

# **Planning Service Enforcement Customer Charter**

*A guide to planning enforcement in Belfast City Council*

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## 1.0 Introduction

- 1.1 Belfast City Council ('the Council') is committed to protecting and enhancing the environment for the benefit of all its residents and businesses. The Council's functions as the planning authority are set out in Part 5 of the Planning Act (Northern Ireland) 2011 ('the Act'). The Strategic Planning Policy Statement for Northern Ireland (2015) sets out the key objectives of the planning system for planning enforcement although ultimately it is a matter for the Council to set its own priorities in terms of enforcement.
- 1.2 The **Planning Service**, within Belfast City Council's Directorate of Planning and Place, administers the planning functions outlined in the Act including the discretionary power to take action against breaches of planning control.
- 1.3 The Council aims to operate its planning enforcement service in a fair, timely, consistent and open manner so that the city of Belfast can be protected and enhanced. The Council recognises the importance of establishing effective controls over unauthorised development to assist in the conservation of the natural and built environment and to protect the quality of citizens' lives.
- 1.4 Planning permission is required for most types of development, including new buildings and change of use of land or buildings. Some minor work can be carried out without planning permission this is known as permitted development<sup>1</sup>.
- 1.5 This Enforcement Charter explains how the enforcement process works, what the Council's role is, what happens at each stage of the process; and the service standards the public can expect. this Charter should also be read in conjunction with the Council's Corporate Enforcement and Regulation Policy<sup>2</sup>.

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<sup>1</sup> Permitted Development rights are outlined in the Planning (General Permitted Development) Order (Northern Ireland) 2015 <http://www.legislation.gov.uk/nisr/2015/70/contents/made>

<sup>2</sup> <http://www.belfastcity.gov.uk/council/Publications/enforcement.aspx>

## **2.0 Key objectives**

2.1 In delivering its enforcement obligations under the Act, the Council aims to:

- bring unauthorised development under control;
- resolve most enforcement complaints informally;
- remedy the undesirable effects of unauthorised development including, where necessary, the removal or cessation of unacceptable development; and
- take legal action, where necessary against anyone who does not comply with planning legislation; and
- operate in an equitable, proportionate and consistent manner.

## **3.0 Guiding principles**

3.1 The Council will take enforcement action against any unauthorised development which unacceptably harms public amenity, public safety or the existing use of land and buildings which should be protected in the public interest. The Council is committed to ensuring the credibility and integrity of the planning system is not undermined, either wilfully or unintentionally by unauthorised works.

3.2 In considering whether to take enforcement action, the Council will take into account all relevant considerations. In particular however it will have regard to the following:

- public safety;
- policy considerations
- residential amenity;
- road safety;
- scale of the breach; and
- public health issues; s; risk of harm to the environment.

3.3 The Council has adopted the government’s Enforcement Concordat – our strategy is based upon its principles of good enforcement. The Council believes in firm but fair regulation. This should be informed by the principles of **proportionality** in application of the law and in securing compliance; **targeting** of enforcement action; **consistency** of approach; **transparency** about how the Council operates and what those regulated may expect from the Council; and **accountability** for the Council’s actions through the existence of a clear **complaints** procedure<sup>3</sup>.

#### 4.0 What is a planning breach?

4.1 A breach of planning control occurs when “development” or certain other activities take place without the necessary planning permission or consent from the Council.

4.2 The Act defines a breach of planning control as:

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

#### 5.0 What is a planning offence?

5.1 ~~The following are offences~~ under the Act and the associated Regulations:

<sup>3</sup> <http://www.belfastcity.gov.uk/contact/feedback.aspx>

- unauthorised works to or demolition of a listed building,
- unauthorised demolition of an unlisted building within a conservation area,
- non-compliance with conditions attached to listed building consent,
- non-compliance with conditions attached to conservation area consent,
- unauthorised display of an advertisement,
- unauthorised works to trees protected by a Tree Preservation Order or within a conservation area, and
- non-compliance with a submission notice, enforcement notice, breach of condition notice, stop notice, listed building notice or hazardous substances contravention notice.

