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1 Introduction

- 1.1 Our Planning Enforcement Section investigates possible breaches of planning control (this includes where a development does not have planning permission or does not meet planning conditions) and aims to sort out the breach. The purpose of this document is to give you basic information on what we do and how we do it.
- 1.2 When we investigate enforcement complaints, we will assess whether or not there is or has been a breach of planning control, and what action (if any) to take. This document provides information on our various enforcement powers, but is not a statement of law and does not describe every type of breach of planning control or enforcement action. There is more guidance on planning enforcement in the documents and websites referred to in the appendix.

Making an enforcement complaint

- 1.3 We prefer that you use our online form to make any new complaints, www.conwy.gov.uk/planning . Alternatively you can make your complaint in writing, or by e-mail to regulatory.services@conwy.gov.uk providing relevant details including your name and address and the nature of your concerns. If you could also detail the nature and extent of any adverse effects caused, that would assist us in prioritising the case and assessing appropriate initial action. A written record is important as this may be used in assessing the expediency of taking enforcement action (which is not obligatory even if a breach has occurred), it therefore clarifies your concerns and the alleged harm caused. As identified below we will not normally investigate anonymous complaints. Please note that your identity will be kept confidential.
- 1.4 If you want to discuss an enforcement complaint informally prior to submission in writing, you can contact an Enforcement Officer (phone 01492 575704, 01492 575273 or 01492 575175). If you want to discuss an existing complaint, you can contact the Enforcement Officer who is dealing with the complaint. If you have any serious difficulties with an enforcement complaint, you can contact Peter Wood, Principal Planning Officer – Enforcement on 01492 575272 or by e-mail at peter.wood@conwy.gov.uk.

Making a complaint about the service provided by the Planning Enforcement Team

- 1.5 We have a separate complaints procedure if you want to make a complaint about the quality of any of our services or about the conduct of a member of staff of any service. You can make these complaints in person, over the phone, by letter, or by filling in a complaints form, which you can get from our offices or our website at www.conwy.gov.uk alternatively please contact the complaints unit direct at - email: complaints@conwy.gov.uk or telephone 01492 576070.

Making a complaint to the Ombudsman

- 1.6 If you are unsatisfied with our response after following the Authority's internal complaints procedure you can make a complaint to the Public Services Ombudsman, who will investigate if we have failed to do something we should have done. Please note that the Ombudsman will not usually investigate unless you have utilised the Council's internal complaints procedure, detailed above. The Ombudsman can examine how we make decisions but cannot overturn them if they are free from maladministration.

- 1.7 A maladministration type of complaint could include cases where we have acted incorrectly, or failed to react appropriately to an enforcement complaint, or have acted unfairly or caused an unfair delay. You can get a copy of the Ombudsman's complaint form from:
- The Public Services Ombudsman For Wales, 1 Ffordd yr Hen Gae, Pen-coed, CF35 5LJ (telephone 01656 641150); or at www.ombudsman-wales.org.

2 Enforcement Service aims

- 2.1 Within the confines of available resources, our aims are to:
- deliver an effective and efficient enforcement service that responds to the needs of our customers, and sets clear standards;
 - make sure that planning policies and decisions are followed;
 - work in line with clear and well-publicised enforcement processes, policy, procedures and standards;
 - promote awareness of the planning enforcement system and the related planning laws;
 - pursue joint working with other related council services;
 - aim to work proactively wherever resources allow;
 - protect our customers from significant planning harm; and
 - monitor, review and improve the enforcement service.

3 Organisation and management

- 3.1 We are responsible for all aspects of planning enforcement within the County Borough, except within the Snowdonia National Park where the Snowdonia National Park Authority is the responsible planning authority, including in respect of planning enforcement.
- 3.2 We have a scheme of delegation, which authorises the Head of Regulatory and Housing Services to carry out various development management functions, including planning enforcement. Most decision making and day-to-day management of the enforcement team is delegated to the Principal Planning Enforcement Officer. On occasion matters are reported to our Planning Committee.
- 3.3 The Planning Enforcement Section is part of the Development Management Team within Regulatory and Housing Services, and is based in the Coed Pella Offices, Colwyn Bay.
- 3.4 The Enforcement Section tells councillors about new enforcement complaints, new enforcement notices, appeal decisions, retrospective applications, prosecutions and decisions of the courts via a weekly list.

