

Planning compliance in Denbighshire

Planning compliance charter

Adopted September 2020

Accessible web version

Foreword

As the Lead Member for Planning, Public Protection, Safer Communities and Domestic Abuse, I welcome the production and use of this very useful charter. This has been developed in consultation with our many City, Town and Community Councils across the County and aims to guide those involved in the planning compliance process. It is vitally important that the Council continues to take a proportionate approach to regulation, aiming to balance environmental protection with business support and growth. This charter provides helpful advice to those making complaints about potential breaches of planning control and to those who may have breached planning control. The planning compliance process is a complex and often time-consuming one. I hope that this charter guides those involved and manages expectations of the Council's role therein.



Councillor Mark Young, September 2020

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1. Introduction

1.1 The purpose of the compliance charter

The planning regime exists to regulate the development and use of land in the public interest. Planning policies are adopted both nationally and locally to make sure that land is used and developed in an appropriate and responsible way. Applications for planning consent are submitted to Denbighshire County Council and judged against these adopted policies.

Not everyone applies for planning consent when they should. This is where the planning compliance function comes in. This charter sets out how the Council seeks to deal with the harmful effects of unauthorised works by ensuring that planning policies are applied proportionately but robustly.

The charter's primary purpose is to help complainants, alleged contraveners and other interested parties understand how the planning compliance function operates. The Council wishes to work alongside local stakeholders to remedy unauthorised works, in the knowledge that working together is the most effective approach to dealing with breaches of planning control. Advice for complainants is provided in section 2, and advice for alleged contraveners is provided in section 3.

1.2 What is a breach of planning control?

A breach of planning control is defined in the Town and Country Planning Act 1990 as:

"the carrying out of a development without the required planning permission, or failing to comply with any condition or limitation subject to which planning permission has been granted".

The term 'development' is also defined in the Act, as follows:

“the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land”.

In other words, a breach of planning control is a ‘development’ which has occurred but which a) does not have planning permission, or b) is contrary to conditions imposed on a planning permission. These are the types of breach which the planning compliance function primarily deals with (see section 2.1 for more information).

It is not necessarily against the law to carry out a development without planning permission. In most cases, there is no legal obligation on developers to apply for planning consent prior to undertaking works—though it is usually simpler for all involved if they do. If they don’t, they run the risk of the Council pursuing enforcement action in order to remedy the breach. An offence may then be committed if a developer, upon receipt of an enforcement notice, fails to comply with it.

1.3 Development which does not need planning permission

It is quite often the case that building works or changes of use do not need the Council’s consent in the first place. Some development, typically small in scale, is classed as ‘permitted development’, meaning that it is exempt from the requirement for planning permission. Many extensions to houses, for example, do not need planning permission. Permitted development rights can also apply to changes of use, both temporary and permanent.

Further information about permitted development rights, and whether a development requires planning permission, can be found on the Welsh Government’s website—visit www.gov.wales/planning-permission.

1.4 Avoiding planning compliance involvement

It is the responsibility of the property owner (or, in limited cases, the person carrying out works) to comply with planning regulations. To avoid the potential involvement of the planning compliance officer, prospective developers should ensure that all of the

appropriate consents are in place prior to commencing works. Developers are also advised to inform neighbours about their plans from the outset.

The Welsh Government's website provides extensive guidance in relation to common projects which may need planning consent—see www.gov.wales/planning-permission. The Council has also published relevant advice, available via www.denbighshire.gov.uk/planning. Of this guidance, the Council's supplementary planning guidance ("SPG") documents, available via the link, are especially useful; covering a wide range of topics, they are tailored to different types of scheme. For example, business owners may find the SPG documents on advertising and shop fronts particularly useful. The documents on Listed Buildings and Conservation Areas may be of use to developers who are carrying out works on a heritage asset. More detailed guidance can be obtained from a planning consultant; a list of agents who operate within Denbighshire is also available on the Council's website.

1.4.1 Lawful development certificates

The Council does not give informal advice on the need for planning permission. Developers who are unsure as to whether their project needs planning permission are recommended instead to make an application for a lawful development certificate. This process is not the same as making an application for planning permission; it is a less onerous process which will provide formal confirmation of whether a specified use, operation or activity is lawful for planning purposes. Further information about how to apply for a lawful development certificate is available on the Council's website.

