



PLANNING COMMITTEE – 17 JULY 2019

SUBJECT: PLANNING ENFORCEMENT CHARTER

REPORT BY: INTERIM CORPORATE DIRECTOR COMMUNITIES

1. PURPOSE OF REPORT

- 1.1 To inform members of the Planning Committee of, and seek their comments about the adoption of a Planning Enforcement charter.

2. SUMMARY

- 2.1 The Planning Enforcement team within the Regeneration and Planning service is an important part of Development Management, ensuring that appropriate action is taken against unauthorised development, where expedient. In recent years, the number of staff in the team has declined from six to two, and therefore it is essential to have a charter that sets out a realistic standard of service, which is clear to the public, members and officers alike.
- 2.2 The Charter explains the principles of Planning Enforcement, the process, the service standards, and the contact details.

3. RECOMMENDATIONS

- 3.1 That members note the contents of the Planning Enforcement Charter, which will be adopted and form the basis of the service.

4. REASONS FOR THE RECOMMENDATIONS

- 4.1 The Planning Enforcement service needs a clear process and set of standards, that also reflect the limited resources available. It also has to be clear to the members of the public engaging with the local planning authority what level of service they can expect.

5. THE REPORT

- 5.1 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 they will take action. A copy of the Charter is attached as Appendix A.
- 5.2 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

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

5.2 **Conclusion**

The Planning Enforcement Charter attached at Appendix A provides a sound basis for the provision of that service, which is clear to the public, and officers and members of the Council.

6. **ASSUMPTIONS**

- 6.1 The Charter has been formulated on the assumption that existing staffing levels will be maintained, and complaint levels will not increase significantly (an average of 362 per year between 2014 and 2018).

7. **LINKS TO RELEVANT COUNCIL POLICIES**

7.1 **Corporate Plan 2018-2023.**

There are no direct links between this Charter and objectives of the Corporate Plan

7.2 **Caerphilly County Borough Local Development Plan up to 2021**

The Local Development Plan is the statutory framework for the development and use of land within Caerphilly County Borough. Planning enforcement plays a significant part in the delivery of the policies of the plan, particularly those relating to amenity, and highway safety.

8. **WELL-BEING OF FUTURE GENERATIONS**

- 8.1 Welsh Government document Planning Policy Wales states the following.

The planning system manages the development and use of land in the public interest, prioritising long term collective benefit, contributing to improving the economic, social, environmental and cultural well-being of Wales. It must reconcile the needs of development and conservation, securing economy, efficiency and amenity in the use of land, ensuring the sustainable management of natural resources and protecting, promoting, conserving and enhancing the built and historic environment.

The planning enforcement regime plays its part in that system thereby contributing to well-being in general, and more particularly prosperity, resilience, cohesive communities, and a globally responsible Wales.

- 8.2 The introduction of the charter will allow the enforcement team to provide a service in the long term, ensuring that problems are prevented from occurring or getting worse. The team works in an integrated and collaborative manner with other agencies within and outside the Council, and where appropriate involves the public.

9. **EQUALITIES IMPLICATIONS**

- 9.1 An EIA screening has been completed in accordance with the Council's Strategic Equality Plan and supplementary guidance. No potential for unlawful discrimination and/or low level or minor negative impact has been identified, therefore a full EIA has not been carried out.

10. FINANCIAL IMPLICATIONS

10.1 There are no financial implications.

11. PERSONNEL IMPLICATIONS

11.1 There are no personnel implications.

12. CONSULTATIONS

12.1 No adverse comments have been received from consultees.

13. STATUTORY POWER

13.1 This report relates to an internal procedure to be adopted by the Council in respect of the provision of a service to the public under the Town and Country Planning Act 1990 and related statutes.

Author: Tim Stephens - Planning Services Manager
Consultees: Councillor Eluned Stenner - Cabinet Member for Environment and Public Protection
Councillor Mike Adams – Chair of Planning Committee
Councillor Andrew Whitcombe – Vice Chair of Planning Committee
Mark S Williams – Interim Corporate Director - Community & Leisure Services
Rhian Kyte – Head of Regeneration and Planning
Richard Crane - Senior Solicitor
The Development Management team

Background Papers: Town and Country Planning Act 1990
Welsh Government planning guidance: Development Management Manual

Appendices:
Appendix A Planning Enforcement Charter

APPENDIX A

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

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 they 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 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. They can be contacted either on line at:

XXX XXX

Or by phone on

XXX XXX

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.

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.

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.

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

3.6 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.

3.7 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.

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.

4.2 We will only act upon a complaint where we receive it in writing (including by email) or 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 submit the written request before we take the matter any further.

4.3 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

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

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

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

The complaint will not be registered and acted upon unless that information is submitted.

4.4 All complainants must provide full contact information, and ideally an email address, so that we can inform them of our investigations. 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.

4.5 Planning Enforcement complaints can be made in the following manner.

ONLINE by completing the Enforcement Complaint Form at the Council's website

BY EMAIL to: PlanningEnforcement@

IN WRITING TO: Planning Enforcement, Tredomen House, Tredomen Park, Ystrad Mynach, Hengoed, CF82 7WF

4.6 The LPA will not normally 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
- Acknowledge the complaint in writing within 5 working days from receipt (by email where the address is provided), providing:-
 - o The Enforcement Case reference number
 - o The name and contact details of the investigating Enforcement Officer

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

5.2 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.

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. In all cases, a short report will be prepared, taking account of the relevant matters, explaining why the LPA has come to that conclusion.

5.3 The timescales for those activities will depend on how serious officers consider the breach to be. In some case 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 and initial investigation will be made within ten working days of receipt.

5.4 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

The 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

The Council will look 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, a short report will be prepared, taking account of the relevant matters, explaining why the LPA has come to that conclusion.

5.5 There are a number of actions the Council 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 Council 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.

5.6 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.

5.7 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.