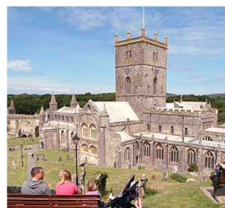
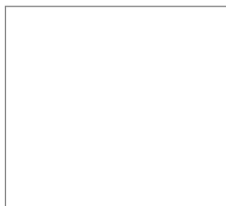


A guide to **planning enforcement** in Wales

Cymorth	Planning
Cynllunio	Aid
Cymru	Wales

A **free guide** for the general public



Produced by Planning Aid Wales

A guide to **planning enforcement** in Wales

Cymorth	Planning
Cynllunio	Aid
Cymru	Wales

Contents	Page
What is this booklet?	2
Your Local Planning Authority	3
What is enforcement?	3
How does enforcement work?	4
How to complain about unauthorised development	6
What happens when a complaint is made?	7
What happens if formal enforcement action is taken?	8
What happens if there is an appeal?	9
Stop Notices and Injunctions	11
Compliance with conditions attached to a planning permission	11
Advertisements	12
Listed buildings and conservation areas	12
Where to go for further help	12
Further information and links	13

What is this booklet?

Sometimes a new building is put up, or a piece of land or property is used for a new activity without the proper planning permission being in place. What happens in this situation? Is the law being broken? What are your rights to complain? What can the authority do to put things right?

The advice in this guide should be used selectively and according to your specific situation. The contents are correct at the time of publication, but planning law and practice continue to change over time. If in any doubt, you should seek up-to-date professional advice from your authority or from a professional expert on enforcement procedures.

This booklet explains the basics of the planning 'enforcement' process in Wales. It is published by **Planning Aid Wales**, an independent charity working to increase public participation in planning, with funding from the **Welsh Assembly Government**.

Second edition, April 2010
First edition published 2008
© Planning Aid Wales
Cover images by Michael Corbett

ISBN 0-9553803-5-9
978-0-9553803-5-8



Supported by
Llywodraeth Cynulliad Cymru
Welsh Assembly Government

Your Local Planning Authority

There are 25 local planning authorities in Wales – 22 County, County Borough or City Councils, and 3 National Parks (Brecon Beacons, Pembrokeshire Coast and Snowdonia). These 25 authorities are responsible for operating the planning system, and are often referred to differently. Sometimes they are referred to as ‘Councils’, ‘Planning Departments’, or ‘Your local authority’. For the purposes of this booklet, we will refer to your Local Planning Authority as **your authority**.

What is enforcement?

The main aims of planning enforcement are to make sure that development is carried out without harming the public interest, and that **action** is taken against development which unacceptably harms the public interest. Effective enforcement helps preserve the quality of local environments and increases public confidence in the planning system.

Enforcement can be used in several ways, including:

- a) making sure that building works or changes of use are carried out with the necessary planning permission;
- b) making sure that where a planning permission is in place, all the conditions of the planning permission are ‘complied’ with;
- c) making sure that other areas of planning control (display of adverts, or work to a listed building) are not breached.
- d) making sure that land and buildings do not remain in an unsightly condition.

How does enforcement work?

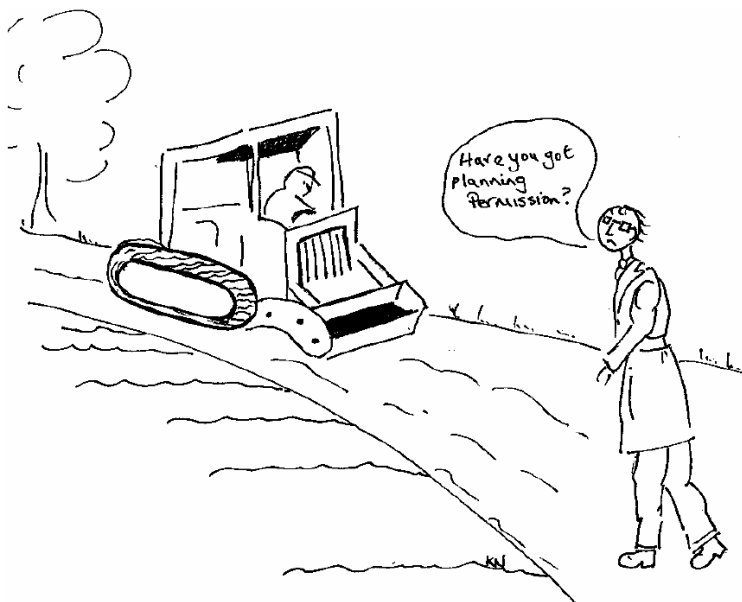
Enforcement does not automatically happen if a 'breach' of planning control is discovered. Before deciding to take any action, the authority first has to consider if the breach of control is likely to have an unacceptable effect on public amenity. The use of enforcement powers is discretionary and Government advice is that formal enforcement action should only be taken where it is expedient.

