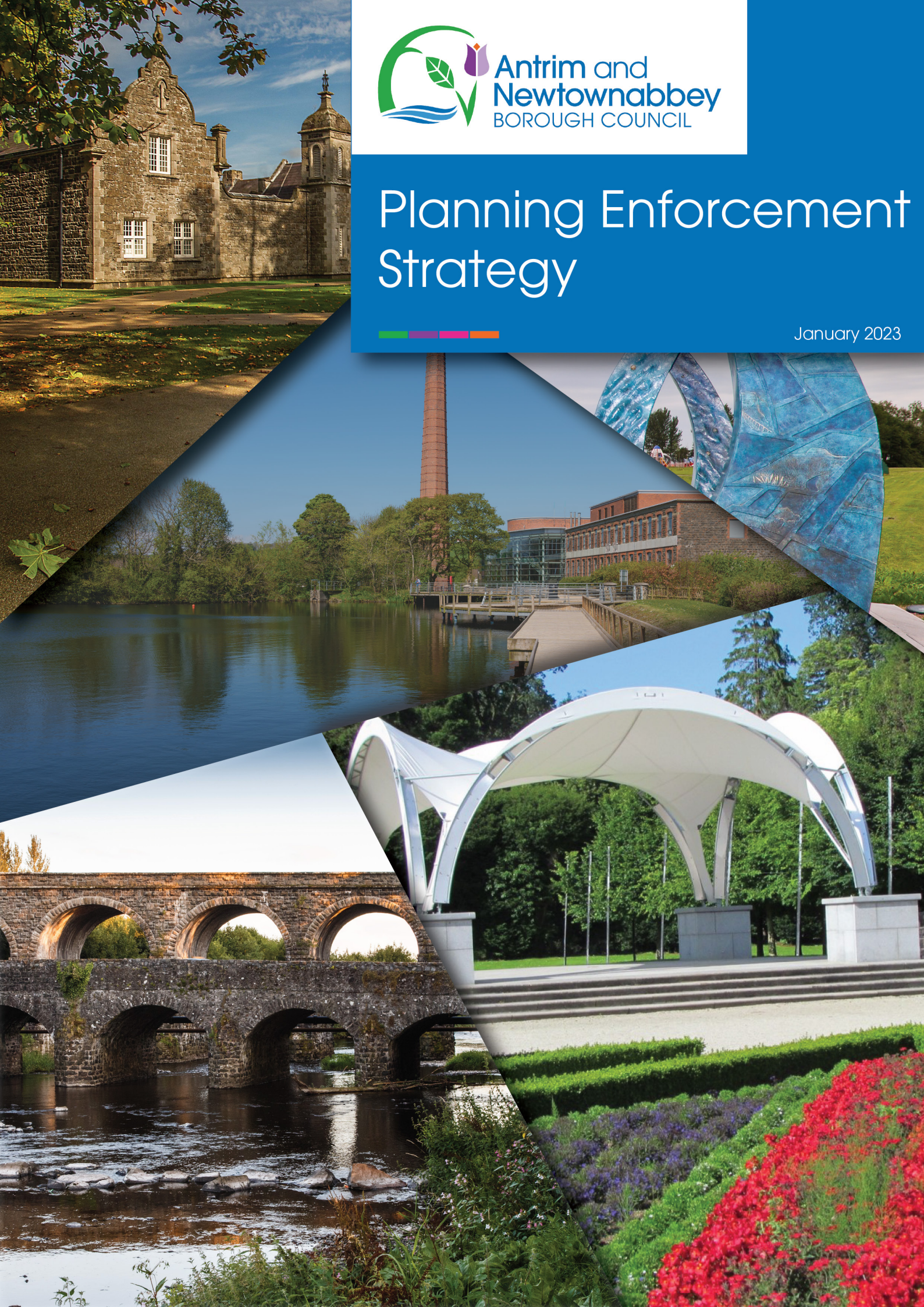


Planning Enforcement Strategy

January 2023



Foreword

3

01	Introduction	4
02	General approach to planning enforcement	4
03	Key Objectives for planning enforcement	5
04	What is a breach of planning control?	6
05	What happens if we are told about a breach of planning control?	7
06	How do we respond to the information we are given?	7
07	How do we seek to resolve a breach of planning control	8
08	A breach of planning control that requires immediate action	11
09	The Council's planning enforcement priorities	11
10	Appeals	12
11	Legislative timescales	13
12	Summary of service standards	13
13	Communication	15

Foreword

Welcome to Antrim and Newtownabbey Borough Council's Planning Enforcement Strategy which sets out the Council's approach to Planning Enforcement.