1.4.2 Pre-application advice service

The Council also offers a pre-application advice service which enables prospective developers to get an informal opinion on the acceptability of the proposed works. To arrange this service, applicants must complete a pre-application advice form which is available on the Council's website. So long as all the necessary information has been provided, we aim to provide a written response to pre-application enquiries within 21 days.

2. Advice for complainants

2.1 What we do and don't investigate

The Council's planning department investigates matters which the law gives us powers to adjudicate over—typically matters which require planning permission. We do not have control over—and do not therefore get involved in—civil matters such as property disputes, property damage and trespass. Issues such as dangerous trees, blocked drains and inconsiderate parking are best resolved directly between the interested parties, as these are not matters which are overseen by the planning department.

In some cases—normally those involving larger schemes—a condition attached to a planning permission may control certain aspects of a development. For example, the planning department may have control over operating hours and mitigation measures, though this is not usually the case for smaller schemes. Complaints relating to the construction phase of developments should in the first instance be referred to the site developer, who may be able to resolve the situation with immediate effect. If this approach is unsuccessful, complainants may wish to consider whether the activity they are concerned about should be reported to the planning department.

The full list of matters which the planning department can investigate is as follows:

- Development (i.e. building works or a change of use of land) which requires planning permission but has proceeded without it;
- Development which has proceeded contrary to plans approved by the Council as part of a planning permission;
- Development which has proceeded contrary to conditions imposed by the Council as part of a planning permission;
- Unconsented alterations to Listed Buildings;
- Unconsented demolition of structures in a Conservation Area;
- Wilful damage to protected trees, i.e. those which are subject to a Tree Preservation Order or located within a Conservation Area;

- Uprooting of non-domestic hedgerows;
- Advertisements whose display requires consent but does not have it; and
- Untidy properties which are having a detrimental effect on the wider area.

If an issue is not listed above, it may be the case that it is one for another department of the Council to resolve. For example, dangerous buildings are a building control issue, while the highways department may be best placed to resolve parking issues. The environmental health team can deal with nuisances such as noise, vermin and odour. Alternatively, the issue may be best referred to another agency such as Natural Resources Wales, Welsh Water, the police or the fire and rescue service.

2.1.1 Development which is immune from enforcement action

If a breach of planning control has existed for some time, it may have acquired immunity from remedial action. Planning law prevents the Council taking enforcement action against unauthorised development which has existed for:

- Four years in cases of building/engineering/mining operations;
- Four years in cases consisting of the change of use of any building to use as a single dwellinghouse; or
- Ten years in all other cases.

Breaches of planning control which do not involve 'development' (see section 1.3), such as breaches of Listed Building legislation or instances of untidy property, do not accrue immunity from enforcement.

2.1.2 Speculative reports

The planning department does not investigate speculative reports of activities which have yet to occur. This is because the resources which are available to the planning compliance function are solely dedicated to investigating and resolving unauthorised works which are ongoing or have already taken place. It is also the case that the scale and nature of a breach needs to be understood before the best course of remedial action can be identified.

2.1.3 Anonymous reports

The planning department does not investigate anonymous reports or reports made using a false identity. This is because we may wish to correspond with complainants in order to gain a better understanding of the alleged breach or to discuss the progress of remedial action.

All personal details are confidential and will not be made public during the investigation phase. On rare occasions—those involving serious breaches which result in an appeal or a prosecution—we may be required to give details of the complaint to the Planning Inspectorate or the Courts. These details may include the complainant's name and address, though we would only divulge these with the complainant's express consent. Similarly, we may need to liaise with external agencies such as Natural Resources Wales, the police and the fire and rescue service in order to investigate an alleged breach effectively.

2.2 The role of complainants

The planning compliance function is most successful when it works collaboratively with complainants. The planning department cannot proactively monitor every street and property in Denbighshire, and this is where members of the public come in. By providing local knowledge and 'eyes and ears' on the ground, local residents and organisations are a key component in the process of securing planning compliance.