The most common form of formal action is the issue of an enforcement notice. Copies of the enforcement notice are served on the person responsible for the unauthorised development and the owner of the land if this is a different person. The notice explains what needs to be done to put right the harm the authority thinks has been done to public amenity. Where the development would be considered acceptable, or would be acceptable if subject to conditions such as hours of opening or restriction on noise levels, the authority may ask for a planning application to put controls in place over that development rather than going down the formal enforcement notice route.

Anyone who carries out unauthorised development runs the risk of the local authority taking enforcement action. Enforcement action will also show up during local searches if the property is put up for sale.

Did you know?

It is not against the law to start a development without planning permission. However, if an enforcement notice is ignored after it has been served, the matter could lead to action in the courts.



Enforcement usually takes time, which can be frustrating for the people affected by a development and also for the authority.

Did you know?

Enforcement action can not be taken against:

- building work that was substantially completed more than four years ago.
- use as a single dwelling (house or flat) that started more than four years ago, or ten years for any other change of use or breach of condition.

If you think your authority is not doing enough to control an unauthorised development, you should say so. The planning system is here to protect the public interest, so do not be afraid to make use of it. But do remember that effective enforcement usually takes time and needs patience. Provide the authority with as much detailed

information as you can and try to be patient. Time is often important in enforcement cases. For example, action cannot be taken against a development that was substantially completed over four years ago, use as a single dwelling house that commenced more than four years ago or ten years for any other change of use or breach of condition.

How to complain about unauthorised development

If you are worried about an activity or development that you think may not have the proper planning permission, you should telephone your local authority and ask to speak to a planning officer who deals with enforcement. Or you can contact your local councillor and ask him / her to pursue the matter for you. Your local authority will be able to tell you the name of your local councillor if you don't know it.

It is important that you follow up a verbal complaint by sending a letter to the enforcement officer or councillor. The letter should set out all the details as you know them, and ask for you to be kept informed about action the authority will be taking. The letter will help the enforcement officer understand your concerns, and it also provides a formal record of your complaint.

Your complaint will be kept confidential by the authority. But do remember that if a planning application is submitted, or if there is an appeal at some time in the future, evidence you give or comments you make on the application or appeal will be publicly available.

Some authorities have a policy not to investigate complaints which are made anonymously.

Did you know?

Anyone has the right to make an enforcement complaint, regardless of whether the development affects them or not.

What happens when a complaint is made?

You should receive an acknowledgement of your letter together with contact details for the enforcement officer dealing with the case. The officer will usually visit the site to see what you have complained about. Sometimes more than one visit will be necessary to get a full picture. After investigating, the authority should tell you what they have found and what action, if any, they propose to take.

Your authority has a range of options for dealing with a breach of planning control. These include:

- trying to stop the use or to have the development removed within a specified time.
- asking for a planning application. This allows neighbours and other interested people to give their views, and means the planning issues can be properly considered by the authority's planning committee. If permission is given, it may have conditions attached to reduce any harmful effects.
- asking for more information from the developer and / or the person who complained.
- considering the possible effects of the development, and suggesting ways of reducing harm to the public interest.
- working out a better design solution, or finding a better location for the development.
- issuing a formal enforcement notice or breach of condition notice.
- taking no action.