Service objectives

- 3.5 We aim to:
- record and acknowledge all written complaints within five working days of receiving them;
 - investigate reports of alleged breaches of planning control promptly;
 - quickly decide whether enforcement action is needed, and tell the person who made the complaint what action will be taken;
 - sort out enforcement complaints about breaches of planning control as quickly as practical (enforcement complaints are considered to be sorted out when one of the

outcomes defined in the national performance standards is achieved – see section 5.1 below);

- justify decisions to issue enforcement notices at appeal;
- prosecute offenders where it is in the public interest, proportionate (reasonable considering the circumstances) and there is a reasonable chance of a conviction;
- promote the service and act on feedback from our customers;
- promote closer working relationships with other related council services particularly Building Control and Council Tax/Business Rates; and
- monitor performance and review performance targets.

Public information

3.6 Our performance is monitored nationally in relation to:

- the number of complaints received;
- the percentage of complaints investigated within 84 days;
- average time to investigate complaints;
- the percentage of complaints resolved within 180 days;
- average time to resolve complaints;

3.7 We keep a Statutory Register of Notices, which may be inspected by members of the public. The Register contains information relating to all Enforcement Notices issued in relation to land within the Conwy County Borough area (not including the Snowdonia National Park area). The Register is held at the Coed Pella Offices in Colwyn Bay. If you have any questions in relation to a notice, please contact an enforcement officer.

3.8 Under the Freedom of Information Act 2000, members of the public and other organisations have a right to look at and make copies of information we hold. However, members of the public cannot see certain types of information, as set out in the Act, and a number of these exemptions apply to planning enforcement. The exemptions include information held for the purpose of criminal investigations and proceedings, information likely to affect regulatory enforcement or civil proceedings, personal information and information provided in confidence.

4 Dealing with complaints and investigating breaches of planning control

4.1 This section describes how we deal with and investigate complaints.

Complaints investigated

4.2 We do not have the resources to check that all new development has planning permission and meets planning conditions, although we do carry out specific proactive cross checks in conjunction with Building Control and undertake targeted projects where resources allow. Section 6 (Other enforcement investigations) contains more information on the enforcement investigations that we carry out.

4.3 However, we do investigate all genuine and substantive complaints regarding possible breaches of planning control, which should be made online, in writing or by e-mail with the name and address of the person making the complaint.

- 4.4 Making a complaint in writing means that we will have a reliable record of the date and nature of the complaint. It is advisable to set out how you are being affected so that we can assess the severity of the matter to assist in assessment of what action is appropriate.
- 4.5 The name and address of the person making the complaint is important and allows us to tell them the progress we are making in sorting out the complaint. Sometimes, we may need to contact the person who made the complaint to get more information. We will treat the names and addresses of the people who make complaints as confidential information and will not pass them on to anyone else, unless complaints become part of court proceedings and their identity may have to be revealed by law, though this is extremely rare. At our discretion we may investigate **anonymous complaints**, though they might be classified as low priority and we will not be able to update you with regards to our assessment.

Prioritising complaints

- 4.6 We will record all the complaints we receive and pass them to an officer for investigation. As part of the initial vetting process, enforcement complaints are given a high, medium or low priority, depending on how serious the matter is. We will generally prioritise complaints in line with the following categories, though each case needs to be considered on the basis of the individual circumstances.
- **High** – matters that need an urgent or immediate investigation or action, such as a development that is likely to result in:
 - irreversible harm to a building or area of national importance;
 - irreversible harm to a protected building or area of local importance; or
 - other very serious harm to amenity (including harm to residential areas, highway safety and nature conservation).
 - **Medium** – other matters that could result in significant harm to amenity (including harm to residential areas, highway safety and nature conservation).
 - **Low** – other complaints and investigations about matters that are unlikely to result in any significant harm to amenity. For example, complaints about non-planning matters, such as boundary, land-ownership disputes or breaches of covenants. Anonymous complaints may also fall into this category.

Registering and acknowledging complaints

- 4.7 Details of new complaints are recorded on our computerised database system. All recorded complaints are given a complaint reference number; please quote this when contacting us.