As well as providing a monitoring presence, local residents and organisations are uniquely placed to remedy the harmful effects of breaches before they need to be escalated to the Council. It is a regrettable fact that the intervention of a planning compliance officer can sometimes be greeted with hostility by developers who are alleged to be carrying out unauthorised works. It is often the case that developers find it unnecessary and antagonistic for the Council to get involved; they will often ask why the aggrieved party couldn't have raised their concerns directly, in order to reach an amicable (and probably swifter) solution.

In order to maintain good community relations—as well as to ensure that our resources are directed at the most severe problems—the Council’s involvement should be treated as a last resort. Before reporting an issue to the Council, complainants should consider whether a solution to the problem could be reached more amicably and without the use of limited Council resources.

2.2.1 The role of city, town and community councils

City, town and community councils have excellent links to the places they serve, and they can use their well-established connections to bring about quick and effective resolutions to local planning issues, to the benefit of all involved. It is also a priority of the Council to work with people and communities to build independence and resilience, involving local people and organisations in shaping their communities and improving services—and we recognise the crucial role that city, town and community councils can play in delivering these objectives.

The planning compliance function provides a regulatory mechanism through which improvements can be made to Denbighshire’s communities. Shaping communities on a wider scale takes more than reactive regulation, though. City, town and community councils which have a generalised concern about their area’s built environment should therefore consider how they can work in partnership with the Council to proactively enhance the public realm. For example, they may wish to consider the strategic benefits of commissioning appraisals which the Council could then use to introduce new planning guidance and/or place-specific controls. Localised controls such as Conservation Areas, Areas of Special Control of Advertisements and Article 4 Direction Areas can make a real difference to the public realm, but limits to resources mean that it is not always possible for the Council to implement them unaided. It is for this reason that it is now so important for partnership organisations such as city, town and community councils to work collaboratively with the Council to stimulate regeneration and enhance the built environment.

2.3 How to report an alleged breach of planning control

If other methods of remedying an alleged breach prove to be unsuccessful, complainants may wish to report the matter to the Council. We only investigate reports of alleged planning breaches which are submitted to us on the dedicated form, which can be found online by visiting www.denbighshire.gov.uk/planning and then following the link to the enforcement section. Alternatively, a hard copy of the form can be sent out to prospective complainants by post.

By completing the form, complainants are ensuring that the planning department has all the information we need to carry out any investigation as quickly, effectively and safely as possible. Quite often, the local knowledge that complainants and local organisations can provide on the form is what makes the difference between a successful and an unsuccessful investigation. For this reason, we may refuse to investigate an alleged breach until all of the necessary information has been provided.

Similarly, the success and speed of an investigation can hinge on the availability of corroborating evidence. Accordingly, complainants may wish to submit photographs, sound recordings, videos and activity logs. It is important for complainants to note that their reports may lead to a criminal investigation, so they must ensure that the information and evidence they provide is accurate and a true representation of the facts.

The Council will endeavour to acknowledge reports of planning breaches within ten working days. Complainants should inform the Council if they do not receive an acknowledgement within this timeframe.

2.4 The investigation phase

The Council receives around 250 reports of alleged planning breaches each year. Investigations must therefore be prioritised according to the level of harm being caused. The highest priority is given to dealing with breaches which are imminently life-threatening or irrevocably harmful, especially if they are ongoing. Thereafter, priority is usually given to breaches affecting the places and artefacts which are recognised for their special

qualities—Listed Buildings, Conservation Areas, the Area of Outstanding Natural Beauty (“AONB”) and protected trees. Similarly, breaches which conflict with the Council’s Corporate Plan will usually be given priority over other cases.

Regard must also be paid to when the breach first occurred. If an unauthorised development is, owing to the passage of time, approaching immunity from enforcement (see section 2.1.1), the investigation into the matter may need to be prioritised accordingly.

The table below (continues overleaf) provides some examples of breaches which the Council typically encounters, and identifies where they would normally fall in the order of priority.