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

## **6.0 Reporting a breach of planning control**

6.1 Whilst officers identify breaches of planning control as part of their normal duties, the Council often rely on members of the public to report possible breaches.

6.2 To ensure communication with complainants where further information is required and in order to avoid malicious complaints, **anonymous allegations of breaches of planning control are not normally investigated** but will be recorded.

Should you wish to remain anonymous, you may wish to consider contacting your Local Councillor.

- 6.3 Complaints should be sent in writing and include the following information:
- the full address or location of the property or lands involved,
  - the full details of the suspected problem,
  - the dates and times when the activity is carried out or when the building work began, and
  - the details of any of the problems caused by the alleged breach

If you want to submit a complaint, you can complete it online at [www.belfastcity.gov.uk/planning1](http://www.belfastcity.gov.uk/planning1) or write to us at The Planning Service, Belfast City Council, Cecil Ward Building, 4-10 Linenhall Street, Belfast, BT2 8BP.

- 6.4 As outlined in Para 13.1, the Council will write to you to acknowledge your complaint and provide you with an overview of our processes. You will also be contacted at the conclusion of the case to advise you of the outcome.

## **7.0 Enforcement priorities and actions**

- 7.1 When determining what (if any) action is to be taken, priority will be given to complaints which relate to the issues outlined in Para 5.1.
- 7.2 It is important to note that the vast majority of breaches of planning control are resolved informally through negotiation with the owner or operator. This can often result in the submission of a remedial or retrospective planning application. The Council will normally hold enforcement action pending the outcome of a remedial planning application unless there is an immediate threat to amenity or safety.
- 7.3 Depending on the extent and nature of the breach investigated, the Council may seek to deal with the alleged breach in a number of ways which are detailed below.

### 7.3.1 **Informal – remedying the breach**

In many cases, breaches are minor and/or inadvertent. Usually, once an officer confirms that a breach has occurred, the Council will write to the owner and operator to inform them of the breach and to ask them to remedy this breach within a specified timeframe. Where appropriate, the officer may offer the route of a **remedial planning application**. These applications are subject to the same rigorous consultation and policy testing as any other applications and can often remedy the breach if permission is granted. In other cases, the offender may be asked to simply remove or cease the actions causing the breach.

Where there has been no response to the first warning letter, a second or final letter may be issued, and thereafter formal action will be considered.

### 7.3.2 **Formal action**

Where it has not been possible to resolve the breach with the owner/operator, formal enforcement action may be taken in the form of:

An **enforcement notice** or a **breach of condition notice** which will set out exactly what, in the Council's view, constitutes the breach of planning control; and the steps which are required to remedy the breach.

An enforcement notice can be accompanied by a **stop notice** which can prohibit any or all of the activities which comprise the alleged breach(es) of planning control specified in the related enforcement notice, ahead of the deadline for compliance in that enforcement notice.

Failure to comply with the steps specified in these Notices will normally result in the Council prosecuting the owner/operator unless an appeal is lodged. .

7.3.3 Alternatively, the Council has the power to seek an **injunction** to restrain any actual or perceived breach of control at any stage of the enforcement process, regardless of whether it has exercised or proposes to exercise any of its other enforcement powers. An injunction is only likely to be used where there is an



immediate threat to the environment.

## **8.0 Penalties**

8.1 On summary conviction, the owner/occupier of the land is liable to a fine with the potential for continuing daily fines. At present the maximum level of fine that may be imposed on summary conviction is £100,000. The Council will also seek to recover legal costs.

## **9.0 Appeals**

9.1 Any person who owns, occupies or controls land which is the subject of an enforcement notice, may appeal to the Planning Appeals Commission (PAC) before the date the notice becomes effective. When an appeal has been made, the requirements of the notice are suspended until the appeal has been either determined or withdrawn.

9.2 An appeal may be also made against a submission notice, listed building notice or hazardous substances contravention notice.

9.3 The timescale 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](http://www.pacni.gov.uk).

9.3.1 There is no right of appeal against a breach of condition notice or a stop notice, however the validity of these notices or the validity of the decision to serve the notices may be challenged by application to the High Court for Judicial Review.

