



Comhairle Ceantair
Lár Uladh
Mid Ulster
District Council

Mid Ulster District Council
Enforcement Strategy

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1.0 Introduction

- 1.1 Mid Ulster District Council ['The Council'] places great importance on protecting and enhancing the environment and protecting our communities from unauthorised development which causes harm or which displays a disregard for the planning system. The Council also recognises that the integrity of the development management process depends upon the Council's commitment to take effective action against unauthorised development.
- 1.2 The Council's role as the planning authority is set out within the Planning Act 2011. The Planning Department of the Council will administer these planning functions and ensure that action is taken when it is right to do so. The Council provides a planning enforcement service which investigates complaints, provides advice on enforcement matters and has the discretionary power to take action against breaches of planning control. This strategy explains how Mid Ulster Council deals with complaints relating to breaches of planning control.

2.0 General approach and key objectives of Planning Enforcement

- 2.1 Under the provisions of The Planning Act (Northern Ireland) 2011 the Council has discretionary powers to take enforcement action when it regards it as expedient to do so, having regard to the provisions of the local development plan and any other material considerations.
- 2.2 In exercising discretion, the Council is mindful of its duty to enforce planning legislation and to ensure that development is managed in a proactive and proportionate manner. In determining the most appropriate course of action in response to alleged breaches of planning control, the Council will take into account the extent of the breach and its potential impact on the environment and our communities. Any decision to proceed with enforcement action will also be informed by case law, precedents and appeal decisions.



2.3 The Councils Key objectives for planning enforcement are:

- To bring unauthorised development under control;
- To remedy the undesirable effects of unauthorised development including, where necessary, the removal or cessation of unacceptable development and uses; and
- To take legal action, where necessary, against those who ignore or flout planning legislation.

2.4 The Council is committed to securing these objectives in order to ensure that the credibility of the Council as the planning authority and the integrity of the planning system is not undermined.

2.5 Mid Ulster Council is also committed to the following principles within the Councils Corporate Plan and the Planning Enforcement team will work to carry out its duties in accordance with these key values:

- **Professional:** Investigating, recording and presenting cases thoroughly, critically and accurately. Consistently striving to exceed the expectations of our customers by knowing what to do, how to do it, when to do it and why we do it.
- **Trustworthy:** Delivering a fair, transparent, equitable and ethical services to all customers, by being as open as possible in our dealings with the public and other interested parties while preserving the confidentiality of complainants.
- **Quality Driven:** Delivering the best service we can, making the best use of the resources we have.
- **Team-focussed:** Working together to deliver the best results possible for Mid Ulster.
- **Innovative:** New and better ways of doing what we do.
- **Customer-focussed:** Designing and delivering our services in response to and around the needs of our customers and within our resources.



3.0 What is a breach of planning?

3.1 A breach of planning occurs when building works or a material change of use of the land or a building takes place without planning consent. In most cases, it is not an offence to undertake development without permission, but the Council has powers to require these breaches to be remedied. The Council can do this by: requiring changes to the development; requiring the removal of the development; requiring cessation of the use; or, by giving the development approval if it is considered acceptable.

3.2 Examples of **actions that are a breach of planning control include:**

- Building works or the use of land without the required planning permission;
- Not building in accordance with approved plans or failure to comply with conditions (following the grant of planning permission);
- Works to a listed building or properties in a conservation area without required consent;
- Removing or lopping trees protected by a Tree Preservation Order or in a Conservation Area;
- Display of an advertisement without benefit of advertisement consent;

3.3 Examples of **actions that are not a breach of planning control include:**

- Where development is 'permitted development' i.e. where it does not require the express consent of the Council;
- Internal works to a building (with the exception of a listed building);
- Where development is certified as 'Lawful Development' by virtue of the period of time it has been demonstrated to have been in place;
- Clearing land of overgrowth, bushes etc. (provided they are not protected);
- Parking commercial vehicles on the highway;
- Boundary disputes as these are a civil matter and cannot be controlled by planning legislation.

