FLINTSHIRE COUNTY COUNCIL

PLANNING ENFORCEMENT POLICY

January 2019

1.0 INTRODUCTION

1.1 For the planning system to work effectively in the best interests of all, there is a need for an effective planning enforcement system, supported through a range of legislation and associated powers.

1.2 This Policy therefore sets out what planning enforcement does and does not do, how reported breaches are dealt with, the criteria used for assessing priorities and how both reactive and proactive action may be taken. This Policy also sets out how we aim to deal with our customers, in particular how elected Members and the general public will be kept up to date in relation to the cases being investigated and how the performance of the service will be measured and reported

2.0 PRINCIPLES OF ENFORCEMENT ACTION

2.1 Underlying the policy are the key principles of:

- **Expediency** Appropriateness of any action in relation to the risks and the harm involved
- **Consistency** Applying a similar approach in similar circumstances to achieve similar ends.
- **Transparency** Making it clear to those regulated and others what is expected of them and what they should expect from the Council.
- **Focus** Applying the right priority and seeing the action through to the desired result.

3.0 WHAT PLANNING ENFORCEMENT DOES/DOES NOT DO

3.1 Whilst there is a considerable range of enforcement powers available to the Council, formal enforcement action will normally be used as a last resort. Whilst the enforcement of breaches of planning control is a statutory function of the Council, the decision on a case by case basis over whether or not to pursue action is discretionary. Applying judgement and taking the decision over the appropriate action is referred to as ‘expediency’. The decisive issue for the Council must be whether the breach of control unacceptably harms the environment, people’s amenity and quality of life, public safety, or some other public interest of acknowledged importance to a material extent. This extent is judged by the expertise of the Council officers.

3.2 It is not appropriate to take formal enforcement action against a trivial or technical breach of control that causes no harm to the wider amenity, particularly where planning permission would be likely to be granted should the development be the subject of a planning application.

3.3 Understandably people may have genuine concerns and anxiety about activities that they believe affect them but planning enforcement action can only be considered against matters that are breaches of planning control. Many issues that are of concern to residents are matters outside of planning control and where these can be addressed under other Council services they will be directed there. On some occasions addressing an unauthorised

development can involve a number of the Council's services, in which case we will ensure that the Planning Officers will work together with other officers of the Council and potentially with officers of other agencies in order to bring the matter to a conclusion.

3.4 The following gives an indication of what is and what may not be within the remit of planning enforcement (where not, the main alternative service or agency is given in brackets). Planning officers **will** therefore investigate, in appropriate circumstances, all alleged breaches of planning control of the following nature:

- Development (Building works, uses of land, engineering operations) which is being carried out without planning permission.
- Development where approval has been granted but it is not being carried out in accordance with the terms and conditions of the permission.
- Advertisements which are being displayed without the necessary consent
- Unauthorised works to Listed Buildings or development within Conservation Areas.
- Damage to trees which are subject to a Preservation Order or lie within Conservation Areas.
- Unauthorised mineral extraction and/or disposal of waste.

3.5 Planning Officers **will not** investigate the following matters unless it is as part of a joint investigation involving other services or agencies (identified in brackets):

- Works or display of advertisements on the highway, including footways and highway verges (The Council's Streetscene service).
- Noise disturbance, pollution and hygiene problems (The Council's Pollution Control team and/ or Natural Resources Wales (NRW))
- Dangerous buildings (Building Control).
- Disputes concerning ownership of land, including ownership of boundary fences etc. (These are civil matters which have to be addressed by the parties concerned).
- Issues concerning housing owned by the Council (The Council's Community & Regeneration service).
- Public buildings and land owned by the Council (The Council's Community & Regeneration service).
- Anti-social behaviour (the Police and the Council's Community Safety team)
- Issues regarding Public Rights of Way (The Council's Public Rights of Way team)

4.0 INSTANCES WHERE ENFORCEMENT ACTION CANNOT BE TAKEN

4.1 Certain developments and advertisements benefit from a general permission which is granted through legislation and providing that they meet the

limitations in terms of scale, distances to boundaries, etc. the Council has no control over them and cannot take any action.

4.2 There is also an immunity from enforcement action where a use of land or buildings has been established for a period of 10 years (or 4 years where there has been a change of use of a building, or part of a building, to use as a s dwelling) or building works have been substantially completed more than 4 years ago. Also, if a condition attached to a planning permission has not been complied with for a period of 10 years it is potentially immune from enforcement action

4.3 Finally, enforcement action would not be considered where the works involved are considered to be of a minor or insignificant in nature (known as *'de minimis*' in legal terms).

