a view to resolving the matter. Where possible, we will formally write to the person or persons responsible to advise them what action we may take.

If a planning condition has been broken

- 5.4 A breach of planning control includes failing to meet any condition under which planning permission has been granted. We investigate complaints that a condition has been broken in the same way as complaints relating to other breaches of planning control. However, when appropriate, we may serve a Breach of Condition Notice to secure compliance with any planning condition.

DRAFT

We may take this action instead of, or as well as, issuing an Enforcement Notice.

Planning control is no longer being breached

- 5.5 In some cases, the person or people responsible may cease breaching planning control and this will resolve the complaint.

Planning application for development already carried out

- 5.6 Any person is entitled to apply for planning permission for development already carried out to make sure they do not breach planning control.
- 5.7 We will publicise applications for planning permission in line with our publicity policy. We will advise the person making the complaint that they are entitled to inspect the planning application documents and comment upon them, but that any comments made during the planning application process will be available for public inspection.

Taking enforcement action

- 5.8 If the person or persons responsible for the breach of planning control elect not to submit a planning application, we will consider issuing an Enforcement Notice to prevent or reduce any harm to public amenity caused by the unauthorised development. By taking enforcement action, we want to put right the effects of the breach of planning control, and not to punish the person or persons responsible for the breach. We will not issue enforcement notices simply because there is no valid planning permission and no significant planning objection to the breach of planning control. We will also not issue an enforcement notice against a minor or technical breach of planning control, which causes no significant harm to public amenity.
- 5.9 When considering whether to take enforcement action against unauthorised householder-type development, we will consider what level of development would be allowed under 'permitted development' rights. The 'permitted development' rights for householder-type development are defined in the Town and Country Planning (General Permitted Development) Order 1995 (as amended).

Solving the problem by moving the development

- 5.10 We do not have to identify, or provide, alternative sites for any unauthorised development. In some cases, we may be able to suggest and encourage alternative sites for any unauthorised development. In these cases, we will assess the reasonable period needed to move the development. We will take account of this period needed in any formal action or notice.

Enforcement action against unacceptable development

- 5.11 Where unauthorised development is unacceptable and there is no reasonable chance of the development being moved to a suitable site, we will normally tell the person or persons responsible that we are not prepared to allow the development to continue. We will consider a reasonable time period for the

DRAFT

development to stop, depending upon the particular circumstances and reflect this in the action we will take.

- 5.12 We will consider taking formal enforcement action in cases where unauthorised development is causing unacceptable harm to public amenity and there is little or no chance of the matter being resolved through negotiations, or voluntarily. We may need to take action quickly to prevent a situation where planning control has been breached from becoming worse and more difficult to address. When deciding whether to issue an enforcement notice, we will have to consider the Unitary Development Plan and other planning considerations.

Urgent action

- 5.13 In some cases, we will take immediate action against unacceptable unauthorised development and we will consider serving a Stop Notice or a Temporary Stop Notice to stop the development. We may also apply to the courts for an injunction, particularly in urgent and exceptional cases.

Prosecutions

- 5.14 The Head of the Planning Services has the authority to instruct prosecutions for all planning offences, taking into account legal advice on:

- whether the prosecution would be in the public interest (taking account of how serious the offence is, any unusual circumstances and any human rights issues involved);
- whether taking criminal proceedings would be in proportion to the alleged offence; and
- whether there is a reasonable chance of securing a conviction.

- 5.15 We will normally have considered public interest before we serve a formal notice, and a prosecution will usually follow where planning control is still not followed. There may be circumstances where prosecution would not serve the public interest (for example, if a developer had followed the conditions of a notice and progress is continuing). A defendant's personal circumstances must not prevent them from following the conditions of a notice, but may in exceptional circumstances be taken into account in deciding whether to postpone prosecution for a limited period.

- 5.16 Once court proceedings have been started, we will not normally withdraw the action. We will normally apply for costs from the offender in relation to planning prosecutions.

Direct action

- 5.17 If compliance with an Enforcement Notice has not been achieved within the period allowed (and in some other circumstances), we have the power to carry out the work (or ask contractors to do so) and reclaim the cost from the owner of the land. This procedure may be appropriate in cases, such as where prosecution has failed to, or would be unlikely to secure compliance with an Enforcement Notice.

DRAFT

Other planning compliance investigations

Advertisements

- 6.1 It is an offence to display certain advertisements without first getting our consent and we may prosecute the person or people responsible. We will normally contact the person or persons responsible and ask them to remove the advertisement. If they do not remove the advertisement within the period allowed, we may commence prosecution proceedings. It is not normal practice to withdraw a prosecution once it has started.