We aim to record and acknowledge all written complaints within five working days of receiving them. An acknowledgement letter/email will give the name and contact details of the Enforcement Officer dealing with the complaint. We will tell the person who made the complaint the outcome of our investigations. The person who made the complaint can check the progress of their complaint by contacting us at any stage.

Non-planning complaints

- 4.8 If we receive a complaint that is not about a breach of planning control, but is about another council service, we will send the complaint letter to the relevant council department and request that they contact you direct.

Other information we will need

- 4.9 In most cases, we need to check relevant planning history as part of the investigations into a complaint, this can take some time where any files are archived or the history is complex. We may also ask the person who made the complaint for more information, which may include keeping a log of activities. Please note that your assistance in keeping logs is often essential with uses such as business uses at residential properties, as our inspections may not reveal the true nature and extent of activities. Without this assistance there may be occasions where we are unable to pursue an investigation if the evidence base to support action is lacking.
- 4.10 Other council departments and other organisations may hold information relevant to the investigation of an enforcement complaint. We keep a list of contact details of officers within other council departments and other organisations, and will carry out appropriate consultations to get relevant information.
- 4.11 When necessary, we will use our powers to serve a legal notice on a person/company to get information about how the land is used, or to get information about who has an interest in the land. If we suspect a breach of planning control, we may serve a Planning Contravention Notice on a person who:
- is the owner and/or occupier of the land;
 - has any other interest in it;
 - is carrying out work on the land; or
 - is using it for any purpose.
- Such a notice must be complied within 21 days of service, otherwise prosecution proceedings will likely need to be initiated. We also have the power to serve other types of legal notices to get information and to carry out formal interviews under caution if necessary.

Initial assessment

- 4.12 Following investigations into a complaint, we will assess whether there has been a breach of planning control, whether further investigations are needed and whether any enforcement powers should be used. We may need to carry out further investigations to get information, including consultations, site visits or writing to people with an interest in the land. We will reassess the initial priority we gave to the complaint if necessary.
- 4.13 We will tell the person who made the complaint the outcome of our investigations and how we will sort out their complaint.

Site visits

- 4.14 An Enforcement Officer will often have to carry out site visits to find out:
- whether there is or has been a breach of planning control;
 - whether we should use any enforcement powers; and
 - how these powers should be used.

- 4.15 During a site visit, an Enforcement Officer may need to record information. This may include taking measurements of land and buildings, surveying land levels and taking photographs. An Enforcement Officer may also need to discuss and possibly formally interview the owner or occupier of the land, or other people on the site.
- 4.16 Individual Enforcement Officers have the right to enter land without a warrant for enforcement purposes. Entry into dwellinghouses is subject to 24 hours notice, otherwise no prior notice is required. Depending on circumstances, an Enforcement Officer may contact the owner or occupier of the land to arrange a site visit, but in some cases the site visit will not be arranged beforehand, sometimes this is essential, particularly with possible changes of use, in order to ensure the visit gives a true impression of ongoing activities. On arriving at a site, an Enforcement Officer will contact an appropriate person on the site (if available) to explain the purpose of the site visit. An Enforcement Officer will be able to produce identification and show that they are entitled to enter the site. If no one is on site, the Officer may carry out an unaccompanied visit rather than aborting the visit.
- 4.17 We will consider prosecuting any person who wilfully prevents an Enforcement Officer from entering a site, as it is an offence to do so. We may also apply to a Justice of the Peace for a warrant to enter the land and, when appropriate, we will ask the Police to accompany our Officers.
- 4.18 An Enforcement Officer will carry out site visits in line with our safety policies and procedures. We will record site visits, including the expected time of return, and report any delays. We will record and report any violent behaviour towards an Enforcement Officer, together with potentially dangerous sites.
- 4.19 On occasion Officers may undertake covert surveillance to establish if any breach of planning control has occurred. This will be properly authorised and subject to the relevant legislation.

5 Sorting out complaints and taking enforcement action

- 5.1 We are monitored by the Welsh Government in relation to the following performance indicators:
- Percentage of enforcement cases investigated in 84 days or less
 - Average time to investigate
 - Percentage of enforcement cases resolved in 180 days or less
 - Average time to resolve
- 5.2 A case has been 'investigated' once the matter has been considered and the complainant advised of our assessment. A case is 'resolved' once one of the following outcomes has been achieved.
- We have decided that planning control has not been breached.
 - We have decided not to take formal enforcement action (not expedient).
 - An application for planning permission has been made and granted.
 - We have served an appropriate enforcement notice and it has been complied with.
 - The breach of planning control has stopped.
 - Direct action removes the breach.