Antrim and Newtownabbey Borough Council attaches great importance to the protection and enhancement of the natural and built environments of the Borough through the planning process. Compliance with and respect for that process are both essential and expected, and the Council will not condone wilful breaches of planning control.



Whilst enforcement action will always need to be commensurate with the breach to which it relates, the Council will not hesitate to be firm and robust in its response in appropriate circumstances, including recourse to the courts. Every effort will be made to resolve inadvertent or minor breaches through discussion and retrospective planning applications. More serious breaches, including those considered to be wilful, are likely to result in formal enforcement action.

Planning enforcement is intrinsically linked to the Council's vision of becoming a prosperous place inspired by our people and driven by ambition. Through this Planning Enforcement Strategy, the Council aims to deliver a planning enforcement service which lives up to its corporate values of excellence, commitment, integrity and responsibility.

A handwritten signature in black ink that reads "Jacqui Dixon". The script is fluid and cursive.

Jacqui Dixon BSc MBA

Chief Executive of Antrim and Newtownabbey Borough Council



1 Introduction

1.1 Antrim and Newtownabbey Borough Council places great importance on protecting our communities, natural habitats and built heritage from unauthorised development that causes harm or which shows a disregard for the planning system. To ensure that we can take action when it is right to do so, the Council provides a planning enforcement service which investigates complaints and provides expert advice on enforcement matters.

1.2 The Council's functions as the planning authority are set out in the Planning Act (Northern Ireland) 2011. The Council's Planning Section administers most of these planning functions including the discretionary power to take action against breaches of planning control.

1.3 Although planning enforcement is a discretionary function, it is recognised that the integrity of the development management process depends on the Council's commitment to take effective action against unauthorised development. This document sets out how the Council will deal with breaches of planning control.



2 General approach to 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 considers it expedient to do so, having regard to the provisions of the Local Development Plan and any other material considerations. The Council is committed to resolving all cases involving unauthorised development, and using its formal enforcement powers in relevant cases.

2.2 In exercising discretion, the Council will be 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. Any decision to proceed with enforcement action will also be informed by case law, precedents and appeal decisions.

2.3 The purpose of the Strategy is to:

- Explain the Council's key objectives for the enforcement of planning control;
- Explain how breaches of planning control will be investigated; and
- Set out the Council's priorities for investigating breaches of planning control.

Service Standard 1

By publishing our standards and targets, we aim to improve our enforcement service and make it responsive to the needs of our citizens. We will monitor the contents of the Strategy to ensure that standards and targets are being met.

3 Key objectives for planning enforcement

3.1 The Council's key objectives for planning enforcement are:

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

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

Service Standard 2

The Planning Enforcement Service aims to carry out its duties in accordance with the following key values:

- **Independence** – making decisions based on a 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, councillors, community groups etc. can be different.
- **Professionalism** – investigating, recording and presenting cases thoroughly, critically and accurately.



4 What is a breach of planning control?

4.1 A breach of planning control occurs when building works or a material change of use of land or a building takes place without planning permission. In most cases, it is not an offence to undertake development without permission, but the Council has powers to require these breaches to be put right. We can do this by requiring the removal of unauthorised development, by requiring changes to be made to the development, or by giving the development approval if we think it is acceptable. A breach of planning control also includes failure to comply with any condition or limitation of any planning approval granted.

4.2 Examples of 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 a grant of planning permission);
- Works to a listed building or properties in a conservation area without the required consent;
- Removing or lopping trees protected by a Tree Preservation Order or in a Conservation Area; or
- Display of an advertisement without the benefit of advertisement consent.

4.3 Things which 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's Planning Section;
- Where development is certified as 'Lawful Development' by virtue of the period of time it has been demonstrated to have been in place;
- Internal works to a building (with the exception of a listed building);
- Clearing land of overgrowth, bushes, etc. (provided they are not protected);
- Homeworking, such as childminding 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;
- Parking commercial vehicles on the highway; or
- Boundary disputes – these are a civil matter and cannot be controlled by planning legislation.

5 What happens if we are told about a breach of planning control?

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

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

5.2 You will be asked to give your name and contact details; however, should you wish to remain anonymous we will still investigate the reported breach. If you choose to provide contact details, these details will remain confidential 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.