## 10.0 Timescales

10.1 Enforcement cases can be a lengthy and complex process and if a person decides to appeal an enforcement notice this may add many months to the time taken to resolve a case. It is therefore difficult to set down timescales for dealing with enforcement cases – however – the Council do have procedures whereby cases are prioritised accordingly and targets set to ensure timely site visit and assessment of cases.

## 11.0 Immunity

11.1 When investigated alleged breaches of planning control, the Council will have regard to the statutory time limits for taking action under Section 132 of the Act. Dependant on the type of planning breach, there are time frames after which it is not possible to take action. These are detailed below.

11.1.1 **Operational development:** Enforcement action may not be taken once 5 years have elapsed from the date on which building operations were substantially completed.

11.1.2 **Material change of use:** Enforcement action may not be taken once 5 years have elapsed from the date on which the change of use took place **and** proof exists that the use has continued uninterrupted for those 5 years.

11.1.3 **Breach of planning condition:** Enforcement action may not be taken once 5 years have elapsed from the date on which the breach began where it has continued uninterrupted for those 5 years.

11.1.4 **Unauthorised advertisement:** Enforcement action may not be taken once 10 years have elapsed from the date on which the breach began and where it has continued uninterrupted for those 10 years.

11.2 The burden of proof is on the owner or operator of land to demonstrate that the works benefit from immunity.

## **12.0 Communication and Information**

12.1 Officers gather information in a number of ways including internet research, information regarding companies and registrations as well as site visits and discussions on site.

12.2 One such method of information gathering is the use of a **Planning Contravention Notice** (PCN) served under Section 133 of the Act. The Council can serve a PCN in order to obtain information about activities on land where a breach of planning control is suspected. It can be served on the owner, occupier, or a person with an interest in the land. The persons served are required to provide information requested in the PCN by law. Failure to provide the information within 21 days of the Notice being served is an offence and can lead to a fine.

12.3 Sections 176, 177 and 178 of the Act provide for **right of entry** of duly authorised officers who attend a site in order to assess whether a breach of planning control has occurred.

### **12.4 Information requests**

The Planning Service reception (Ground Floor, Cecil Ward Building), where you can view and copy paper records, will be open from 9am to 5pm every weekday except for public and bank holidays.

The Freedom of Information Act 2000 and Environmental Information Regulations ('EIR') 2004 make it easier for you to get information about us. All you have to do is submit your request in writing, by letter or email, to any member of staff, stating clearly what information you want. In respect of EIR requests these can be made verbally.

The Planning Service will adhere to existing Council guidelines in relation to how its information is published and retained. The Service is also committed to operating in an open and transparent manner in relation to how it manages its information.

### 13.0 Service Standards

13.1 We will give priority to significant incidents where planning control has been breached including as outlined in Para 5.1.

Our performance targets are outlined below.

<b>Service Standard</b>	<b>Action</b>	<b>Target Timescale</b>	<b>Additional information</b>
Service Standard 1	Complaint Acknowledgement	Within 5 working days of receipt	The acknowledgement letter will contain the council's case reference number as well as our contact details and some information about our service
Service Standard 2A	High priority complaints - preliminary investigation and site visit	Within 3 working days of receipt of complaint	High priority complaints would include listed buildings, buildings in conservation areas and protected trees

Service Standard 2B	All other complaints - Undertake a preliminary investigation including site visit	Within 20 working days from the acknowledgement date	It may take some time to establish the nature of a breach and who is responsible
Service Standard 3A	High priority cases - Discuss and agree a course of action	Within 10 working days of receipt of complaint	
Service Standard 3B	All other complaints - Discuss and agree a course of action	Within 8 working weeks of receipt of complaint	
Service Standard 4	Target conclusion	Within 35 working weeks of receipt of complaint	Target conclusion means case closure, submission of a retrospective application, formal enforcement action or court summons
Service Standard 5	Inform interested parties of outcome	Within 5 working days of decision	

## **Appendix 1 - Frequently Asked Questions**

### **How can I find out if a development has planning permission?**

Our planning portal - <http://epicpublic.planningni.gov.uk/publicaccess/> - contains information on live and decided cases. Should you encounter difficulty, you can call 0300 200 7830 for assistance.