Priority	Type of breach
1 (Urgent)	<ul style="list-style-type: none"> • Ongoing works to a Listed Building or a Scheduled Ancient Monument which are causing irrevocable and significant damage to its character • Ongoing works which are causing irrevocable and significant damage to a designated natural asset, e.g. a Site of Special Scientific Interest or a tree subject to a Tree Preservation Order • Works which are putting people in imminent danger of death <p>Examples: ongoing excavations at a Scheduled Ancient Monument; the ongoing felling of a group of protected trees; the creation of a vehicular access onto a blind corner on a fast A-road.</p>
2 (High)	<ul style="list-style-type: none"> • Works which have caused irrevocable and significant damage to a Listed Building or a Scheduled Ancient Monument, but are not ongoing • Works which have caused irrevocable and significant damage to a designated natural asset, but are not ongoing.

Priority

Type of breach

Examples: a Listed Building which has had stained-glass windows removed; excavation works which have occurred within a SSSI; a non-domestic hedgerow which has been uprooted.

3 (Moderate)

- Works which have had a **significant adverse effect** on the character of a designated heritage or natural asset, but are **not ongoing**
- Unauthorised dwellings in the **open countryside**
- Unauthorised, non-temporary **advertisements**
- Buildings which, owing to their lack of maintenance, are causing **significant visual harm** to the surrounding **public realm**—especially empty homes
- Breaches of conditions attached to planning permissions.

Examples: an unauthorised extension on a Listed Building; quarrying within the Area of Outstanding Natural Beauty; an unauthorised shop sign in a Conservation area; an unauthorised conversion of a barn into a dwelling; a long-term empty home which is visually harming a busy public thoroughfare; a new dwelling not being used as an Affordable Home, in breach of planning conditions.

4 (Low)

- Development which is **not causing significant harm** to public amenity, the environment or to the health, safety or wellbeing of the public
- Breaches which appear to be temporary
- Works to **non-Listed buildings** which are not within a Conservation Area or the Area of Outstanding Natural Beauty

Priority**Type of breach**

- Unauthorised '**householder development**' (works within the garden areas of houses)
- Overgrown front gardens.

Examples: outbuildings in gardens; overheight fences; changes of use, such as a bookshop selling tea and coffee.

While all reports of alleged planning breaches will be recorded, those that do not meet priority status will be investigated if and when workloads allow. The Council aims to investigate 50% of reports within 10 weeks, and 80% within 12 weeks. Cases which are complex, lacking in evidence or relatively low-priority may take more than 12 weeks to investigate.

2.4.1 Site visits

The Council does not carry out site visits in response to every complaint, but some cases will demand an on-site inspection. It is for the Council to decide whether a visit is needed as part of an investigation.

In order to make the most efficient use of resources, visits are carried out in geographical groupings. For this reason, it may be some weeks after a report has been received before a site visit is undertaken. In order to expedite matters, complainants may wish to provide evidence which would negate the need for a site visit.

2.5 What happens once a breach has been investigated?

Once an alleged breach has been investigated, the Council will then pursue remedial action or close the case down. Cases will be closed down at this stage if: a) we do not have sufficient evidence of a breach; or b) a breach has been identified, but is not so harmful that the Council would find it expedient to devote further resources to remedying the matter.

2.5.1 Expediency

The planning compliance function is a discretionary service offered by the Council. As such, it is for the Council to decide whether to pursue remedial action in response to alleged breaches of planning control. The aim of the planning compliance function is to remedy the adverse effects of breaches, not to punish the people carrying them out.

The pivotal issue for the Council is whether the unauthorised development is unacceptably affecting public amenity. It is not an appropriate use of Council resources to take action against a trivial or technical breach which causes negligible harm to public amenity.

2.5.2 Remedial action

Depending on the severity of the unauthorised development, any ensuing remedial action will in most cases take one of two forms. The Council may:

- 1) Pursue the cessation of the breach, through formal enforcement action if necessary. This option is appropriate when there is adequate evidence of a harmful breach which irreconcilably conflicts with planning policy; or
- 2) Request a planning application to be submitted in retrospect. This is an appropriate method of dealing with breaches which may be harmful, but whose harm could potentially be controlled by attaching a condition to a retrospective planning permission. For example, a planning condition may mitigate noise by requiring the installation of soundproofing. It is also appropriate to request an application if the nature of the breach is such that the submission of evidence and/or the input of specialist consultees is needed in order that an informed decision about a development's acceptability can be made.

