

# **Planning Enforcement Charter - A guide to enforcing planning controls**

## **INTRODUCTION**

Enforcement is one of the most complex parts of the planning system and is an issue that concerns many members of the public. The aim of this Charter is to ensure that adopted procedures are fair, reasonable and consistent, and that interested parties are made aware of what is required when making a complaint, what to expect from the Council when it responds to a complaint and then kept regularly informed during the investigation. We hope you will find this Charter useful and will let us know if you think we could improve the service further. The Charter will also provide details of the service standards that the Council is committed to in providing the local community with an enforcement service that is as efficient and effective as possible. It is important to realise that although all complaints will be considered seriously, not all will result in enforcement action, or the resulting removal of an unauthorised structure or ceasing of activity.

It is not always possible to anticipate the length of time required for a decision or for action on a case, nor for a case to be resolved. Progress can be delayed for a number of reasons, for example where evidence must be collected and verified over a period of time, where negotiations take place, or where formal procedures have to be used. Where an application is submitted to regularise the breach of control or where an appeal is made to the Planning Inspectorate against a decision of the planning authority this will also affect the timescale for resolution of the case. The Council recognises that delays can be a source of considerable frustration to those who consider that their amenity is being affected. In most cases the Council will try to negotiate compliance rather than pursue formal action although in those cases where serious environmental damage or harm to the amenities of neighbouring residents is taking place, or where damage is being caused to protected landscapes, trees and/or listed buildings, the Council will use the full range of its enforcement powers to bring the matter speedily under control.

This Charter will be reviewed and updated as necessary to take into account legislative changes and any feedback received. The service commitments within this Charter will be monitored and reviewed with particular reference to resources and the need for effectiveness and efficiency and will be updated accordingly. An Enforcement Policy document has been issued by the Department of Environmental Services and Housing which sets out the more general policy regarding enforcement. That Policy document is intended to provide a framework for a consistent approach to enforcement.

## **CHARTER STANDARDS**

- All complaints will be acknowledged within 7 working days
- A visit will be made to all Priority One complaints within 3 working days, to all Priority Two complaints within 10 working days and the remainder within 20 working days.
- A decision will be made as to what action to take in respect of all complaints within 10 working days of the site visit. An initial conclusion letter will also be sent to the complainant within 10 working days of that decision being made.
- If a planning application is to be requested to rectify a breach of planning control then the Council will require the application to be submitted, in a valid form, within 6-8 weeks from the date of the request, depending on the complexity of the development.
- The complainants will be notified when a Planning Application is made so that you can make relevant comment.

- The Council will endeavour to either close an investigation case or serve a notice within six months of the date of the acknowledgement letter for all complaints. All interested parties (complainants and person who has allegedly carried out development without planning permissions) will be advised of the outcome of the investigations within 28 days of their conclusion, regardless of whether action is to be pursued or the case to be closed. If it is not appropriate to take action we will state that and give the reasons for not taking action.
- If formal action is to be taken the complainant will be notified within 10 working days of any notice being served.
- If an appeal against the issue of an Enforcement Notice has been made, we will tell the complainants how they can make representations in the appeal process
- If the Council prosecute someone, the complainants will be notified of the result of any Court hearing
- The Council will produce a report to the Development Control Committee and the relevant Scrutiny Committee every 3 months providing a review of performance against the agreed targets

### **WHO CAN REPORT A BREACH OF PLANNING CONTROL AND HOW IS IT DONE?**

The Council accept that many people do not like to make formal complaints to the Council; however Planning Enforcement is mainly a complaint driven department. Your details will remain confidential and will not be publicly available. If you would prefer, you may approach a County Councillor, or the Town Council / Community Council in your area to make a complaint on your behalf.

Anonymous complaints will not be encouraged unless what is being reported is such that it requires immediate action by the Council in terms of public amenity and are irreversible actions that involve serious breaches resulting in significant harm e.g. demolition of a listed building or removal of a protected tree. It needs to be understood that the complainant can provide essential information if further action is to be taken against unauthorised development. Without ensuring that people are ready to give such information enforcement action may well fail. The Freedom of Information Act 2000 gives a general right of access to information held by public authorities. It is important for the Council to promote accountability and transparency in the planning process and to allow individuals to understand views expressed and the reasons underlying decisions that have been taken. 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 be considered individually to establish whether an exemption applies. Where the Council does refuse a request to disclose information under the Act, a written explanation will be provided setting out the exemptions relied on by the Council for withholding the information and the relevant appeal procedures.

The Enforcement Section will also, as time allows, undertake investigations of records held by other departments of the Authority so as to be more pro-active in identifying unauthorised development, which require planning permission.

