Planning Enforcement Charter

A guide to the Enforcement of Planning Control
in Caerphilly County Borough Council



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Mae'r ddogfen hon ar gael yn Gymraeg, ac mewn ieithoedd a fformatau eraill ar gais.
This document is available in Welsh, and in other languages and formats on request.



Summary

The Council as Local Planning Authority (LPA) has powers to take enforcement action against development carried out without the appropriate consent under planning legislation. While all valid complaints will be investigated, it is not always possible or expedient for the LPA to take action. The purpose of this Charter is to explain the basis on which the LPA will investigate breaches of the planning statutes, and in what circumstances it will take action.

This Charter seeks to:-

- Provide an overview of the planning enforcement system, including a summary of what may constitute a breach of planning control;
- Detail the enforcement processes and powers available to the Council;
- Identify policies and procedures which set out how the Caerphilly County Borough Council Planning Enforcement team will deal with enforcement complaints in a fair, reasonable and consistent manner;
- Set out the service standards that we strive to achieve to ensure that enforcement complaints are dealt with in a timely manner, and that complainants are advised of the outcome of such investigations at appropriate stages.

This Charter is not an authoritative source in respect of the legislation and policy, and does not bind the Council in those regards.

1. Introduction

1.1 The Town and Country Planning Act 1990 provides the Council as LPA with the powers to serve an enforcement notice where it is expedient to issue one, having regard to the provisions of the Development Plan and to any other material considerations. That means that the Council will not take action or serve a notice in every case, and will often look to resolve breaches of Planning legislation by other means, such as removing the unauthorised development through negotiation, or by getting the developer to submit an application to secure planning permission retrospectively.

1.2 The planning enforcement function is carried out by the Council's Planning Enforcement Officers within the Regeneration and Planning Service of the Communities Directorate.

1.3 Welsh Government policy on planning enforcement is set out in section 14 of its Development Management Manual which can be found at the following website:

https://gov.wales/sites/default/files/publications/2018-10/development-management-manual.pdf

2. What is a Breach of Planning Control?

2.1 The main breaches of planning control are:

- Carrying out building works or engineering operations, or materially changing the use of land or buildings, without the necessary planning permission;
- Where planning permission has been granted but the approved plans or the conditions attached to the approval have not been complied with;
- Unauthorised works to a Listed Building that affect its character as a building of special architectural or historic interest;
- Unauthorised demolition in a Conservation Area;
- Unauthorised display of advertisements;
- Unauthorised works to trees protected by Tree Preservation Order (TPO) or because of they are in a Conservation Area;
- Untidy land or buildings that may be adversely affecting the amenity of an area.

3. Determining whether action should be taken

3.1 Welsh Government's Development Management Manual states that effective enforcement underpins the whole Development Management function. The decisive issue is to consider whether the breach of planning control would unacceptably affect public amenity or the existing use of land and buildings meriting protection in the public interest. The intention should be to remedy the effects of the unauthorised development, not to punish the people carrying out the operation or use.

3.2 The Manual emphasises that:

- Any enforcement action should be commensurate with the breach of planning control to which it relates;
- It is usually inappropriate to take formal enforcement action against a trivial or technical breach of control which causes no harm to public amenity; and
- Enforcement action should not be taken simply to regularise development for which permission had not been sought but which is otherwise acceptable.

3.3 When investigating an alleged breach of planning control the LPA always tries to ensure that decisions are taken concerning the most appropriate way forward in an effective and timely manner. This does not, however, mean that formal action will be taken. Indeed such action is limited to the most serious cases where harm arises and action is warranted in the public interest.

3.4 In the majority of cases, even where breaches are identified, we will seek to resolve them informally, which may include:

- Informal negotiation with an owner or developer to remove a breach, or to make changes to a development such that it no longer constitutes a breach, or no longer causes material harm;
- Seeking the submission of a planning application to regularise a breach, which may include the need to comply with conditions to mitigate any harm caused by the development;
- Concluding that no harm arises from the breach, such that it is not expedient for the Council to take the matter further.

3.5 When we investigate complaints, and these are found to require planning permission we will undertake an initial assessment to determine whether the development would be acceptable judged against the policies within the Council's adopted Local Development Plan, and other material considerations such as Welsh Government policy, and decisions taken by The Planning Inspectorate.

3.6 Where we consider that such development is likely to be acceptable, and it is minor, e.g. a garden shed, we will advise the developer that it is not expedient to take action, but the development is unlawful, and they may wish to regularise the matter by submitting a planning application.