4.0 What to do if you believe there is a breach of planning control?

4.1 If you believe that a breach of planning control has occurred you should:

- Notify the Councils Planning Enforcement Team (in writing, by telephone, by email or in person);
- Give the address of the site or directions (we may need a site location plan so that we know exactly where the site is);
- Detail exactly what has happened and when it first occurred;
- Provide the name and address of the landowner(s) and/or the person responsible for carrying out the works, if known.

4.2 In alerting us to an alleged breach of planning control you will be asked to give your name and contact details. Mid Ulster Council will not investigate anonymous complaints with the exception of the following high priority cases: demolition of or works to a listed building; trees protected by a TPO or trees within a Conservation Area; and, demolition of a building in a conservation area. Your contact details, will remain confidential in accordance with the principles of the Data Protection Act 1998; The Freedom of Information Act 2000; and the Environmental Information's Regulations 2004, unless we need to use your evidence to support our case, for example, if the matter went to court; however, we would contact you beforehand.

5.0 Guiding principles for investigating breaches of planning control

5.1 In the course of investigating our enforcement cases, as a result of a legal test of expediency (having regard to the development plan and all other material considerations) formal enforcement action will only be taken where it is fair and reasonable to do so. In making this decision, an assessment will be made as to whether the breach of planning control unacceptably affects public amenity or the use of land or buildings meriting protection in the public interest. Any enforcement action should be appropriate to the breach of planning control. There will be cases where the breach or harm is so minor that action cannot be justified i.e. it is not expedient to pursue this case.

- 5.2 All complaints will be prioritised on receipt in accordance with the priorities set out in this strategy. Priority will be given to those breaches where, in the Council's opinion, the greatest harm is being, or is likely to be caused.
- 5.3 As enforcement is a discretionary power, the Council will not pursue those minor breaches of planning control where there is no significant harm being caused, or where it is not considered expedient to do so.
- 5.4 Enforcement action may be held abeyance while a planning application or appeal to remedy the breach is being determined, depending on the degree of harm and nature and scale of the breach. However, if a case is well advanced and the unauthorised activity/development is considered to be unacceptable enforcement action is likely to proceed.
- 5.5 All actions taken in response to a breach of planning control will be proportionate to the harm being caused and in accordance with the priorities identified in this Strategy. Where a planning breach cannot be resolved and action is justified, formal enforcement action will be taken. A decision to proceed with enforcement action will be actioned in accordance with the Mid Ulster Council 'Scheme of delegation on Planning Matters'.
- 5.6 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.
- 5.7 Planning enforcement officers will liaise closely with colleagues within the Council, and also within central government departments such as Northern Ireland Environment Agency in relation to Listed Buildings and waste management; and DRD Transport NI in relation to road safety issues.
- 5.8 Complainants will be advised when a case has been concluded.



5.9 The Council will continue to cultivate effective working relationships with all interested parties in order to progress cases to a satisfactory conclusion.

6.0 What are the Councils enforcement priorities?

6.1 The Council will investigate all alleged breaches of planning control, with exception of anonymous complaints unless the breach relates to: demolition of or works to a listed building; trees protected by a TPO or trees within a Conservation Area; and, demolition of a building in a conservation area. However, when determining what, if any, action is to be taken, priority will be given to those breaches where, in the Councils opinion, the greatest harm is likely to be caused.

6.2 The priority given is commensurate with the breach of planning control to which it relates and any action in response to a breach will be proportionate to the harm it causes. The priorities which reflect this principle are as follows:

- **Priority One** - Works resulting in public danger or development which may result in permanent damage to the environment. For example: demolition of or works to a listed building, removal of damage to or works to trees protected by a Tree Preservation Order, demolition of a building within a Conservation Area.
- **Priority Two** - Commencement of building operations without planning permission; unauthorised works or uses which cause loss of amenity or any other significant public or private impact.
- **Priority Three** - Non-compliance with conditions of planning approval (Unless they relate to serious amenity issues in which case it may fall into Priority 1 or 2).
- **Priority Four** - Breaches of a minor nature for example domestic sheds, fences, house extension built to acceptable standard.