## **HOW TO REPORT A POSSIBLE BREACH OF PLANNING CONTROL?**

The Council will accept complaints relating to breaches of planning control to be submitted via telephone in writing or by e-mail and in all cases the information requested will be that which can be found on the form to be seen in the Enforcement Section of the Council's web site at [www.ceredigion.gov.uk/planning](http://www.ceredigion.gov.uk/planning). Using the form will allow the Council to record all complaints in a consistent manner and will ensure that all the necessary information is received allowing the investigation to be commenced without delay. Officers are unable to carry out investigations without basic address and contact details and there will therefore be a resultant delay in Officers visiting the site and carrying out the investigation requested. In such circumstances, Officers will not therefore be able to meet the Council's planning enforcement service standards and targets outlined in this Charter. In many cases, officers may not be able to gain the evidence needed to pursue a breach in planning control within the timeframe set out in this Charter Without evidence of a breach no action can be taken. The evidence supplied by the complainant is therefore vital to the Council's investigation and potentially the success of any formal action.

In any case where formal action is considered necessary, complainants may be asked to provide further information such as:

- Details of the alleged breach of planning law including any photographic, statistical or diary evidence to substantiate any claims made, e.g. if the alleged breach is of a business operation in a residential property, details of what has been observed to lead the complainant to that view are required.
- How long has the alleged breach of planning law been taking place or when did the unauthorised works commence or were completed
- Details of the harm the alleged breach of planning law is causing and how it directly affects the complainant
- Confirmation that the complainant is willing for their details to be passed onto another section of the Council or appropriate body (e.g. Environment Agency, Countryside Council for Wales, etc.)

The Council will not tolerate any inappropriate or defamatory statements within any accompanying letters of complaints, either regarding the person who has allegedly carried out development without planning permission or any Council Officer. The content of any letters should focus on factual information.

Some complaints, such as neighbour disputes over boundaries or complaints over anti-social behaviour relate to matters over which the planning service has no control and cannot be investigated by planning enforcement section. In such cases you will be advised of this and, where the complaint should be addressed to a different council department (e.g. environmental health, Building Regulations).

The Council acknowledges that complainants can be very concerned or angry about an alleged breach, but under no circumstances will anger against or abuse against Council officers be tolerated. Officers of the Council are not directly responsible for the breach and are there to assist complainants. However, they are only able to work within the parameters of the legislation, over which Officers have no control.

## WHAT HAPPENS TO THE COMPLAINT

### 1. Acknowledgement and Prioritisation

Information received by the Council's planning enforcement section is checked to ensure that it involves a possible breach of control and includes all the detail required for a possible investigation. After preliminary checking and compliance with the requirements for investigation, the complaint will be registered. Once registered, a written or e-mail acknowledgement will be sent to the person who made the complaint giving the contact details of the Investigation Officer dealing with the case, the priority allocation and details of this Enforcement Charter. In the event of anonymous complaints or complainants only leaving a telephone number, this will not be possible.

The complaint will be prioritised in accordance with the Prioritisation Scheme. Due to the large number of enforcement complaints received by the Enforcement Section it is necessary for them to be prioritised and available resources to be assigned appropriately and proportionately. This Prioritisation Scheme has been adopted to take into account the level of harm being caused to the local community and public amenity. Nevertheless, the Council is committed to investigate every alleged breach (but it may not be possible to take actions in all cases) and, as stated both the person who has allegedly carried out development without planning permission and the complainants will be regularly kept informed. Regardless of the source of the complaint it will be allocated to one of the priorities listed below. This will prevent unnecessary allegations of bias from complainants. The timescales placed against the priorities is that which is considered to be reasonable but there will be instances when they are not met due to unforeseen circumstances, such as inaccessibility to the land/building, difficulties in tracing the landowner(s), protracted negotiations and incremental compliance. In all cases it will be for the Council to have the final word in deciding whether and to what level any harm to public amenity results from an alleged breach and whether the breach falls within Priority 1, 2, 3 or 4. The Priority rating will be given to each case as it is received, but the rating may change during the investigation. The complainant will be notified of the priority allocated to the matter originally within the acknowledgement letter, which will be sent out within 7 days of receipt of the complaint (it is not anticipated that complainants will be informed of subsequent changes to the Priority rating). The prioritisation of cases is particularly necessary to manage expectations of complainants and will aid effective work during periods of high workload and during holiday periods. It should be emphasised that the prioritisation system will not result in significant delays to those cases in lower priorities. All cases will be investigated as soon as possible, regardless of the formal prioritisation system. The differing timetable represents a system of informing complainants and ensuring the most important cases are dealt with as quickly as possible. In general "Priority 1" cases will be those involving the demolition or alterations to listed buildings, unauthorised works to protected trees and other cases which causes serious harm. "Priority 2" will be given to those cases which the Authority consider to have a significant detrimental effect and is likely to lead to formal enforcement action, if not rectified. "Priority 3" are those cases which are considered to have less of an impact and those which the Authority consider it would not be expedient to take formal enforcement action. Retrospective planning applications will be invited to rectify these situations. Examples are minor extensions to dwellings which require planning permission. At the other end of the scale, "Priority 4" cases relate to be minor operations with very limited impact, for example fences, some advertisements, or satellite dishes on non-listed buildings.