In cases where a requested application turns out not to be successful—or not submitted at all—the Council may resort to pursuing the cessation of the breach, through formal enforcement action if appropriate.

2.5.3 Formal enforcement action

The Council has the power to serve enforcement notices which formally require recipients to undertake remedial action or otherwise face a penalty. There are different types of notice the Council can serve, depending on the nature of the breach. Certain notices may only come into effect 28 or more days after their date of issue, in order to allow the recipient the opportunity to appeal. Appeal proceedings are overseen by the Planning Inspectorate, who will either uphold, modify or quash the notice.

Notices must offer recipients a reasonable period within which to carry out the required remedial works. This period of compliance starts when the notice comes into effect or, in cases where appeal proceedings are brought, when the Planning Inspectorate issues their decision.

For relatively minor breaches, the service of the enforcement notice may be deemed sufficiently punitive in itself, given its effect on land valuation. In most cases, however, the response of the notice's recipient will be monitored once the period of compliance has elapsed. If the monitoring reveals that the recipient of a notice has failed to comply with its requirements, the Council may, if expedient, seek to secure further punitive action. Penalties for non-compliance vary depending on the type of breach and the notice served (see section 3.2). Prosecution may be pursued if it is in the wider public interest to do so, and if legal advice suggests that there is a reasonable prospect of success.

The timescales needed for the complete resolution of cases can unfortunately be extensive, and often dependent on factors outside of the Council's control. The Council will nonetheless strive to resolve all priority cases in a timely manner, and, if expedient, will pursue all appropriate and reasonable avenues to do so.

3. Advice for alleged contraveners

3.1 How to respond to an allegation by the Council

Those who are alleged by the Council to have carried out unauthorised works should read the correspondence they have received thoroughly. Any such correspondence will carefully set out the Council's position and provide advice about what to do next. It will state what courses of remedial action are available and, if applicable, the penalties for non-compliance. Given the costs involved, the Council may refuse to provide further advice beyond this, especially if a fee would ordinarily be levied for providing such advice to the public (as is the case with pre-application advice, for example).

In light of the above, alleged contraveners are advised to seek the assistance of a planning consultant if they are in any doubt about their obligations. A list of such agents who operate in the locality is available at www.denbighshire.gov.uk/planning. Alternatively, Planning Aid Wales, which is a charitable organisation which helps eligible individuals to participate more effectively in the planning system, provides advisory services including a helpline. Further information about the charity can be found at www.planningaidwales.org.uk.

3.2 Formal notices

There are a number of formal notices which the Council has the power to issue in response to an alleged breach of planning control. There is no obligation on the Council to make informal attempts at resolving an alleged breach prior to issuing a formal notice.

Each type of notice has a different function. They also have different penalties for non-compliance. These vary depending on the notice served, and will be expressed on, or in an annex attached to, the notice. They most often take the form of one or more of the following:

- Prosecution, which can result in a fine;

- The Council carrying out the works required by the notice followed by action in the County Court to recover all incurred costs; and/or
- The Council carrying out the works and then registering a charge on the property with the Land Registry, recoverable should the property be sold.

Certain notices are appealable. If the recipient of a notice has this right of appeal, the details of how to exercise it will be given in an annex to the notice. Further details about the grounds under which an appeal can be raised will also be provided.

3.2.1 Enforcement Notices

Section 172 of the Town and Country Planning Act 1990 gives the Council the power to issue an Enforcement Notice to require an alleged breach of planning control as defined in the Act (see section 1.2 of this document) to be remedied. The required remedial action will be identified on the notice. Once served, there is a period of no fewer than 28 days before the notice comes into effect, to allow its recipient to raise an appeal. Once the notice comes into effect, there is a further period of time to allow for compliance. This period for compliance will vary depending on the nature of the alleged breach. Failure to comply with an enforcement notice within the required timeframe is a criminal offence and can lead to a substantial fine.