3.7 Where the development is more significant and could be made acceptable by conditions, we will usually seek submission of an application to regularise the development.

3.8 However, where unauthorised development has adverse impacts that cannot be controlled adequately by condition, we will normally serve an enforcement notice seeking its removal.

3.9 There are time limits for taking enforcement action: four years in the case of unauthorised buildings, and 10 years for unauthorised changes of use or failures to comply with planning conditions.

3.10 There are rights of appeal against enforcement notices to The Planning Inspectorate details of which can be found at the following website:

https://gov.wales/planning-appeals

If an appeal is received, no further action can usually be taken until the appeal has been determined.

4. Reporting a Breach of Planning Control

4.1 Anyone can report a breach of planning control. Please be assured that a complainant's details will remain confidential and will not be publicly available. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 give a general right of access to information and environmental information held by public authorities. While the presumption will always be in favour of disclosure of such information, having regard to the wider principles of promoting accountability and transparency in the planning process, in respect of enforcement complaints details will be treated in strictest confidence.

4.2 Accordingly, while requests to disclose the identity of a complainant are likely to be resisted because it would discourage others from reporting alleged breaches of planning control to the Council, thereby prejudicing the proper enforcement of planning laws, each request will have to be considered individually to establish whether an exemption applies.

4.3 We will only act upon a complaint where it is received via the Planning Enforcement complaints section of the Council's website. You may phone the Planning Enforcement team to notify us of a breach of planning control but you will be advised to complete the online form before a potential breach of planning control is investigated.

4.4 All Enforcement complaints, upon receipt, will be validated to ensure that adequate information is provided prior to being passed onto the Planning Enforcement Officers for investigation. To ensure that the enforcement complaint has enough information to be registered, the following information will be required:

- Your name;
- Your address;
- A valid e-mail address, this is to ensure we can update you on the progress of the investigation;
- As well as the relevant evidence listed under point 4.4 of this Charter.

4.5 If the LPA believe that a valid email address has not been provided, then a decision will be made regarding whether the reported breach will be investigated.

4.6 All complaints should be accompanied by the following evidence.

1. Allegations of unauthorised buildings and structures including fences, and alterations to listed buildings.

- The address of the site where the work is taking place;
- The location on the site of the alleged breach;
- A description of the development taking place supported where possible by photographs;
- Details of when the unauthorised works were commenced or completed. If there is no known address to the site where works are being taken place, then a map showing clearly the location of where the breach is being undertaken will be required.

2. Allegations of unauthorised changes of use

- The address of the site where the use is taking place;
- The location on the site of the alleged breach;
- A description of the change of use taking place;

- A log of the occasions on which you have observed the alleged change of use, being a minimum of at least five occasions on five separate days, with a full description of the activities, and supported where possible by photographs;
- Details of how long the alleged breach has been taking place;
- If there is no known address to the site where works are being taken place, then a map showing clearly the location of where the breach is being undertaken will be required.

3. Failure to comply with planning conditions or approved plans

- The address of the site where the alleged breach is taking place;
- The location on the site of the alleged breach;
- Which plan or condition the developer is failing to comply with, and in what manner, supported if possible by photographs;
- Details of how long the alleged breach has been taking place;
- A log of the occasions on which you have observed the alleged breach taking place, being a minimum of at least five occasions on five separate days, with a full description of the activities, and supported where possible by photographs;
- If there is no known address to the site where works are being taken place, then a map showing clearly the location of where the breach is being undertaken will be required.

4. Untidy land or buildings

- The address of the site where the work is taking place;
- The location on the site of the alleged breach;
- A description of the site's condition supported where possible by photographs;

- Details of how long the alleged breach has been taking place;
- If there is no known address to the site where works are being taken place, then a map showing clearly the location of where the breach is being undertaken will be required.

4.7 The complaint will not be registered and acted upon unless theat information is submitted. If the LPA consider that not enough information has been submitted to support the complaint, then a letter will be sent via e-mail to the complainant requesting that the required information is provided within 14 days of the date of the letter. If the required information is not received within this timeframe then the reported breach will **NOT** be investigated.

4.8 Anonymous complaints will **NOT** be investigated unless the Council's officers determine that the nature of the complaint is sufficiently serious that it may require immediate action by the Council in terms of public amenity, or includes irreversible actions that involve serious breaches resulting in significant harm. If the complainant's details clearly indicate that the complaint has been made anonymously then the alleged breach of planning control will **NOT** be investigated.