5.0 THE COUNCIL'S APPROACH TO PLANNING ENFORCEMENT

5.1 The Council recognises the importance of establishing effective control over unauthorised development and will not condone wilful breaches of planning control. It must however be recognised that planning enforcement is discretionary and in most cases it is not illegal to carry out works without the relevant consent (the exceptions being Listed Buildings and Advertisements). The unauthorised works only become illegal after the Council has issued an enforcement notice and those in breach fail to comply with its requirements.

5.2 In considering whether it is expedient to take enforcement action, the Council will in the first instance take into account relevant planning policies and all other material planning considerations, including relevant appeal decisions and case law. Consideration will also be given to the reasonable time and resources available to carry out the enforcement function and whether any expected outcome would be proportionate to the level of resource required to achieve it. It should be recognised that the objective of planning enforcement is compliance, not punishment, and as such the Council will encourage its officers to work with those in breach of planning control to negotiate favourable outcomes without having to issue a formal notice.

5.3 As a last resort, in cases of serious breaches where those involved are not pro-actively working with officers or fail to meet agreed deadlines, formal enforcement action will be taken, relevant notices will be issued and if an individual or organisation does not comply with the requirements of any such notices they will be at risk of prosecution by the Council.

6.0 WHAT THE COMPLAINANT CAN EXPECT FROM THE COUNCIL

6.1 A planning enforcement investigation will be initiated once we receive a complaint, which should be made to us in writing or by email (a standard form can be found on the Council's website). However, the complaint can only be investigated if we have the relevant information, including the identity and address of the complainant, the address at which the alleged breach of planning control has taken place, a description of the unauthorised development/use and the harm that is considered to be caused by it.

The Council cannot normally fully investigate anonymous complaints as it means we cannot verify particular aspects of the complaint at a later stage.

Furthermore, many anonymous complaints result to be vexatious and waste resource that should have been dedicated to genuine complaints.

6.2 All complaints received will be treated in the strictest confidence. However, as cases progress to formal action, complainants may be asked to provide evidence to assist the investigation's legal proceedings. Should complaints be received which fall outside the Planning remit, we will endeavour to re-direct the complaint or to advise accordingly. In investigating breaches of planning control we will:

- All written complaints, which include emails, will be allocated to an officer and acknowledged in writing to the complainant within 5 working days of receipt, giving the name of the case officer and the unique reference number which should be used in all correspondence.
- All complainants' details will be confidential. A complainant will be advised if any evidence from them which may need to be disclosed before any appeal or court proceedings. A complainant's refusal to provide such information will likely mean that any such case cannot continue.
- Although complainants details will remain confidential as the Council expands it digital services it is likely that a register of enforcement complaints will appear on the Council's website.
- We will carry out site visits and investigations in relation to each case on a priority basis (as set out below). It may be that multiple visits are required to a site and so complainants must be assured that the case officer will update the complainant when the appropriate time allows within the investigation. Complainants will be made aware of this when appropriate during the investigation.
- If we request the submission of a retrospective application, where there is a likelihood of permission being granted, we will notify the complainant on receipt of the application, giving them the opportunity of making representations at that stage. It should be noted that an individual may be given up to 2 months to appoint an architect or agent and to submit an application.
- Where we intend to take appropriate enforcement action (see powers available below) we will endeavour to advise the complainant and any Local Member who has registered their interest in the case of the intended action at the appropriate time.
- Where a formal notice (see types of notice below) has been served we will publish relevant information on our website, including the date when it takes effect, the steps required to comply with it and the timescales involved.
- Where there is an appeal against an Enforcement Notice we will notify the complainant of relevant dates for the submission of information to the Planning Inspectorate.
- We will notify all complainants when the enforcement investigations have been completed and/or the case file has been closed (giving the reasons if this is the action).
- In addition to these cases, where a retrospective planning application has been refused and/or an appeal to the Inspectorate has been dismissed, we will instigate enforcement action in respect of the unauthorised development and notify any persons who objected to the planning application or who made representations to the appeal process, as if they were complainants.
- For investigations which shows that there is no breach of planning control we will write to the complainant and local member, if they have registered

an interest and advise that their no further action can be taken. If the officer is aware of other organisations or services which can help the complainant they advise accordingly.

