

TOWN AND COUNTRY PLANNING ENFORCEMENT POLICY

INTRODUCTION

The purpose of this document is to set out the policy of Caerphilly County Borough Council regarding what the general public, businesses and others can expect from officers involved in enforcing town and country planning and related legislation. It is a guide for those affected by breaches of planning and listed building control who may wish to know what steps the Authority can take and the timescales involved in achieving results.

The Council recognises the need for effective enforcement of planning control to protect the built and natural environment. However, enforcing compliance with planning controls can be both time consuming and complex. Enforcement is a discretionary power and should only be taken if it is expedient to do so in the public interest. In many cases the Authority will try to negotiate compliance rather than pursue formal action although in those cases where serious environmental damage or demonstrable harm is being caused to the local amenity of the area, or where damage is being caused to protected landscapes and listed buildings, the Authority will use the full range of its enforcement powers to bring the matter speedily under control.

Whilst it is a criminal offence to carry out unauthorised works to a listed building, or a protected tree, or to display an unauthorised advertisement, it is not illegal or an offence to carry out development or a use that does not have the benefit of planning permission. It is merely unauthorised and no criminal offence has been committed. Only when the Authority has served an enforcement or similar notice and all avenues of appeal have been exhausted and the recipient has failed to comply with the requirements of the notice, does the person responsible for the unauthorised use or development become liable to prosecution and, if found guilty, acquire a criminal record.

The person against whom an enforcement notice is served has a right of appeal. This can result in some delay in resolving the matter. There is no right of appeal against a Breach of Condition Notice.

The Authority can only use its enforcement powers effectively if there is sufficient robust evidence available to demonstrate clearly that a breach of planning or listed building control has occurred.

LEGISLATION

Enforcement powers are derived from The Town and Country Planning Act 1990 as amended and the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended. All Investigations will be carried out under the following legislation and in accordance with any associated guidance or codes of practice insofar as they relate to this authority. The Regulation of Investigatory Powers Act 2000; The Police and Criminal Evidence Act 1984 and The Human Rights Act 1998.

GOVERNMENT GUIDANCE/PLANNING POLICY

Government guidance is found in Planning Policy Wales (Edition 5, November 2012) Chapter 4 'Making and Enforcing Planning Decisions' and Technical Advice Note (TAN) 9: Enforcement of Planning Control 1997.

Local Development Plan Policies

The relevant development plan is the Caerphilly County Borough Council Local Development Plan up to 2021 – Adopted November 2010 (LDP).

THE SERVICE

The policy is based on the principles of good enforcement as set out in the concordat published in 1998 by central government, they are:

1. **Standards** of service provision
2. **Helpfulness** to service users
3. **Openness** about the service
4. **Proportionality** of the action taken
5. **Consistency** of the service provided
6. **Complaints** about the service

1. STANDARDS

Priorities

To ensure the efficient and consistent progress of cases, all complaints will be prioritised for action depending on the severity of the alleged breach in accordance with the Authority's adopted and published schedule of priorities, namely:

Priority 1: Urgent

- Allegations of works to a Listed Building
- Allegations of work to trees subject to a Tree Preservation Order or Trees within a Conservation Area
- Allegations of work to the fabric of buildings in Conservation Areas
- Allegations of work relating to sites within statutory designations (Sites of Special Scientific Interest) which appear to have the potential to be significantly detrimental to the area
- Allegations of work on sites where protected species (flora or fauna) are known to be present
- Allegations relating to large scale engineering operations (including tipping)
- Allegations which indicate an immediate threat to public safety, to include issues relating to highway safety
- Allegations of unauthorised advertisements which suggest an immediate threat to highway safety

In instances of Priority 1 cases, an initial site visit should be carried out within 1 day of the complaint being received.

Priority 2: Medium

- Allegations that are numerous in number suggesting widespread impact on amenity
- Allegations relating to the use of a building or land which is reported as adversely impacting on residential amenity by reason of noise and disturbance
- Allegations of new building works other than those referred to in Priority 1 and including within local designations
- Allegations relating to the commencement of development in non-compliance with planning conditions
- Allegations relating to non-compliance with conditions on previously developed sites
- Allegations of unauthorised advertisements which suggest a detrimental impact on visual amenity

In instances of Priority 2 cases, an initial site visit should be carried out within 1 to 5 working days of receipt of the complaint.

Priority 3: Low

- Allegations that include reference to boundary dispute/issues**
- Allegations that include reference to disputes relating to land ownership**
- Allegations relating to minor building and engineering operations
- Allegations relating to changes of use of buildings that do not impact on residential amenity
- Allegations relating to development of a minor or insignificant visual impact

*** Note: Allegations which relate solely to land ownership or boundary disputes are private legal matter between the parties concern and is not something in which the Local Planning Authority is empowered to act, they should be advised to obtain proper Legal Advise.*

In instances of Priority 3 cases, an initial site visit should be carried out within 10 working days of receipt of the complaint.

Complaints

Complaints can be received in the following form:

- Telephone call
- Letter
- E-mail
- Via Local Elected Members

In addition consideration will be given to the development of an electronic version of a complaints form, which can be accessed via the Councils web site.