6 How do we respond to the information we are given?

6.1 We will handle the case in the following way:

- Acknowledge the complaint in writing (or by email) and provide a case reference and the name of the investigating officer;
- Check the planning history of the site;
- Visit the site in a timely manner having regard to our priorities;
- Establish whether or not we believe there is a breach of planning control;
- Find out the details of the landowner;
- Establish the identity of the person(s) responsible for carrying out the breach (if not the landowner); and
- Issue a Planning Contravention Notice (a formal request for information) if necessary.

Service Standard 3

An enforcement case will be opened if preliminary investigations suggest that a breach of planning control has taken place. A written or email acknowledgement will be sent to the person who reported the alleged breach. This will include a reference number and contact details for the investigating officer.

6.2 After investigation we may decide that there has not been a breach of planning control, and in such circumstances we will close the case. We will not re-open the case, however if there is a significant new piece of information or change on site, we may open a new case. On occasions, where there is no current breach, but there is potential for a breach of planning, the Council's Planning Enforcement Team may monitor the situation. This will depend on the fact and degree of each case. We may also decide that although there has been a breach of planning control, it is not causing sufficient harm to justify taking further action. We will take into account why the breach may have happened, how many people are affected, how they are affected and whether there is a cumulative effect that adds up to an unacceptable situation.

6.3 This will depend on the fact and degree of each case. We may also decide that although there has been a breach of planning control, it is not causing sufficient harm to justify taking further action. We will take into account why the breach may have happened, how many people are affected, how they are affected and whether there is a cumulative effect that adds up to an unacceptable situation.

6.4 Not every report about a breach of planning control justifies further action. 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.



7 How do we seek to resolve a breach of planning control?

7.1 If we decide that there has been a breach of planning control that should be pursued further then in the first instance we will:

- Ask for things to be put back the way they should be; or
- Without prejudice, invite an application for the unauthorised development if it is considered possible that planning permission might be granted, normally giving 28 days for its submission; or
- Try to resolve the situation through negotiation without allowing the matter to become protracted. This may mean agreeing a compromise or partial change that we are happy with. It is at the Council's discretion to decide whether this would be sufficient.

7.2 Where a retrospective planning application has been asked for, we will normally wait a reasonable period for it to be submitted and for its determination before taking further enforcement action. However, where it appears that the progress of the application is being deliberately held up by the applicant or there is no prospect of planning permission being granted, enforcement action may be initiated without delay.

7.3 Under planning legislation, a breach of planning control that has been in existence in excess of five years will be immune from enforcement action, i.e. it is lawful. If, through discussions with the landowner and other interested parties, it appears that the alleged breach might be lawful, then we will normally seek evidence to prove the assertion. On occasions, we may invite the submission of an application for a Certificate of Lawfulness. Such applications are considered on the facts of the case and the relevant test to be applied is 'the balance of probabilities'. While on occasion applications can be delayed due to difficulties in obtaining evidence, the Council will endeavor not to allow the matter to become protracted.

7.4 Until the Council's Planning Section is satisfied, usually by the granting of a Certificate of Lawfulness that the development is lawful, the alleged breach of planning control remains open to the possibility of enforcement action being taken.

Service Standard 4

Where a planning breach cannot be resolved and action is justified, formal enforcement action will be recommended to the Planning Committee. Subject to the agreement of the Committee, such action could include the issue of an Enforcement Notice, Stop Notice or Breach of Condition Notice. We will write to the recipient of the Notice to explain what is required, the timescales involved and outline the options available to resolve the issue. The Planning Committee has authorised officers to instigate prosecution in relation to direct offences relating to advertisement control, Tree Preservation Orders, Conservation Areas, Listed Buildings and for non-compliance with a Planning Contravention Notice or Submission Notice.

7.5 If a breach of planning control is not resolved through negotiation, an invitation to submit an application is declined or a retrospective planning application is refused, our next steps will be:

- To consider the expediency of taking formal enforcement action; and
- To take into account the advice contained within the Local Development Plan and other relevant policy publications

7.6 On occasion we will decide at this point not to try to remove or change everything about an unauthorised development. There may be certain elements of the development that can be brought under control without further delay, such as the hours of use or the position of a window. If these are the things that are really important we may agree to these changes and not pursue other less important matters.