Each of these circumstances is explained below.

No breach of planning control

- 5.3 In some cases, enforcement investigations may show that there is or has been no breach of planning control. In these circumstances, we will tell the person who made the complaint and close the file. On occasion the matter may be referred to another section for further investigation, for example, Housing and Environmental Enforcement or the Council Tax/Business Rates Team.

Breach of planning control

- 5.4 If planning control has been breached, we will attempt to contact the person or people responsible to see if we can sort out the matter. Where possible, we will initially write to the person or people responsible to tell them what action we may take to seek to remedy the breach. If the matter is serious we may need to take immediate action without initial contact by letter.
- 5.5 A breach of planning control includes failing to meet any condition under which planning permission has been granted. We investigate complaints that a condition has been broken in a similar way as complaints relating to other breaches of planning control. However, when appropriate, we may serve a Breach of Condition Notice (BCN) to make sure people keep to a planning condition, if it is expedient and in the public interest to do so. We may take this action instead of or as well as issuing an Enforcement Notice. Non compliance with a BCN can lead to prosecution proceedings. A case is considered to be resolved once a BCN has been fully complied with, though ongoing monitoring may be required in some cases, for example in relation to opening hours restrictions.

Planning control is no longer being breached

- 5.6 In some cases, the person or people responsible may stop breaching planning control and this will sort out the complaint, though ongoing compliance may need to be monitored in some cases.

Planning application for development already carried out

- 5.7 Any person is lawfully entitled to retrospectively apply for planning permission for development already carried out to seek to regularise the breach of planning control without penalty. We cannot refuse to entertain such an application in normal circumstances but we may choose to serve an Enforcement Notice if the development is clearly unacceptable and the application is likely to be refused, for example if the development is clearly against policy or otherwise causing significant harm.
- 5.8 Undertaking 'development' without planning permission is not a criminal offence, however should a notice be served, non compliance would comprise an offence. Please note that the unauthorised display of advertisements and unauthorised works to a listed building comprise offences without the need to serve any notice, see below.
- 5.9 If we consider that there is a reasonable prospect that planning permission could be retrospectively granted, we may choose to serve an "Enforcement Warning Notice". Such a notice requires the person concerned to either submit a planning application for further consideration or to take necessary action to effect the removal of the development and/or to require the relevant activity to cease. There is no right of appeal against such a notice and

please note that it has the same effect in law as an Enforcement Notice in respect of halting any accrual of potential immunity from enforcement action.

- 5.10 We publicise applications for planning permission in line with our publicity policy. We will tell the person making the complaint that they may inspect the planning application documents (including online) and make representations, but please note that any such comments made during the planning application process will be available for public inspection. Only comments pertaining to planning matters will be taken into account.
- 5.11 A case is only considered to be resolved once permission has been granted. It will often be the case that applications will take some time to submit (often 3-4 weeks minimum), and determine (typically 6-8 weeks). If the application is refused a right of appeal exists; this process can take several months. We will only normally suggest that an application is made for further consideration if there is some chance that permission might be granted, often we will seek amendments to developments to improve the submission. If an application is refused the expediency of serving an enforcement notice will need to be considered.

Taking enforcement action

- 5.12 If the person or people responsible for the breach of planning control do not seek regularisation of the matter, for example by making a planning application for us to consider granting planning permission, or such an application is refused, we will consider issuing an enforcement notice to address the harm caused by the unauthorised development. By taking enforcement action, we want to put right any significant negative effects of the breach of planning control, and not to punish the person or people responsible for the breach. In line with national planning guidance we will not issue enforcement notices just because there is no valid planning permission where there are no significant planning objections to the breach of planning control. We will also not issue an enforcement notice against a minor or technical breach of planning control, which causes no significant harm to public amenity. If we consider that permission could be granted with conditions but no application is submitted, enforcement action may be still required as Enforcement Notices may not include conditions as is possible on a grant of planning permission..
- 5.13 When considering whether to take enforcement action we will consider what level of development would be allowed under 'permitted development' rights as a 'fall-back position'. 'Permitted Development' rights are defined in the Town and Country Planning (General Permitted Development) Order 1995 (as amended).
- 5.14 A case is only considered to be resolved once any enforcement notice has been fully complied with. It will often be the case that an appeal will be made; this process can take several months. In any event a notice must allow reasonable time to be complied with, this may be several weeks or months depending upon the nature of the breach and what is required to put it right. Sometimes a notice may not be complied with and so prosecution proceedings or works in default may be required to bring about a resolution of the breach.