If they have not already done so, all complainants should be encouraged to submit their complaint in writing. In view of the provisions of The Freedom of Information Act 2000, an informant should be advised that the Council may not be able to keep their complaint confidential. The information received from a complainant will to a large extent dictate how officers respond; see the section on priorities above. It is, therefore, important that the information is not only accurately recorded, but that as much information as possible is obtained. Useful information includes:

- A precise location.
- The duration and when the breach of planning legislation commenced.
- Where possible, the names contact addresses or telephone numbers of any person known to be carrying out the activity should be obtained.
- The exact nature of the complaint.

If a person wishes to remain anonymous they should be informed that they will not receive any response from the authority when our enquiries are completed.

If the complainant provided their contact details their complaint will be acknowledged in writing within five working days of the receipt of the complaint.

The Local Planning Authority will inform the complainant which enforcement officer is dealing with the matter, how that officer may be contacted and the appropriate case reference number to be used in all future correspondence. The complainant will be kept informed of progress in the case.

Performance

The performance of the enforcement team is reported to planning committee on a quarterly basis in the format shown below. Unlike a planning application, where legislation states that a decision must be made within eight weeks unless the applicant agrees to a longer period, there are no such limitations on the enforcement process. Each case is different, and there are a number of different possible outcomes, ranging from no action being taken, to an application being submitted to regularise the matter, to enforcement action.

However, the Welsh Assembly Government attempt to mirror the development control process by imposing two main measures on the enforcement system: the percentage of cases where it is decided within eight weeks what type of action should be taken, if any, and the percentage of cases that are resolved within twelve weeks. In addition to this, enforcement officers record time spent on other day-to-day enforcement and development control related matters and this data is also included in the quarterly report.

ENFORCEMENT CASES	
Number of new cases opened	
Number of cases where a course of action has been determined within 8 weeks	
Number of cases where a course of action has been determined, not within 8 weeks	
Number of cases closed.	
Number of cases resolved within 12 weeks	
Number of cases resolved, not within 12 weeks	
Number of cases open at the end of the quarter	
NOTICES	
Number of Enforcement Notices / Breach of Condition Notices issued	
Number of Section 215 Notices issued	
Number of Planning Contravention Notices issued / Requisition for Information	

PLANNING APPLICATIONS	
Number of planning applications received as a result of investigation.	
Number of planning applications determined	
Number of applications where conditions have been discharged	
Number of pre-application enquiries	
Number of permitted development enquiries.	
Number of expediency reports prepared	
Enforcement / Planning Appeals	
Witness Statements / Prosecutions	

2. HELPFULNESS

Wherever possible guidance and assistance will be given to persons and organisations in their efforts to understand and comply with the requirements and constraints placed upon them by the Planning system.

A future development of the service will be access to a copy of the Authority's published Planning Enforcement Policy via the Councils web site. A leaflet setting out the basic principles of the Council's Planning Enforcement Policy will be prepared and made available to the public.

Individuals and organisations will be provided with a courteous service our officers will identify themselves by name and provide those people making enquiries with contact telephone numbers and reference numbers to ensure consistency and continuity of service by the officers involved.

Officers will deal efficiently and in a co-ordinated manner with enforcement issues in order to avoid unnecessary and costly time delays and overlapping of enforcement action by other Departments. Unless immediate action is required the opportunity will be provided to discuss the circumstances of the case and if possible to resolve any points of difference.

3. OPENNESS

Within the constraints placed on the organisation regarding confidentiality, the Council will endeavour to be as open and frank as is practicable in the way it carries out its duties. In particular, the Council will:-

- A) Have a clear commitment to the use of plain language in both oral and written form.
- B) Endeavour to ensure that relevant information is made available as widely as possible to all persons or organisations involved with enforcement issues, and a written account of actions or proposed actions will normally be provided to all involved.
- C) Ensure that all persons or organisations involved with enforcement issues are made aware of any appeals procedures or financial implications which may be applicable, and which, directly or indirectly, will affect them.
- D) Always discuss and record any difficulties which individuals or organisations have regarding general or specific compliance with the planning legislation.

4. PROPORTIONALITY

The Council will ensure that the approach adopted, the requirements imposed and the action taken to remedy any breach of planning control are appropriate and in proportion to the seriousness of the matter. Any such action will be taken having regard to National planning guidance and National and Local planning policy. The process in reaching a decision on what action is appropriate together with the reason for taking such action will be fully documented.

5. CONSISTENCY

The council will endeavour to promote consistency in both the level of service customers receive and the way in which it responds to a breach of planning legislation. In particular the Council will:-

- a) carry out its duties in a fair, consistent and equitable manner.
- b) put arrangements in place to promote consistency, including liaison with other authorities and enforcement bodies.

6. COMPLAINTS ABOUT THE SERVICE

It is accepted that despite the best efforts of those involved, on occasions customer dissatisfaction with the service will occur and the Council recognises the role that complaints about the service can play in identifying areas for improvement. The Council has an established complaints procedure in place which is available to those people who are dissatisfied with the service provided. Any complaints received will be dealt with via this procedure.