4.9 Planning Enforcement complaints can only be made **ONLINE** by completing the Enforcement Complaint Form at the Council's website: https://www.caerphilly.gov.uk/

4.10 The LPA will not investigate some complaints, such as neighbour disputes over boundaries or complaints over anti-social behaviour as they relate to matters over which planning legislation has no control. Where officers consider the complaint relates to such matters where there are private or civil law solutions, the Council will not become involved. In such cases you will be advised of this and, if possible, where the complaint could be directed.

5. How Do We Deal With Complaints?

5.1 On receiving a valid complaint fully supported by the appropriate evidence we will:

- Register the complaint in the Council's Enforcement System;
- Allocated a priority in line with Appendix A of the Charter;
- Acknowledge the complaint in writing within 5 working days from receipt (by email where the address is provided), providing:-
  - The Enforcement Case reference number.
  - The priority allocated to the complaint.
  - The name and contact details of the investigating Enforcement Officer.

5.2 The Council will seek to ensure that 100% of complaints are registered and acknowledged in writing within 5 working days of receipt.

5.3 Following registration and acknowledgement of a complaint we will;

1. Undertake any relevant initial research which may assist in identifying whether the complaint constitutes unauthorised development. Depending on the findings, the complaint may not be investigated any further.
2. Carry out a site visit to gather information and evidence relating to the alleged breach of planning control, including taking notes and photographs from the site or adjoining land. Depending on the findings, the complaint may not be investigated any further.

5.4 At the end of either of these stages, if the development under investigation is found to be unauthorised, the LPA may come to the view that it is not expedient to take further action.

5.5 The timescales for those activities will depend on how serious the LPA consider the breach to be. In some cases a site visit and initial investigation will be made no later than the next working day following the registration of the complaint. In most other cases a site visit will be made within twenty-five working days and the initial investigation will be concluded within 84 days of receipt of the complaint.

5.6 Following the appropriate investigations, officers will come to one of the following conclusions:

1. That there has not been a breach of planning control;
2. That there has been a breach, but it would not be expedient to pursue further action;
3. That a breach has occurred, and action is expedient;

   Such action can include requesting the submission of a planning application, negotiating the removal of the breach, or to take enforcement action to remove the breach.
4. Notify the complainant in writing of the outcome of the investigation phase, including information on the next stages of the investigation where relevant;
5. Notify the owner or developer of the conclusions of the investigation phase, including details of the next stage of the investigation where a breach of planning has been identified and it is expedient to pursue the matter further.

5.7 The LPA will seek to advise complainants in writing (including email) of the conclusion of this phase of the investigation within 12 weeks of the receipt of the original case, in 90% of cases. In all cases, an assessment will be made taking account of the relevant matters, which will assist the LPA to a final conclusion regarding the case.

5.8 There are a number of actions the LPA can take to try to resolve a breach of planning control including, encouraging the submission of a planning application, removal through negotiation, serving an enforcement notice, prosecution following the service of an enforcement notice and the exhaustion of any appeal procedure, and in some cases direct action to remove the breach. The LPA will strive to ensure that such action is taken in no fewer than 80% of cases within 180 days of the complainant being advised of the course of action.

5.9 The term 'enforcement action' encompasses a number of procedures which are summarised below.

- Enforcement notice: this is usually served against unauthorised operational development or changes of use;
- Breach of condition notice: as the name suggests, this is served to secure compliance with a condition on a planning permission e.g. one that limits hours of operation;
- Temporary stop notice: this is a new procedure which can require an activity which is a breach of planning control to stop immediately, but ceases to have effect after 28 days. Before issuing, the LPA must consider the consequences of the notice, including any implications in respect of the Human Rights Act 1998, and the Equalities Act 2010;

- Enforcement warning notice: this is served to provide a developer with a clear indication that if an application for planning permission is submitted, adequate controls could be applied to the development by conditions to make it acceptable;
- Section 215 notice: this is served on land and buildings to require their proper maintenance;
- Stop notice: this can be served in conjunction with an enforcement notice when there is a severe amenity problem. Before issuing, the LPA must consider the consequences of the notice, including any implications in respect of the Human Rights Act 1998, and the Equalities Act 2010. There are also compensation implications if the notice is later withdrawn, varied or quashed at appeal;
- Injunction: this is usually used at the end of a long process of enforcement action;
- Completion notice: this requires development to be completed within a certain time, otherwise the planning permission will cease to have effect for the uncompleted part of the operations.