Solving the problem by moving the development

- 5.15 We do not have to identify, or provide, alternative sites to which unauthorised development might move. In some cases, we may be able to suggest and encourage an unauthorised development to move to a different site. In these cases, we will assess the reasonable period needed to move the development. If appropriate we will take account of this period needed in any formal action or notice. In the event that a suitable site is not found, this does not preclude the Authority from pursuing formal action and prosecution, if it is expedient to do so.

Enforcement action against unacceptable development

5.16 Where unauthorised development is unacceptable and there is no reasonable chance of the development being moved to a suitable site, we will normally tell the person or people responsible that we are not prepared to allow the development to continue. We will consider a reasonable time period for the development to stop, depending on the particular circumstances and reflect this in the action we will take.

We will consider taking formal enforcement action in cases where unauthorised development is causing unacceptable harm and there is little or no chance of the matter being sorted out through negotiations or voluntarily. We may need to take action quickly to prevent a situation where planning control has been breached from becoming worse and more difficult to sort out. When deciding whether to issue an enforcement notice, we will have to consider planning policy and other planning considerations.

Urgent action

5.17 In exceptional cases, we may take immediate action against unacceptable unauthorised development, and we will consider serving a Stop Notice or Temporary Stop Notice to stop the development. We may also apply to the courts for an injunction, particularly in urgent and exceptional cases including where significant and/or irreparable harm is actively being caused.

Prosecutions

5.18 Prosecution proceedings are not taken lightly, however sometimes this is considered to be the most appropriate course of action; we would normally consider the following factors:

- whether the prosecution would be in the public interest (taking account of how serious the offence is, any unusual circumstances and any human rights issues involved);
- whether taking criminal proceedings would be in proportion to the alleged offence; and
- whether there is a reasonable chance of securing a conviction.

5.19 We will normally have considered public interest before we serve a formal notice, and a prosecution will usually follow where planning control is still not followed. There may be circumstances where prosecution would not serve the public interest (for example, if a developer has partially complied with a notice and progress is continuing). A defendant's personal circumstances must not prevent them from following the conditions of a notice, but may in exceptional circumstances be taken into account in deciding whether to postpone prosecution for a limited period.

5.20 Once court proceedings have been started, we will not normally withdraw the action. We will normally apply for costs from the offender in relation to planning prosecutions.

Direct action

5.21 If an Enforcement Notice has not been addressed within the set period, (and in some other circumstances), we have the power to carry out the work (or ask contractors to do so) and reclaim the cost from the owner of the land. This procedure may be appropriate in cases, such as where prosecution has failed to or would be unlikely to make people comply with an Enforcement Notice.

6 Other enforcement investigations

Advertisements

- 6.1 It is a criminal offence to display certain advertisements (which includes, posters, signs, notices, etc) without first getting our consent and we may prosecute the person or people responsible. If the display is the offender's first offence we will normally contact the person or people responsible and ask them to remove the advertisement, failing removal we may start prosecution proceedings. However, in some circumstances, for example where the advertisement is upon highway street furniture and is causing a danger, it may be removed by officers, following which a letter will normally be sent to the offender and/or potential prosecution proceedings may be taken. It is not normal practice to withdraw a prosecution once it has started even if the advertisement is removed in the interim, as the offence has already occurred.

Listed buildings and conservation areas

- 6.2 Unlike development undertaken without planning permission it is an offence to carry out any unauthorised work to a listed building which affects its character, this may include internal works. It is also an offence to demolish certain types of buildings, including in conservation areas, without first getting the appropriate consent. If unauthorised work is carried out, we will normally contact the person or people responsible and give them the opportunity to put things right if this is possible, but in some cases immediate action (including possible injunction proceedings) will be appropriate without giving any notice.

