

# **Merthyr Tydfil County Borough Council**

## **Town Planning Division**

### **Enforcement Policy**

#### **1. Introduction**

This policy document is intended to set out the enforcement policy of the Authority in relation to planning enforcement. Planning enforcement investigates possible breaches of planning control and aims to resolve these using the most appropriate means of action. The enforcement section is responsible for enforcing control for all planning matters including minerals.

#### **What constitutes a breach of planning control?**

The Town and Country Planning Act 1990 defines a breach of planning control 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.'*

Outlined below are a few examples of breaches of planning control:-

- Development which has planning permission but is not carried out in accordance with the approved plans or details
- Building work, engineering operation and material change of use, that are carried out without the benefit of planning permission, where permission is required
- The failure to comply with conditions that form part of a permission or consent
- Advertisements that require express consent under the Advertisement Regulations that have been displayed without consent being granted \*
- Works carried out to a Listed Building which affect its historic character or setting, without Listed Building consent being granted \*
- Failure to comply with the requirements of a planning legal notice, for example, enforcement notice, stop notice, section 215 notice etc. \*

The planning enforcement team also deal with high hedges complaints.

**\* These items constitute a criminal offence.**

#### **Making an enforcement complaint**

If a suspected breach of planning control has taken place, a complaint should be submitted to the planning department either through letter, email or telephone call. The complainant should supply as much information as possible about the breach and the site, including:

- The complainant's own details including names, address and telephone number (anonymous complaints will be given less weight)
- The exact location of the breach, with full address and postcode if possible
- A full description of the activity or works
- When the works or activity started
- The name and addresses of anyone involved

## **2. Organisation**

### **Investigating complaints**

We will endeavour to:

- Record and acknowledge all written complaints of a breach of planning control within five working days of receiving them
- Investigate reports of alleged breaches of planning control quickly
- Carry out a site visit in a reasonable time frame
- To resolve the investigation through negotiation and without formal action whenever possible, but formal action will be taken if expedient to do so
- Prosecute offenders where it is in the public interest, it is proportionate to do so and there is a reasonable chance of a conviction
- Keep complainant informed throughout the investigation of complaints at key stages
- Keep complainant's details confidential (it may be necessary to disclose it if the matter reaches an appeal or prosecution)
- Monitor performance of the service and review performance targets

### **Public Information**

A Statutory Register of Enforcement and Stop Notices, which may be inspected by members of the public is kept by the department and can be viewed between 8.30am and 5.00pm Mondays to Thursdays and between 8.30am and 4.30pm on Fridays.

## **3. Taking Enforcement Action**

In the majority of cases, and unless a breach is particularly serious, the Council will always endeavour to resolve a breach of planning control through negotiation and without resort to formal enforcement action. Many breaches occur through ignorance of the planning process and can be remedied fairly easily. Informal action may therefore involve verbal warnings, the use of letters, and requests for action including the submission of a planning application to regularise the development and to enable the Council to impose controlling conditions, or the cessation of an unauthorised use of land.

Prior to taking any formal enforcement action, the Council must attempt to identify those persons with a material interest in the site subject of the breach. This can be done through the following notices:

### **Section 16 Notice – Requisition For Information (RFI)**

A Section 16 Notice is served under the Local Government Miscellaneous Provisions Act 1976. This is primarily intended to establish information about the ownership and other interest of land. It is an offence to fail to comply with the requirements of the notice within the period set for its return, or to make false or misleading statements. The current penalty for failing to return the notice is up to £2000.

### **Planning Contravention Notice (PCN)**

A PCN is used to obtain information about alleged unauthorised development, where it appears that a breach of planning control may have occurred. The PCN may require the recipient to provide information about the use of the land and any operations or activities taking place. Failure to return the completed PCN within the period set for its return, or to provide false or misleading information, is a criminal offence.

Where enforcement action is deemed necessary a report will be prepared for the Head of Town Planning to obtain authorisation to take formal action.