7.7 Where formal enforcement action is considered to be necessary the Enforcement Team will present the case to the Planning Committee (subject to the exceptions in Service Standard 4, above) along with a recommendation that formal enforcement action is progressed, normally by issuing an Enforcement Notice or Breach of Condition Notice. The Planning Committee will decide, based on the information presented, whether or not it is appropriate to progress formal enforcement action. If the Committee agrees with the Officer recommendation, we will aim to issue an Enforcement Notice or other relevant notice within 14 days of the Committee's decision. If the Committee decides that formal enforcement action should not be progressed, we will seek to regularise the breach by other means if possible.

7.8 If a breach of planning control occurs that requires urgent action, the Enforcement Team is empowered to issue an Enforcement Notice or other relevant notice as soon as practicable and report this to the next Committee meeting. All enforcement cases are presented to the Planning Committee in confidence so that there is no adverse impact on formal action. The recipient of an Enforcement Notice has the right to lodge an appeal to the Planning Appeals Commission before the Enforcement Notice takes effect (minimum 28 days following receipt of the notice). It may be a matter of months before the appeal can be heard. If no appeal is lodged, the Notice takes effect no less than 28 days following its date of issue; the date will be clearly specified on the Notice. There is no right of appeal to a Breach of Condition Notice.

7.9 Where an Enforcement Notice is issued, it will include requirements for remedying the breach of planning control and a period for compliance. Failure to comply with the requirements of an Enforcement Notice within the specified compliance period is a criminal offence, liable to prosecution in the Magistrate's Court (subject to a maximum fine of £100,000).

7.10 It is important to note that in relation to Enforcement Notices there are two separate offences – the first as owner of the land, and the second as 'the person in control' of, or who has an estate in the land to which the notice relates (other than the owner).

7.11 The Council has the power to enter the land and undertake the works to comply with the requirements of the Enforcement Notice (known as 'Discontinuance Orders'). The Council will seek to recover the costs of undertaking the works from the landowner and those expenses shall be a civil debt recoverable summarily. Whilst this can be an effective way to secure compliance with an Enforcement Notice, it does involve a cost implication to the Council and so in most cases the preferred method to secure compliance is to prosecute the landowner.

7.12 In cases of severe harm the Council can apply for an Injunction in the County or High Court. The Council can also decide to instigate proceedings under the Proceeds of Crime Act 2002, when it believes such action would be proportionate and appropriate.

Service Standard 5

In cases where the terms of any formal Notice are not complied with, every effort will be made to resolve the case to the satisfaction of the Council. Options include prosecution and injunction.

8 A breach of planning control that requires immediate action

8.1 When we consider there is a breach of planning control which is causing immediate harm then we may issue a Stop Notice or Temporary Stop Notice, which should bring about the immediate cessation of certain types of unauthorised works. A Stop Notice can only be served in association with or following the issue of an Enforcement Notice. Before taking such action, the Council will consider that any costs incurred by the developer by having to stop works are fully taken into account and weighed against the harm being caused.

9 The Council's planning enforcement priorities

9.1 The Council's Planning Enforcement Team will investigate all alleged breaches of planning control. However, when determining what, if any, action is to be taken, priority will be given to those breaches where, in the Council's opinion, the greatest harm is likely to be caused.

9.2 The priority given is determined by the guiding principle that any action in response to a breach of planning control should be proportionate to the harm it causes. The priorities which reflect this principle are as follows:

Priority 1 – Works resulting in public danger or development which may result in permanent damage to the environment. For example; unauthorised quarrying operations, 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 in a Conservation Area, and commencement of building operations without permission that have a significant impact on the environment.

Priority 2 – Unauthorised work/uses which cause loss of amenity or any other significant public or private impact.

Priority 3 – Non-compliance with conditions of a planning approval (unless they relate to serious amenity issues in which case it may fall into Priority 1 or 2).

Priority 4 – Minor breaches that can be regularised for example, domestic sheds, fences or extensions.



9.3 The above list is not exhaustive and is for guidance only. It is ultimately the responsibility of the Council's Planning Enforcement Team to prioritise cases taking account of the nature of the breach and the harm being caused or likely to be caused.

9.4 The priority given is reflected in the timescales against which performance is measured i.e. high priority cases have shorter timescales.

Service Standard 6

Priority will be given to significant breaches of planning control, such as:

- unauthorised quarrying operations
- demolition of or works to a listed building
- works to or removal of trees protected by a Tree Preservation Order
- demolition of a building in a conservation area
- commencement of building operations without permission that have a significant impact on the environment.