- If an investigation shows that there is a breach of planning control but it is not expedient to take enforcement action we will write to the complainant and local member, if they have registered an interest and advise why it is not expedient for the Council to take enforcement action. Officer will also try and signpost the complainant to any other services or organisations who may be able to assist.

7.0 WHAT THOSE IN BREACH OF PLANNING CONTROL MAY EXPECT FROM THE COUNCIL

7.1 All investigations into any alleged breach of control will be conducted in a methodical and robust way in order to achieve an outcome which best aligns with adopted planning policy. Depending on the nature of the reported alleged breach, the investigation could be relatively straightforward or complex involving extensive research or monitoring over a length of time, potentially followed by a long legal process before the matter is resolved.

7.2 Officers will carry out site visits, as necessary, to establish whether a breach of planning control has occurred and to ascertain the nature of any remedial action that may be appropriate. In undertaking such site visits officers will identify themselves as well as the reason for the visit. In this regard officers are authorised by the Council to undertake site inspections for enforcement purposes and will carry and show identification.

7.3 Where the owner/occupier of the land refuses entry, the officers will withdraw and arrange to visit at the next earliest opportunity which is suitable to both parties. Only where it is believed that a serious breach causing significant harm to the environment or to the amenities/safety of any parties will officers' exercise their right of entry onto land at the first visit.

7.4 Officers may take with them such other persons necessary to assist them in their investigation and will, where appropriate, take measurements and photographs to help clarify the nature of the development or works concerned.

8.0 HOW COMPLAINANTS AND THOSE BEING INVESTIGATED SHOULD COMMUNICATE WITH THE COUNCIL

8.1 The service receives many planning applications, appeals and enforcement complaints each week. Each officer is likely to have 40 to 80 “live” cases at any one time. In order to ensure that the enforcement service is as effective and efficient as possible, complainants are asked to adhere to the following:

- If people wish to speak the officer investigating their complaint in person at the council offices they will be required to book an appointment. Officers within the planning service work in an “agile” manner, which means that they will work away from the office up to 2 days a week and will also undertake site visits. As a result, the officer’s presence at County Hall every day of the week cannot be guaranteed. People are asked to treat officers with respect and listen to the advice which is being provided. The outcome which is required is to ensure that development complies with planning policy. This might not always accord with the expectations of complainants. If no action can be taken this will be explained in full by the case officer in correspondence marking the closure of the complainant.

9.0 TIMESCALES FOR TAKING ACTION

9.1 As discussed above, in order to provide an effective enforcement service the resources available need to be used to the optimum level, which involves identifying those breaches of planning control which cause most harm and prioritising these to seek to ensure a quick response.

Priority	Type of Breach	Action
1	• Unauthorised works to a Listed Building. • Breaches within a Conservation Area which may have an unacceptable effect on its character and appearance. • Ongoing or unauthorised works to protected trees. • Breach of a condition which would fall into any of the above categories.	Site visit within 1 working days of receipt of written complaints
2	• Breaches relating to major development that adversely affect the living conditions of neighbouring occupiers. • Unauthorised gypsy/traveller sites (or similar development) on private land. • Non-compliance with pre-commencement conditions. • Unauthorised advertisements which are detrimental to highway safety	Site visit within 5 working days of receipt of written complaint
3	• Breaches relating to minor or other development that adversely affect the living conditions of neighbouring occupiers. • Breaches of a major, minor or other scale which would be likely to receive planning permission if an application was to be submitted. • Non-compliance with conditions (other than above) imposed on planning permissions	Site visit within 15 working days of receipt of written complaint

	• Unauthorised advertisements which are detrimental to visual amenity	
4	• Long standing breaches of either a major, minor or other scale of development with a low level impact and limited effect on the living conditions of any neighbour occupiers • Complaints which are not unlikely to form a breach of planning control	Site visit within 25 working days of receipt of written complaint

9.2 When a complaint is being registered it will be given a priority rating in-line with the table above. The rating may change as the investigation continues.

9.3 An officer will investigate complaints in chronological order within their priority category.

10.0 WHAT ENFORCEMENT POWERS ARE AVAILABLE?

10.1 As discussed earlier in this policy document, officers will seek to work with those in breach to voluntarily resolve contraventions whenever this is possible and appropriate thereby avoiding formal action having to be taken. When this is not possible or appropriate the expediency of taking formal enforcement action will be assessed by officers. If it is considered expedient to take enforcement action there are a number of notices which may be served dependant on the breach. Almost always a Planning Contravention Notice will be served in order to establish basic details about the breach, such as the nature of it and who has an interest in the land. Below are a list of varying times of notices which may be served in response to particular breach.