Listed buildings and conservation areas

- 6.2 It is an offence to carry out any unauthorised demolition work to a listed building, or carry out any alteration or extension work, which affects the character of a listed building. It is also an offence to demolish certain types of buildings in conservation areas without first getting the appropriate consent. If unauthorised work is carried out, we will normally contact the person or persons responsible and give them the opportunity to put things right, but in some cases immediate action (including possible injunction proceedings) will be appropriate without giving notice.

Condition of land affecting the area

- 6.3 If we consider that the condition of land (including buildings) has a negative effect on the surrounding area, we will consider serving a Notice (Section 215 Notice) requiring work to be carried out to remedy the situation. For example we would consider this type of action in cases where a building is in disrepair, or land is untidy. It is an offence to fail to follow the requirements of a Section 215 Notice, and we may prosecute the person or persons responsible. We could also consider carrying out the work that needs to be done and then reclaiming the associated costs from the owner of the land.

Section 106 planning obligations

- 6.4 Section 106 planning obligations may restrict the development or use of land in a specific way, or may require the owner of the land to pay the Council an amount of money. A planning obligation can be enforced through an injunction. If a requirement in a planning obligation to carry out any work on the land is broken, we have the power to carry out the work and to reclaim the cost from the person or persons involved.

Building Control

- 6.5 Our planning and building control functions are separate systems of regulatory control and are responsible for regulating different aspects of building work and development. The Planning Compliance Section encourages a close working relationship with Building Control Services.

Other investigations

- 6.6 We have access to the database holding details on all applications for planning permission and we are advised of new development by Building Control Services at the point when they are requested to inspect the early stages of any

DRAFT

building works. However, we do not have the resources to check all new work to make sure it complies with all aspects of planning control.

- 6.7 We target our resources and operate a proactive monitoring system to ensure compliance with conditions attached to planning permission and Section 106 planning obligations.
- 6.8 We will also investigate specific developments and our investigations are likely to be focused towards specific types of development and developments relating to sensitive buildings and places.

Contacting the person who made the complaint

- 7.1 We will contact the person who made the complaint at the following stages of the investigation process, when appropriate.
 - We will acknowledge that we have received written complaints about a breach of planning control. We will give the person who made the complaint a reference number and the name and contact details of the Compliance Officer dealing with the matter.
 - If appropriate, we will ask for more information to help our investigation.
 - The outcome of the initial investigation to decide whether or not there is a breach of planning control. If there is no breach of planning control, we will advise the complainant.
 - If there is no breach of planning control, but the complaint relates to other Council services, we will inform the person who made the complaint that we have forwarded it to the relevant Council department.
 - If planning control is no longer being breached, we will advise the person who made the complaint that the matter has been resolved.
 - If we receive an application for planning permission for a development that has already been completed, we will publicise the planning application in line with our publicity policy. We will contact the person who made the complaint, if they have not already been contacted as part of this process.
 - If we decide to take enforcement action to deal with someone who has breached planning control. We will inform the person who made the complaint about any expected action and the outcome of the action.
 - If we start court proceedings, we will advise the person who made the complaint on the outcome of the court proceedings.
- 7.2 We will close an enforcement complaint file once we have resolved the complaint and informed the complainant.

DRAFT

Appendix

Further guidance on planning enforcement can be found within the following documents:

- Enforcement Concordat: Good Practice Guide for England and Wales, DTI Small Business Service, June 2003. (www.dti.gov.uk)
- Enforcement of Planning Control, Welsh Assembly Government, Planning Guidance (Wales), Technical Advice Note 9, October 1997. (www.wales.gov.uk)
- Enforcing Planning Control - Legislative Provisions and Procedural Requirements, Welsh Office Circular 24/97. (www.wales.gov.uk)
- Enforcement of Planning Control, Royal Town Planning Institute - Practice Advice Note 6. (www.rtpi.org.uk)
- Enforcement Appeals Procedures, Welsh Assembly Government Circular 08/2003. (www.wales.gov.uk)
- Making Your Enforcement Appeal, The Planning Inspectorate, June 2003. (www.planning-inspectorate.gov.uk)
- Model Planning Enforcement Standards for Wales, Planning Officers Society – Wales, February 2005. (www.planningofficers.org.uk)
- Planning Policy Wales, Welsh Assembly Government, March 2002. (www.wales.gov.uk)
- Planning and Compensation Act - Implementation of Main Enforcement provisions, Welsh Office Circular 21/91. (www.wales.gov.uk)
- The Use of Planning Conditions in Planning Permissions, Welsh Office Circular 35/95. (www.wales.gov.uk)
- Town and Country Planning Act 1990 Section 215: Best Practice Guidance, Office of the Deputy Prime Minister, January 2005. (www.odpm.gov.uk)