### **What information will I receive if I refer a breach to you?**

Firstly you will receive confirmation of a case being opened including the reference number, contact details and some additional information about enforcement investigations.

At the conclusion of the case, you will receive a notification in writing when the case has been closed along with details of the outcome.

### **Why can I not receive updates during the processing of the enforcement case?**

Each enforcement case is a criminal investigation and therefore detailed information cannot normally be disclosed in the course of the investigation in case that disclosure prejudices the investigation, a subsequent court hearing or the rights of the person under investigation. Enforcement notices are however publically available.

### **What does public interest mean with regards to enforcement cases?**

Although each case is considered on its individual merits, sometimes the nature and degree of a breach means that it is not in the public interest to pursue the breach. For example, a 2.2 metre fence which is 0.2m above the permitted allowance may be minor in nature and would be likely to receive planning permission if applied for. By taking a pragmatic approach to minor breaches, this allows the Council to divert resources towards resolving more serious matters.

**My neighbour does not have planning permission for building work they are carrying out; can you force them to stop building?**

In most cases, The Council does not have the power to stop building work. In exceptional circumstances the Council can serve a notice requiring that unauthorised development is stopped but that is only likely to be where serious harm is being caused.

**My neighbour is building an extension/wall that encroaches slightly onto my property; can the Council do anything about this?**

The Council cannot become involved in matters relating to boundary disputes or allegations of trespass onto your property. If an extension is constructed on a neighbour's property that you believe part to have been built on your land, you should seek legal advice from a solicitor/legal advisor about how to pursue the matter. Similarly, if a neighbour has erected scaffolding on your property to enable them to construct an extension, the Council does not have any power to take action.

**My neighbour has constructed a fence that blocks off my right of access to the rear of my property; can the Council do anything about this?**

The Council cannot become involved in and has no power to take action regarding matters relating to access rights. If a neighbour has fenced off part of their garden or a shared private drive over which you believe you have a right of access, you should seek legal advice from a solicitor/legal advisor about how to pursue the matter. Similarly, if your neighbour constructs a fence or wall over a public footpath or a public right of way, the Council does not have the power to take any action in respect of the encroachment. The Council can only investigate an alleged unauthorised boundary wall or fence if it exceeds Permitted Development height restrictions.

**Does my neighbour need planning permission to use a room in their house as an office/for business purposes?**

A property owner can usually use a room in their property as a home office, without needing to apply for planning permission. The general test is whether the extent of the use remains ancillary to the enjoyment of the home as a dwelling.

**I have received a letter telling me that my extension is unauthorised. My plans were approved by Building Control so I don't need planning permission separately do I?**

The Council's Building Control Section can grant Building Regulations Approval for a development if it complies with Building Regulations. This is NOT a grant of Planning Permission. Building regulations and planning permission are entirely separate matters and are governed by completely different legislation. In many cases planning permission will also be required and would need to be applied for separately.

**I'm sharing a house with some friends – is this a House of Multiple Occupancy?**

**I'm a landlord and I'm letting my house to a group of individuals – is this a House of Multiple Occupancy?**

In terms of planning, a HMO is "A house occupied by more than 2 qualifying persons, being persons who are not all members of the same family". If a change of use has occurred between a single family residence to what would constitute a HMO, planning permission is required. More information is available at [http://www.planningni.gov.uk/downloads/houses\\_in\\_multiple\\_occupation\\_subject\\_plan-2.pdf](http://www.planningni.gov.uk/downloads/houses_in_multiple_occupation_subject_plan-2.pdf).



**Appendix 2** – Did you know that the following are not breaches of planning control?

- Carrying out works to a home which fall under permitted development rights.  
Find out more about his [here](#).
- Internal works to a non-listed building
- Obstruction of a highway or public right of way
- Parking of a caravan in the curtilage of a domestic dwelling, provided the caravan is not used as self-contained accommodation
- Clearing of bushes and trees providing the trees are not protected under a Tree Preservation Order or located within a Conservation Area
- Operating a business from home, provided the residential use remains the primary use and there is no adverse effect on neighbours
- Boundary disputes
- Breach of deeds or covenants unless prevented by a specific planning condition
- Trespassing
- Health and safety