9.5 It is important to note that the vast majority of breaches of planning control are resolved informally through negotiation with the owner/occupier or through the submission and consideration of a retrospective planning application.

9.6 The speed at which a breach of planning control can be resolved will vary depending on the complexity of the individual case and general workloads. Some complex cases can however take a significant period of time due to the nature of the investigative process. However, officers will, in general, aim to confirm whether there is a breach of planning control and set out the Council's position in writing to the land owner/developer within eight weeks of a complaint being received.

Service Standard 7

We will aim to bring 70% of all enforcement cases to a target conclusion within 39 working weeks in line with Local Government Performance Indicators. 'Target conclusion' means case closure, submission of a retrospective planning application, commencement of formal enforcement action or the issuing of a summons to court.

10 Appeals

10.1 Under the provisions of the Planning Act (Northern Ireland) 2011, an appeal may be lodged with the Planning Appeals Commission (PAC) against an Enforcement Notice, a Listed Building Enforcement Notice, a Submission Notice, a Hazardous Substances Contravention Notice and a Section 164 Notice (replacement of trees). The timescale for hearing an appeal and issuing a determination is a matter for the Planning Appeals Commission. Additional information on the Planning Appeals Process can be obtained from the PAC website, www.pacni.gov.uk.



11 Legislative timescales

11.1 When considering enforcement action, the Council will bear in mind the statutory time limits for taking enforcement action as set out in Section 132 of the Act. Where there has been a breach of planning control consisting of the carrying out of building, engineering, mining or other operations in, on, over or under land, without planning permission, no enforcement action may be taken after the end of the period of 5 years beginning with the date on which the operations were substantially completed.

11.2 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.

11.3 In the case of any other breach of planning control (except advertisements), no enforcement action may be taken after the end of the period of 5 years, beginning with the date of the breach. An unauthorised advertisement benefits from deemed consent if it has been displayed continually for the preceding ten years, provided there has been no material change to that advertisement.

12 Summary of service standards

12.1 For the purposes of measuring performance, the Council will adhere as far as possible to the following service standards:

1. By publishing our standards and targets, we aim to improve our enforcement service and make it responsive to the needs of our citizens. We will monitor the contents of the Strategy to ensure that standards and targets are being met.
2. The Planning Enforcement Service aims to carry out its duties in accordance with the following key values:

Independence – making decisions based on a 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 whilst 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, councillors, community groups, etc. can be different

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



3. An enforcement case will be opened if preliminary investigations suggest that a breach of planning control has taken place. A written or email acknowledgement will be sent to the person who made the enquiry. This will include a reference number and contact details for the investigating officer.
4. Where a planning breach cannot be resolved and action is justified, formal enforcement action will be recommended to the Planning Committee. Subject to the agreement of the Committee, such action could include the issue of an Enforcement Notice, Stop Notice or Breach of Condition Notice. The Council will write to the recipient of the Notice to explain what is required, the timescales involved and the available options to resolve the issue. The Planning Committee has authorised officers to instigate prosecution in relation to direct offences relating to advertisement control, Tree Preservation Orders, Conservation Areas, listed buildings and for non-compliance with a Planning Contravention Notice or Submission Notice.
5. In cases where the terms of any formal Notice are not complied with, every effort will be made to resolve the case to the satisfaction of the Council. Options include prosecution and injunction.
6. Priority will be given to significant breaches of planning control, such as:
 - unauthorised quarrying operations;
 - demolition of or works to a listed building;
 - works to or removal of trees protected by a Tree Preservation Order;
 - demolition of a building in a Conservation Area; and
 - commencement of building operations without permission that have a significant impact on the environment.
7. We will aim to bring 70% of all enforcement cases to a target conclusion within 39 working weeks in line with Local Government Performance Indicators. 'Target conclusion' means case closure, submission of a retrospective planning application, commencement of formal enforcement action or the issuing of a summons to court.

13 Communication

13.1 We will respond to all reasonable requests for an update on particular cases, however the Council will be unable to provide specific details of the investigation until such time as it has been concluded. The reason for this is that the release of premature information into the public domain can have an adverse impact upon any legal proceedings which may be required to remedy a breach of planning control. The Council's Enforcement Team will not provide a routine commentary on progress in dealing with cases as this would require resources that are best used pursuing investigations.

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

E. planning@antrimandnewtownabbey.gov.uk

T. 0300 123 6677

Post : Antrim and Newtownabbey Planning Section
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