The Welsh Assembly advises planning authorities only to take formal enforcement action where it is necessary and expedient. The developer should be given reasonable opportunities to bring the unauthorised development into line with local planning policies.

Often, a number of site inspections and discussions are needed with the developer and separately with the person complaining to get a full picture of an unauthorised development.

There are many 'grey areas' about what needs planning permission and what does not. While most enforcement action against unauthorised development would be taken under planning legislation, there may be cases where enforcement action would be better placed under other legislation such as environmental health or building regulations – it would be for the authority to decide which would be the more appropriate legislation to use.

What happens if formal enforcement action is taken?

The case will usually be reported to a meeting of the local authority planning committee. These take place regularly and are open to the public. Do remember though that some councils delegate to their enforcement officers the power to take decisions on whether enforcement action should be taken – instances where this would happen should be available on the council's website. In either case, a report will be prepared to say whether officers think enforcement action should be taken. You should ask your authority for a copy of the report and its enforcement procedures to see what should happen next.

If the authority does decide to take formal enforcement action, authority solicitors will usually be responsible for preparing the relevant papers. A Planning Contravention Notice is usually served first of all, but the authority decides whether it needs to do this or not. This requires the owner or occupier to provide details of ownership and of other people with an interest in the land or property, including tenants.

This also alerts the recipient of the notice to the possibility of enforcement action. It is a criminal offence not to provide the

information required by the Planning Contravention Notice within the 21 days specified in the Notice. Failing to comply or making false statements in reply can lead to a fine of up to £5,000.

If the warning provided by the Planning Contravention Notice is not acted upon by the developer the next formal stage in the process is usually to issue an enforcement notice, with copies of it served on the owner and occupier of the land. All those people who have a legal interest in the property must also be served with a copy. Once served, there is a further 28 day period before the notice comes into effect.

An appeal against the notice can be made to Welsh Ministers at any time before the notice comes into effect.

Once the notice comes into effect there is usually a further period of time to allow for compliance. This will vary depending on the circumstances of the development. It is a criminal offence not to comply within the stated period of time and the authority can bring a criminal prosecution in a Magistrates Court. If convicted, magistrates can impose fines of up to £20,000.

What happens if there is an appeal?

A person served with an Enforcement Notice can appeal to Welsh Ministers. Once an appeal is lodged, the provisions of the Enforcement Notice are immediately suspended.

Appeals are processed by the Planning Inspectorate, an executive agency of the Welsh Assembly Government, and almost all decisions on appeals taken by Planning Inspectors. Those appeals not determined by Inspectors are determined by the Welsh Ministers. Enforcement appeals are dealt with in one of three ways:

1. **By written representations:** This is an exchange of correspondence setting out the case for each of the parties. Once all the paperwork is available, the independent

Inspector will usually make a site visit and then decide whether to 'allow' or 'dismiss' the appeal. Written representations are often the fastest and cheapest way of dealing with an appeal.

2. **At a Hearing:** This allows all the parties to put their case to an independent Inspector. Hearings are quite informal and there is usually no need for legal support. Before the hearing, the Inspector will have read all the written statements from the different parties. He or she will ask questions to get more detail. After the Hearing and a site visit, the Inspector decides the appeal.
3. **At a Public Inquiry:** This is a more formal public hearing before an independent Inspector. It can be asked for by the authority or by the person making the appeal but the Planning Inspectorate make the final decision. Local people can attend to hear all the parties put their case. Witnesses are called by the main parties. Usually the main parties are legally represented at a public inquiry. After the inquiry the Inspector decides the appeal.

Local people will be told about the appeal and given an opportunity to send their views to the Planning Inspectorate.

Enforcement appeals can be lodged on up to 7 different grounds (a-g) and this can include the merits of the development. Are there good reasons why planning permission should not be granted, or only granted if appropriate conditions were to be imposed?

If an appeal against an enforcement notice is successful and the notice is 'quashed' (thrown out) the authority can appeal against that decision to the High Court, but this is very rare.