- 6.3 The above list is not exhaustive and is for guidance only. It is ultimately the responsibility of the Councils Planning Enforcement Team to prioritise cases taking into account the nature of the breach and the harm being caused or likely to be caused.
- 6.4 The priority given is reflected in the timescales against which performance is measured i.e. high priority cases have shorter timescales.
- 6.5 It is important to note that the vast majority of breaches of planning control are resolved through negotiation with the owner/occupier or through the submission and consideration of a retrospective planning application.
- 6.6 The speed in which a breach of planning control can be resolved will vary depending on the complexity of the individual case and general workloads. Some complex cases can however take a significant period of time due to the nature of the investigation process.

7.0 Performance Targets

- 7.1 Statutory performance indicators for each council have been proposed in the Draft Local Government (Performance Indicators and Standards) Order (NI) 2015. Within this legislation the statutory Key Performance Indicator (KPI) target for Enforcement agreed by this Council, is to bring 70% of cases to target conclusion with 39 working weeks (9 months) of receipt of complaint. For purposes of this strategy 'target conclusion' means case closure, submission of a retrospective planning application, enforcement action or summons to court.
- 7.2 In addition, the Council will adhere as far as possible to the range of Performance Targets as set out below:-
- Acknowledge receipt of 75% of complaints with 3 working days and 95% of complaints within 6 working days.

- Site inspect 90% of High Priority cases within 3 working days and 100% within 5 working days.
- Site inspect 75% of all other cases within 20 working days and 95% within 30 working days.
- Discuss and agree a course of action for 95% of High Priority cases within 2 working weeks of receipt of the initial complaint.
- Discuss and agree a course of action for 60% of all other cases within 8 working weeks and 95% within 12 working weeks of receipt of the initial complaint.
- Notify complaints of case closure in 75% of cases within 2 working weeks, and 95% of cases within 4 working weeks of the Group Decision being made.

7.3 The above method of performance measurements reflects the Councils approach to enforcement in that it focuses resources on those breaches of planning control where the greatest harm is being or is likely to be caused.

8.0 Appeals

8.1 Under the provisions of The Planning Act (Northern Ireland) 2011, an appeal may be lodged with the Planning's Appeals Commission (PAC), against an Enforcement Notice, Listed Building Enforcement Notice, Hazardous Substances Notice and Replacement of Trees (Section 64) 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

8.2 When an appeal is pending, the decision on whether or not to proceed with summons action will be based on the merits of the case and degree of harm caused by the development. In the event of an appeal of any of the Notices referred to above, the Notice shall not come into effect until the appeal has been determined or withdrawn.

9.0 Legislative timescale

- 9.1 When considering taking enforcement action, the Council will bear in mind the statutory time limits for taking enforcement action as set out in Section 132 of The Planning Act. 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.
- 9.2 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.
- 9.3 In relation to unauthorised works to a 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.
- 9.4 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.

10.0 What to do if you feel there is an unreasonable delay

- 10.1 If you feel that there is unreasonable delay, or an error in the way in which an enforcement investigation is being carried out, you should contact the Council directly. The Council has its own Complaints Standards and Procedures of which will be sent to you. If you remain dissatisfied with the outcome of any investigation, you may complain to the Ombudsman and information on how to do this will be given to you by the Council. Please remember that the Ombudsman does not apply to matters which are directly related to a Council or committee decision or where there is a legal remedy or appeals process, it will deal only with the aspects concerning the conduct of the investigation.

11.0 Communication

11.1 Members of the Planning Committee will be sent lists of enforcement cases that have been closed/opened and a current live case list on a monthly basis. Updates will be provided on all cases and if particular cases are requested by a Planning Committee Member.

11.2 Any queries on specific cases should be directed to the Planning Enforcement Team, who can be contacted as follows:

By telephone on: 03000 132 132

By email at: planning@midulstercouncil.org

Or in person/writing at: Mid Ulster District Council
Planning Enforcement Team
Council Offices
50 Ballyronan Road
Magherafelt
BT45 6EN