Condition of land adversely affecting the area

- 6.3 If you have concerns in relation to the condition of land (including buildings thereon) which is adversely affecting amenity please get in contact. Usually we will initially contact the owner of the land in question to see if the matter can be informally rectified, if not a formal notice pursuant to Section 215 of the Town and Planning Act 1990 may be deemed necessary. Please note that in some cases other powers may be more pertinent if the case relates to 'fly tipping', an illegal dump, pest related concerns, substandard accommodation and so on, if this is the case we will pass on your concerns to the relevant team.

Section 106 planning obligations/community infrastructure levy

- 6.4 Legal Agreements may restrict development or use of land in a specific way, or may require the owner of the land to pay us an amount of money to enable, for example, off site provision of play areas, affordable housing and suchlike. We keep a database of such agreements and monitor compliance where resources allow. A planning obligation can be enforced through an injunction. The Community Infrastructure Levy is not yet in force in Conwy but will take the form of a levy on certain types of development payable typically when development commences, this will be monitored and enforced as resources allow.

Building Control

Our planning and building control functions operate under separate systems of regulatory control and are responsible for regulating different aspects of building work and development. However, the two teams work together and where resources allow enforcement officers carry out selective cross checks between applications for building regulations approval and planning permission, to ensure consistency and compliance with conditions. Notwithstanding these checks it is the developer's responsibility to ensure appropriate permission is in place. **Please ensure any changes to plans are agreed by both planning and building control.**

Other investigations

6.5 We investigate specific developments and undertake pro-active projects depending on the resources we have available. This can include checking that certain development has planning permission and meets planning conditions. Our investigations are targeted towards specific types of development and developments relating to sensitive buildings and places.

7 Contacting the person who made the complaint

7.1 We will normally contact the person who made the complaint at the following stages of the investigation process, as appropriate.

- We will acknowledge that we have received written complaints about a breach of planning control within five working days of receipt. We will give the person who made the complaint the name and contact details of the Enforcement Officer dealing with the complaint.
- If appropriate, we will ask for more information to help in our investigation, this may include keeping a log of activities relating to any breach of planning control.
- The outcome of the initial investigation to decide whether or not there is a breach of planning control and what initial action is appropriate. If there is no breach of planning control, we will tell the person who made the complaint.
- If there is no breach of planning control, but the complaint relates to other council services, we will tell the person who made the complaint that we have sent it to the relevant council department.
- If planning control is no longer being breached, we will tell the person who made the complaint that the matter has been sorted out.
- If we receive a retrospective application for planning permission for any unauthorised development, we will publicise the planning application in line with our publicity policy. We will contact the person who made the complaint, if they have not already been contacted as part of this process.
- If we decide to take enforcement action to deal with someone who has breached planning control. We will tell the person who made the complaint about any expected action and the outcome of the action.
- If we start court proceedings, we will tell the person who made the complaint the outcome of the court proceedings.

7.2 We will close an enforcement complaint file once we have sorted out the complaint and told the person who made the complaint.

Appendix

You can find further guidance on planning enforcement in the following documents.

Enforcement of Planning Control, Welsh Government, Planning Guidance (Wales), Technical Advice Note 9, October 1997. (www.wales.gov.uk)

Planning Policy Wales, Welsh Assembly Government, (www.wales.gov.uk)

Enforcing Planning Control - Legislative Provisions and Procedural Requirements, Welsh Office Circular 24/97. (www.wales.gov.uk)

Enforcement Appeals Procedures, Welsh Government Circular 08/2003. (www.wales.gov.uk)

Making Your Enforcement Appeal, The Planning Inspectorate
(www.planningportal.gov.uk/planning/planninginspectorate/)

The Use of Planning Conditions in Planning Permissions, Welsh Government Circular 016/2014.
(www.wales.gov.uk)

Planning Aid Wales – an independent, charitable organisation helping individuals and communities across Wales to participate more effectively in the planning system.
www.planningaidwales.org.uk

Public Services Ombudsman – Planning Enforcement Factsheet
(www.ombudsman-wales.org.uk/~/_media/Files/Factsheets_en/Planning%20Enforcement.ashx)