5.10 It is difficult to predict a general timescale for the closure of enforcement cases. Some developers recognise their mistake immediately, are cooperative, and the breach is removed or planning permission is secured fairly promptly. Others will refuse to resolve the breach despite being prosecuted and fined. There are also rights of appeal to The Planning Inspectorate. Therefore the Council cannot commit to any targets for the closure of enforcement cases. The LPA will, however, always seek to ensure final resolution of enforcement cases at the earliest opportunity, and will pursue all appropriate and reasonable action to secure resolution.

Appendix A

At the registration stage all complaints will be prioritised. This will ensure that the expectations of complainants can be managed and that the resources of the Planning Enforcement team are appropriately and proportionately targeted, having regard to the likely level of harm being caused to the local community and public amenity.

All complaints will be prioritised in accordance with the following protocol:-

Priority 1: High Priority Cases

In general, 'Priority 1' cases will be restricted to those cases where the likelihood of harm being caused to the environment or amenity is significant, immediate and potentially irreparable, and there is a likelihood that urgent action may be needed to prevent or mitigate existing or potential immediate harm.

This is likely to relate to serious breaches such as:

- Unauthorised works to a Listed Building, archaeological site or Scheduled Ancient Monument (SAM) (contact will be made with Cadw in respect of SAM);
- Demolition of important unlisted buildings in a Conservation Area;
- Development Works affecting a European Protected Species (EPS) Site of Special Scientific Interest (SSSI) or other designation;
- Unauthorised development that is causing severe disturbance to neighbours or poses a threat to public safety;
- Unauthorised works to trees covered by a Tree Preservation Order (TPO) or in a Conservation Area;
- Unauthorised display of advertisements which appear likely to be causing significant harm to public safety.

Priority 2: Medium Priority Cases

'Priority 2' will normally be given to those cases which the Authority consider there is a potential likelihood of a serious or significant effect on the environment or local amenity, which could merit formal enforcement action being taken, but no short-term harm.

This is likely to relate to serious breaches such as:

- Breaches of planning control contrary to the policies of the Local Development Plan (e.g. Unauthorised residential use in the countryside);
- Complaints where the time limit for taking formal action may be about to expire;
- Serious breach of conditions on planning permissions, including non-compliance with 'conditions precedent*;
- New Building works of medium-large scale;
- Complaints of significant harm being caused to amenity, for example, extensions to residential property that result in serious overlooking or other amenity problems, unauthorised uses of land which cause amenity problems to neighbouring properties;
- Unauthorised display of advertisements which appear likely to be causing significant harm to visual amenity.

* A condition which require approval of details or actions to be undertaken prior to development commencing.

Priority 3 Low Priority Cases

'Priority 3' will be assigned to all other cases. These cases being those which, while potentially of significance to a complainant, are nevertheless (based on the information available at registration stage): -

- Likely to have a limited degree of harm;
- May be cases where it will not be expedient to take positive action; or
- Deemed unlikely to represent a breach of planning control;
- This is most likely to relate to complaints about;
- Householder development such as small-scale extensions, boundary enclosures etc;
- Advertisements (other than those identified under Priority 2);
- Minor development where there may be a breach of planning control but there is little or no immediate harm to amenity, for example incidental minor developments that only just exceed permitted development rights;
- The Material Change of Use of a property;
- Minor Breaches of Planning Conditions.

Assigning a Priority to a Case

The priority of a case will normally be assigned by the Principal Area Enforcement Officer or Team Leader in liaison with the Development Manager – Planning.

In all cases it will be for the Council to determine whether and to what level any harm to public amenity results from an alleged breach, and which priority is assigned to an enforcement case.

Please note:

1. A Priority will be assigned to a case irrespective of the source of the complaint.

2. Although a Priority rating will be given to each case as it is received, the rating may change during the investigation.

3. Notwithstanding the priority given to a complaint, the Council remains committed to investigating every alleged breach of planning in accordance with the guidance and targets within the Charter.

Depending on the seriousness of the alleged breach and available resources the target time for our initial investigation will be as follows: -

Priority 1 cases:

A site visit and initial investigation will be made no later than the **next working day** following the registration of the complaint.

Priority 2 cases:

A site visit will be made within **ten working days** of receipt.

Priority 3 cases:

A site visit will be made within **twenty-five working days** of receipt.

All enforcement complaints have a target investigation time of 12 weeks, where the authority will strive to investigate 90% of complaints within this timeframe.

Caerphilly County Borough Council

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