3.2.2 Listed Building Enforcement Notices

It is a criminal offence under Section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to alter, extend or demolish a structure subject to a Listing without Listed Building consent. A Listed Building Enforcement Notice (“LBEN”) seeks to have unauthorised works remedied by:

- a) Requiring the building to be brought back to its former state; or
- b) If that is not reasonably practicable or desirable, requiring other works to alleviate the effects of the unauthorised works; or
- c) Requiring the building to be brought into the state it would have been in if the terms of any Listed Building consent had been observed.

The Notice must specify a time period for securing compliance with its requirements.

There is a right of appeal against a LBEN; the procedures are similar to those used for an appeal against an Enforcement Notice.

If works subject to a LBEN are later authorised by a retrospective application for Listed Building consent, the notice will cease to have any effect. The liability to prosecution for an offence committed before the date of any retrospective consent will remain, however. The penalty for offenders is a substantial fine, imprisonment, or both.

3.2.3 Breach of Condition Notices

A Breach of Condition Notice (“BCN”) may be served when a condition attached to a planning permission has not been adhered to. Because the imposition of any given condition can be appealed at the time when the planning permission was granted, there is no right of appeal against a BCN. Failure to comply with a BCN can, upon prosecution, lead to a fine.

3.2.4 Stop Notices and Temporary Stop Notices

The Council may issue a Stop Notice or a Temporary Stop Notice in order to stop a particularly harmful activity with immediate effect. These notices are typically reserved to dealing with especially severe alleged breaches—‘Priority 1’ cases (see section 2.3) which are ongoing and whose harm is irrevocable.

A Temporary Stop Notice allows the Council to stop a harmful activity in order for us to investigate the matter further and, if appropriate, issue a formal notice to have the identified harm remedied. Stop Notices may only be issued at the same time as an Enforcement Notice or after an Enforcement Notice has been served, and thus are best used to ensure that a harmful activity does not continue during appeal proceedings. Failure to comply with a Stop Notice or a Temporary Stop Notice can lead to a substantial fine.

3.2.5 Enforcement Warning Notices

An Enforcement Warning Notice (“EWN”) formally requires its recipient to seek to remedy an alleged breach by undertaking one of the following courses of action:

- Apply for planning permission for the unauthorised development in retrospect; or
- Cease the alleged breach.

Serving an EWN prevents an unauthorised development from potentially gaining immunity from further enforcement through the passage of time (see section 2.1.1).

The Council will often issue an EWN in relation to alleged breaches which, after an initial assessment, appear to accord with planning policy in principle. They are reserved for circumstances in which, subject to the imposition of conditions, there is a ‘reasonable prospect’ that retrospective planning permission would be granted if an application for such were to be made. They do not act as a guarantee that planning permission will be forthcoming. Failure to comply with an EWN may lead to further formal action, normally the service of a full Enforcement Notice.

3.2.6 Other notices

The Council has the power to issue further types of formal notice, such as those which deal with unconsented advertisements, untidy properties and unauthorised works within Conservation Areas. As is the case with the abovementioned notices, the penalties for non-compliance and the available options for raising an appeal will be expressed either on or in an annex to the notice issued.

3.3 Injunctions

If the Council considers a breach of planning control to be sufficiently serious, it may apply to the Courts for a restraint injunction. Those in breach of an injunction can be imprisoned.

3.4 Submitting a planning application

Alleged contraveners may be instructed to attempt to regularise unauthorised development by submitting a planning application. In order to ensure that the submitted application passes validation checks—that is, contains all the documentation we need in order to consult on and determine the application—applicants are advised to employ the services of a planning consultant. This can often save applicants time and money in the long run. A list of agents who operate within Denbighshire, as well as general advice on submitting planning applications, can be found at www.denbighshire.gov.uk/planning. Our support team can also provide limited assistance by email, at planning@denbighshire.gov.uk, or by phone on (01824) 706727.

3.4.1 Non-determination of retrospective planning applications

The Council has the power to decline to determine retrospective planning applications for development that is subject to an enforcement notice.

3.5 Officers' right of entry onto land

The planning compliance officer has a right of entry onto land to:

- Ascertain whether there has been a breach of planning control;
- Determine whether and how the Council's powers should be exercised; and
- Determine whether there has been compliance.

Any person who wilfully obstructs an authorised officer acting in the exercise of a right of entry shall be guilty of an offence and will be liable to prosecution.

Contact us

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