There are a number of formal notices that can be served, these include –

### **Breach of Condition Notice (BCN)**

A BCN is normally served in order to remedy a breach of planning control arising from a failure to comply with a condition subject to which planning permission has been granted. There is no right of appeal against such notice. The notice is served on the 'person responsible' for the breach and is not a legal charge on the land. Consequently only that person can be prosecuted for an offence. The BCN will specify the steps that must be taken, or the activities that must cease, in order to secure compliance with the conditions. There is a minimum period of 28 days after the notice is served before it can take effect. It is a criminal offence to fail to comply with the requirements of a BCN, and may result in a fine on conviction of up to £1000.

### **Enforcement Notice**

An Enforcement Notice is served when a breach of planning control has occurred and when it is deemed expedient to take action. The recipients of the notice must take the specified steps within a set time period. The minimum period before such a notice can take effect after it has been issued is 28 days. Failure to comply with the notice is a criminal offence. The recipients of the notice have a right of appeal to the Planning Inspectorate during this period. An appeal suspends the effect of the notice until it is determined.

### **Stop Notice**

A Stop Notice is served with an Enforcement Notice, or after an Enforcement Notice has been issued, if it is considered that the continuing unauthorised development is causing irreparable and immediate significant harm. Normally a stop notice will take effect 3 days after service, although in cases where the activity to be prohibited is causing irreparable damage it may take effect immediately. The Stop Notice continues to take effect even if an appeal is lodged against the Enforcement Notice. Work must stop immediately when the Notice comes into effect. This type of notice is only served in exceptional circumstances.

### **Section 215 Notice**

If it appears that the condition of land adversely affects the amenity of an area, a Section 215 Notice (Town and Country Planning Act 1990) can be served. Such a Notice will state reasons as to why the

condition of the land impacts on the amenity of the area and will also specify the steps required to remedy the situation. The only right of appeal is directly to the Magistrates Court. Failure to comply with the notice will result in prosecution in the Magistrates Court.

### **Injunction**

The Council can apply to the County Court or High Court for an injunction to stop an actual or imminent breach of planning or listed building control, even when the identity of the person is unknown. The Council must prepare a high level of evidence to convince a judge that an injunction is necessary. Failure to comply with an injunction can lead to an unlimited fine and/or imprisonment.

### **Prosecution**

Court proceedings can commence where a breach of a formal notice has taken place. In addition, legal proceedings can commence, in some cases, without the need to serve a formal notice for examples unauthorised works to a listed building, a protected tree, or an unauthorised advertisement. When considering the suitability of a case for prosecution the following has to be applied:

- Whether there is enough evidence to provide a realistic prospect of conviction
- The evidence can be used and is reliable
- Whether it is in the public interest

If the above can be satisfied then it has to be determined if it is in the public interest whether to prosecute an alleged offender or whether an alternative course of action may be more suitable. The Council will take into account the action which the suspect person is willing to take, in order to remedy the breach of planning control.

If prosecution proceedings are instigated, a witness statement must be prepared by the case officer. The statement should contain a sequential history of the case and all relevant material.

### **Advertisements**

Display of an advertisement or use of an advertisement site without the necessary express consent is illegal and it is open to the planning authority to bring a prosecution in the Magistrates' Court for an offence under Section 224 of the Town and Country Planning Act 1990. Prosecution can be directed at the owner, the occupier of the land, the advertising company responsible for the display and the company whose products or services are promoted by the advert.

### **Listed Building**

It is an offence to carry out unauthorised works to a listed building which would affect its character under the Planning (Listed Buildings and Conservation Areas) Act 1990. The owner of a listed building or those who have an interest in the property or who have carried out the works may be prosecuted by the Council irrespective of whether consent is later obtained retrospectively or the unauthorised works later made satisfactory. A person found guilty of an offence may be liable to a substantial fine, and/or a term of imprisonment. There is no time limit upon the Council to pursue Listed Building Enforcement Action. A Listed Building Enforcement Notice may also be served

requiring remedial works to the building within a certain time scale. There is a right of appeal to the Planning Inspectorate but failure to comply with the Notice is an offence, which is liable to substantial fine on summary conviction.

## **Conclusion**

To avoid unintended breaches of planning control, members of the public are therefore strongly advised to contact the Town Planning Division prior to commencing work on site.

## **Contacts:**

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