Every investigation involves two stages of assessment:

- Whether there is a breach in planning control
- Whether it is expedient to take formal action

Prior to visiting the site, an initial check of the Council's planning and enforcement records will be undertaken. Additionally, the officer may call, e-mail or write to the complainant to ensure the correct details have been collected and to discuss further the areas of concern. This will ensure, in most cases that all the information required for the investigation is collected during one site inspection. The Enforcement Officer will also investigate the records held by Building Regulations with regard to the property at this time.

## **2. The site investigation and Initial assessment**

The following process will be followed during a site inspection where contact with either the complainant or the person who has carried out development without planning permission is necessary and access is required:

- Proof of identity will be shown on request
- The purpose of the visit and the alleged breach of planning law will be explained
- Access to the land/buildings will only be made if necessary to complete the investigation
- Information will be collected to establish whether a breach of planning law has occurred, to check compliance with a notice or check whether a breach has been resolved.
- Notes and photographs will be taken

The individual who has made the complaint will also be informed of what the outcome of the initial assessment, if any, is and what future action will be taken. They will be advised if the matter does not involve a breach of planning control. In some other cases, additional investigation may be needed before coming finalising the initial assessment. Where further information is required before a decision can be made on the case, details will be requested from all owners of the site allowing a maximum of 28 days for submission. In certain cases a change in the Priority may become necessary – the complainant will be advised of such a change and the justification given for the change.

## **3. Further investigation**

Following the site inspection, further research may be undertaken into the planning history or other relevant sources, for example ownership details, aerial photography and records from other Council services such as Building Control and Taxation. If adequate information is unavailable, Officers are able to request information from the person who has carried out development. Further site visits may be necessary to gain further information and/or evidence.

Many investigations can be carried out without the knowledge of the person who has allegedly carried out development without planning permission. Where this is the case, it is not always appropriate to provide any notification of the Council's involvement since it may result in poor neighbour relations. Persons who have allegedly carried out development without planning permissions will therefore also be kept informed, where it is appropriate, as regularly as resources allow regarding the progress of the investigation, All letters requiring action and/or further information will give reasonable timescales commensurate with the nature of what is required. The person who has allegedly carried out development without planning permission will be notified on each occasion of the alleged breach, the outcome of the investigation, and the Council's powers should the person who has carried out development without planning permission not take remedial action to remedy the breach. In all cases where formal action is agreed by the Council, the person who has carried out development without planning permission will be notified by telephone, e-mail or letter prior to the issue of the Notice.. Where the person who has carried out development without planning permission makes contact by telephone this will be recorded on the file.

The Authority will try to keep interested parties informed of significant stages in the progress of a case but they may wish to contact the case officer for a more regular update. If there has been no progress for a period of 8 weeks, the Council will write to complainants to explain the delay. All communication will be carried out in writing preferably by email. However, where contact is made by phone by the complainant a verbal response will be given and recorded on the file.

The range of further actions possible are :-

- That the investigation stage is complete and the case has been closed. A detailed reason behind the closing of the case will be given.
- That formal action is being considered and a report is being prepared. Advice is given as to the decision-making process and the timescales involved.
- That no action has been agreed by the Council and the case has been closed. A detailed reason behind the closing of the case will be given
- That action has been agreed by the Council. Advice is given as the next stages and timescales involved and the potential variations in the process and outcomes
- That a Notice has been served, the content of the notice and compliance period.

#### **4. What will happen if a breach is found?**

The first assessment made is whether the breach is such that action is necessary in the interests of the community and public amenity. Cases of lower priority as identified in the Prioritisation Scheme may be closed with no further action. For example, it may not be expedient to take action against a development that was acceptable, when assessed against policy and guidance and did not cause any harmful impact upon public amenity.