Planning Contravention Notice (PCN):

A PCN is served, usually in the early stages following a complaint and where it has been established that there is a potential breach of planning control, in order to obtain information about nature of the development and those who have an interest in the land concerned

Notice under S. 330 (of the Town and Country Planning Act 1990):
This is an alternative way of establishing Information as to interests in land, etc.

Enforcement Warning Notice (EWN):
Where an unauthorised development could potentially be made acceptable through the imposition of conditions if a planning application was to be submitted in respect of an unauthorised development a EWN can be served.

Section 215 Notices:

Where the condition of land or a building is adversely affecting the amenity of a neighbourhood the Council may issue a Notice under Section 215 of the Town and Country Planning Act 1990, requiring the owner or occupier to remedy the condition of the land or building. Failure to comply with the Notice is a criminal offence. The council also has powers, where a Notice has not been complied with, to enter the land and carry out the work itself and recover the cost from the owner.

Breach of Condition Notice (BCN):
These can be used as an alternative to an Enforcement Notice where conditions applied to a planning permission are not being complied with. There is no right of appeal against this notice.

Enforcement Notice (EN):
This is the usual method of remedying unauthorised development and there is a right of appeal against the notice. The use of the Enforcement Notice is an effective tool and such notices will be served fairly early on in cases that cause significant harm or where the transgressor has made clear they are unwilling to remedy the breach. The transgressor has the right to appeal against the notice to the Planning Inspectorate.

Hedgerow Removal Notice (HRN):
Certain hedges are protected under planning regulations and where a protected hedge has been destroyed (completely or in part), as well as seek to prosecute the perpetrator the Council can serve a HRN to require the hedge to be replanted

High Hedge Remedial Notice:
This is a provision of the Anti-Social Behaviour Act and regards a high hedge which is believed to be affecting the amenities of a residential property. Where appropriate such a complaint is made (and the complainant has paid the appropriate fee) the Council may serve a remedial notice which requires the hedge to be cut down to a specified height.

Stop Notice:
This can be used in conjunction with an enforcement notice where the breach of planning control is causing serious harm and should only be used in extreme cases. In such cases where Stop Notices are issued the council may be liable to pay compensation if it is later decided that the Stop Notice was not appropriate.

Temporary Stop Notice:
These are similar to Stop Notices (above) but take effect immediately from the moment they are displayed on a site, and last for up to 28 days. A Temporary Stop Notice would be issued only where it is appropriate that the use or activity should cease immediately because of its effect on (for example) amenity, the environment, public safety etc. It may be issued even where planning permission has been granted for development, in a case where the developer is not complying with conditions attached to the permission.

Injunction:
This involves seeking an order from the court preventing an activity or operation from taking place. Failure to comply with the requirements of an injunction amounts to a criminal offence.

Prosecution (Adverts and Listed Buildings): A number of advertisements benefit from a deemed consent which is granted by planning regulations and which in some cases impose limits on size , positioning, etc. of signs. Where the set criteria is not met and express consent is required but has not been obtained, the display of the advert becomes an offence and is liable to

prosecution. In a similar fashion the carrying out of unauthorised works to a Listed Building, where there is no prospect of a negotiated resolution, the approach open to the Council is to prosecute the offender.

Default Powers (Direct Action):
The council may enter the land and take the necessary action to secure compliance when enforcement notices are in effect. This is only used in extreme cases and when resources allow. The council will seek to recover all cost associated with carrying out works in default.

APPEALS:

There is a right of appeal against most statutory Notices issued by the council (exceptions are Breach of Condition Notices, Stop Notices). Appeals are in most cases made to the Planning Inspectorate or in some cases to the Magistrates' Court. When a notice is issued the recipient will also be given the necessary information on how to exercise their right of appeal. Whilst an appeal is ongoing the Council cannot take any action and must wait until the appeal is determined.

10.0 CONTACTS AND FURTHER INFORMATION

10.1 The relevant planning policies and guidance can be found on our website. These are the fundamental principles by which is will be considered whether it is expedient to take enforcement action.

10.2 You may email any enquiries to enforcement@flintshire.gov.uk.