Stop Notices and Injunctions

For really serious breaches of planning control, it can be important to stop the unauthorised activity as soon as possible. To do this the planning authority may serve a Stop Notice, but this can only be served in association with an enforcement notice. The Stop Notice requires the unauthorised activity specified in the enforcement notice to stop immediately. The Stop Notice stands or falls with the enforcement notice and, while the effect of the enforcement notice may be suspended by an appeal to the Welsh Ministers, the effect of the Stop Notice is not.



Not complying with a Stop Notice can lead to conviction and a substantial fine. If the enforcement notice relating to the Stop Notice is quashed on an appeal on certain grounds then the council may be liable to pay compensation to the appellant.

An authority can also apply for an injunction if it thinks normal enforcement powers are unlikely

to work. Injunctions are rarely used as the cost of applying for them can be expensive and the tests applied by the Courts are quite stringent. A person in breach of an injunction can be imprisoned.

Compliance with conditions attached to a planning permission

A Breach of Condition Notice can be served if conditions attached to a planning permission are not complied with. The notice requires the condition to be complied with, and in certain circumstances allows action to be taken against the person responsible for the breach of planning control, even if the property has been sold on. There

is no right of appeal. Failing to comply with a notice may result in conviction in a Magistrate's Court and a fine of up to £1,000.

Advertisements

Unauthorised advertisements, including signs, posters, and placards, are dealt with differently as they are illegal. An authority can prosecute against an unauthorised display in the courts without having to issue an Enforcement Notice.

Listed buildings and conservation areas

There are special controls that apply to works to listed buildings and within conservation areas. For instance, it is an offence to carry out unauthorised alterations to a listed building that might affect its character, or to carry out certain demolition works in a conservation area. Always check with your authority's Conservation Officer before commencing any work of this kind, as fines can be extremely hefty. The authority can also serve a Listed Building or Conservation Area Enforcement Notice to require unauthorised works to be put right.

Where to go for further help

If you are still unsure about the planning enforcement process, you should either contact your authority's planning enforcement team, or Planning Aid Wales on 02920 485 765. Other agencies such as the police, or other council officers in highways and environmental health, may be able to help resolve a complaint. If you are unhappy with the way your authority has dealt with your enforcement enquiry, you should pursue the matter through the authority's formal complaints procedure. If after that you still think that you have not had a fair hearing, you can make a complaint to the Public Services Ombudsman for Wales asking for the matter to be looked at independently. Letters should be addressed to: The Public Services Ombudsman For Wales, 1 Ffordd yr Hen Gae, Pencoed, CF35 5LJ.

Further information and links

Planning Aid Wales

Planning Aid Wales provides free information and advice on the land use planning system to eligible individuals and community organisations. A telephone helpline service is available from 10am to 1pm, Monday to Friday.

Helpline: 02920 625000

Website: www.planningaidwales.org.uk

Email: info@planningaidwales.org.uk

Address: First Floor, 174 Whitchurch Road, Heath, Cardiff, CF14 3NB

Online planning guidance

The Welsh Assembly Government has prepared a variety of guidance documents on planning issues in Wales. These are available from:

<http://wales.gov.uk/topics/planning/policy>

Planning Inspectorate

For more information about planning appeals, you can contact the Planning Inspectorate for Wales at The Planning Inspectorate, Crown Buildings, Cathays Park, Cardiff, CF10 3NQ

Telephone: 02920 823 866 Fax: 02920 825 150

Website: www.planning-inspectorate.gov.uk

Email: wales@planning-inspectorate.gsi.gov.uk

Public Services Ombudsman for Wales

If you think that your planning authority has not dealt fairly with a planning matter, and you have already pursued a complaint through the authority's official complaints procedure, the Public Services Ombudsman for Wales may be able to help:

Public Services Ombudsman For Wales ,1 Ffordd yr Hen Gae
Pencoed, CF35 5LJ.

Telephone: 01656 641 150 Fax: 01656 641 199

Website: www.ombudsman-wales.org.uk