Where a breach is found and it is considered to be a high priority due to its harmful effect upon public amenity, it is the Council's aim to try to remedy the situation through informal action, where possible and appropriate. It is not in the Council's or the community's interests to proceed to formal action without first exploring and using other tools to remedy the situation. Action will always be taken that is commensurate and proportionate with the breach of planning law to which it relates. **Negotiation** is the best tool to remedy breaches against planning law. This is therefore the favoured course of action by the Council. A letter will be sent to the person who has allegedly carried out development without planning permission advising whether a breach of planning law has been found, and if so what is the likely course of action to be taken by the Council. The letter may outline any steps that are required to remedy the breach and an opportunity to discuss the matters and any possible options available will be given. In all cases the person who has allegedly carried out development without planning permission will be given the opportunity to remedy the breach rather than take formal action.

Formal action by the Council will be as a last resort or used in situations where an immediate solution is necessary in the interests of public amenity. The most appropriate Notice will be used to remedy the harm being caused. The Council will not normally take enforcement action in order to remedy only a slight variation in excess of what would have been permitted by virtue of the General Permitted Development Order provisions.

The Council will not seek a retrospective application solely to certify an unauthorised development. Without prejudice to the proper consideration of any such planning application, a retrospective application will only be sought where the development is possibly acceptable in planning terms but could be limited by condition to remedy the breach. For example a change of use may be acceptable upon control of its hours of opening, or a development may be acceptable upon a

detailed planting scheme being implemented and maintained. Formal enforcement action will not be pursued during the consideration of the retrospective application since to do so could prejudice the decision making process.

If the development is unlikely to receive permission, the Council will not encourage the submission of a retrospective application, although there remains a right to make an application for consideration by the Council. Therefore if an application is submitted, the Council is duty bound to determine it. Other than in the most seriously harmful breaches, it is best practice to await the outcome of a retrospective planning application before considering taking formal enforcement action.

On a case by case basis, a balance will be sought between the need to overcome the harm and the likely lengthy timescales that are involved in pursuing formal action.

Regardless of the aim as stated in this Charter, it is not always possible to gauge how long it will take for the Council to resolve certain alleged breaches. This is due to their often complex and sensitive nature and the need to collect detailed and accurate information before being in a position to consider taking action. This is particularly important should the Council serve a notice or end up in an appeal or court situation since an appeal can be lost if correct procedures are not followed and the Council can be fined in some instances.

Details of enforcement notices, breach of condition notices, temporary stop notices and stop notices are entered into an Enforcement Register. The Register is available for inspection at the Planning Section, Neuadd Cyngor Ceredigion, Penmorfa, Aberaeron, SA46 0PA.

## **5. Where enforcement action will not be considered**

Some complaints and requests for enforcement action received by the Council are malicious or are a result of conflict between neighbours or land owners. The Council will screen all complaints and all complaints which are potentially private disputes and non planning issues will not be accepted. If there are private or civil law solutions to these complaints the Council will not become involved. Similarly, if other regulatory agencies have been contacted and are more empowered to control a situation, the Council will not duplicate such enforcement action.

The Council considers liaising with third parties agencies an integral part of the current approach to planning enforcement and is vital for thorough investigations.

## **MAKING A SUGGESTION OR COMPLAINT ABOUT THE SERVICE**

We will consider all complaints made about the way an enforcement enquiry was dealt with. Some people may disagree with the outcome of an investigation but, of itself, that is not grounds for complaint. As noted above there is a separate appeals' procedure for a recipient of an enforcement notice.

In the first instance, complaints should be discussed with the member of staff involved. If you are still dissatisfied, talk to the Principal Development Control Officer, DESH, Ceredigion County Council, Neuadd Cyngor Ceredigion, Penmorfa, Aberaeron, Ceredigion, SA46 0PA. If he/she is unable to help, you will be given the name of a more senior manager who will investigate the matter.

Written complaints will be acknowledged and then fully and promptly investigated. The complainant will be given a written response explaining the outcome of the investigation and any action that the Council proposes to take. If no action is proposed, the reasons will be explained.

If you are not happy with the initial response, you can take the complaint further. You can complete a Complaints Form (available from the web site address [www.ceredigion.gov.uk](http://www.ceredigion.gov.uk)) If that fails to resolve the problem, you can seek the advice and help of the Chief Executive of the Council. Lastly, if you are unsatisfied with the Council's complaints process, you have the right to take your complaint to the Ombudsman, the web site of which is [www.ombudsman-wales.org.uk](http://www.ombudsman-wales.org.uk) or at Public Services Ombudsman For Wales, 1 Ffordd yr Hen Gae, Pencoed, CF35 5LJ.