



A Guide to Planning Enforcement in Ireland



Planning
Leaflet **6**





A Guide to Planning Enforcement in Ireland

This leaflet is a practical guide to understanding how planning law is enforced. It provides information and guidance for those undertaking development, or those who may be concerned that breaches of planning requirements have occurred. This leaflet is not intended as an interpretation of planning law, for further advice you are advised to contact your local planning authority (city or county council).

1. What is planning?

Planning plays an important role in society. It enables us to make the best use of our resources and allows necessary and worthwhile development to go ahead. It also ensures that the environment and heritage of our towns, cities and countryside is protected. Planning authorities control the location, amount and type of development through their decisions on planning applications. Everyone has a right to comment on planning matters, shaping the planning and development of their area.

2. What is planning enforcement?

Good planning decisions are key to our quality of life. Planning enforcement ensures that good decisions, taken at the planning application stage, are carried out in the finished building or development. It deals with those who flout the law by ignoring, or not complying with, the planning process.

3. Who is responsible for planning and planning enforcement?

Local authorities (city or county councils) are responsible for the planning system. Their role includes enforcement relating to breaches of planning legislation and taking action on unauthorised development. Local authorities may apply to the courts to obtain legal orders to stop unauthorised development.

4. What is unauthorised development?

Any development that requires planning permission or a development which is in breach of the conditions of its planning permission is classed as ‘unauthorised development’.

The term ‘development’ covers a wide range of activities including carrying out any works (i.e. building, demolition, alteration) on, in, over or under any land or buildings and making a material (i.e. significant) change of use of structures or land.

Carrying out unauthorised development is an offence and anyone who has undertaken unauthorised development may be subject to enforcement proceedings. Enforcement is the means by which the planning authority ensures that unauthorised development becomes compliant with planning law.

Enforcement action can only be taken when development has been undertaken without the appropriate planning permission. It is important to note that planning enforcement action cannot be taken if the work carried out does not require planning permission such as:

- a change of use of a structure which is not material; *or*



- development of a minor nature, such as a small extension to a house or installing solar panels on the roof, and minor modifications on the basis that the alterations do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures. There are certain thresholds for minor works set out in planning law. Where these thresholds are exceeded, the exemptions no longer apply.

5. I believe unauthorised development has taken place, so how do I make a complaint?

If you think someone is developing or using land without, or contrary to planning permission, the first step is to contact the planning authority. When doing this you need to set out in writing why you believe this is the case. When reporting a suspected breach of planning control, it is helpful if you

provide as much information as possible including:

- the exact address,
- dates and/or times when activities started,
- the nature of the building works or use, *and*
- the names, addresses and contact details of the known owners or other persons responsible.

It is recommended that when you write to the planning authority, you state that you are making a written representation under Section 152 of the Planning and Development Act 2000, as amended. Members of the public and organisations such as residents' groups may have helpful information and knowledge. Any information you provide will be added to the planning authority's existing records. Such representations are generally treated by local authorities as confidential.

6. What will the planning authority do when it receives my complaint?

When a planning authority receives a complaint, it will generally carry out an initial analysis to consider the matter, and following this the planning authority may initiate an investigation. This investigation may include site inspection/s and follow-up enquiries. If deemed necessary consultation with other departments within the local authority may occur. Local authorities consider pursuing enforcement activity on a case-by-case basis, taking into account matters such as the nature of the unauthorised development and other avenues to resolve the matter.

Where a complaint is found to be valid, the planning authority may issue a warning letter. The planning authority may also decide that the complaint is frivolous, trivial or without substance. The planning authority alone has the discretion to decide this.

It is important to note that once an enforcement case is opened by the planning authority, the details of the case are a matter for the planning authority and it may not be possible for the planning authority to provide regular updates to interested persons.

A warning letter informs the person concerned that the planning authority is aware that they may be carrying out unauthorised development. The person

concerned is given a four-week period to reply to the warning letter.

Where a warning letter has been issued, the planning authority must carry out an investigation into the alleged unauthorised development. If the planning authority determines that unauthorised development has taken place, it must also determine whether the requirements of the warning letter have been met before taking further action.

Where the planning authority establishes, following an investigation, that unauthorised development which is not trivial or minor is being carried out, and that the person carrying out the development has not remedied the situation (e.g. by removing the offending development or by securing planning permission) the planning authority must take further action. According to planning law, the planning authority needs a compelling reason for taking no further action in such a case.

Further action will normally take the form of an enforcement notice requiring the person concerned to rectify the situation. The planning authority should, where possible, make its decision on further action within 12 weeks of sending the warning letter. It is the objective of the planning authority to meet this timeline taking account of the overall enforcement workload. The planning authority should also inform the person who made the complaint of the action being

taken. A summary of the process is set out in the table below:

Timescale for Warning Letter Process

Action	Timescale
Written complaint received by planning authority	Start
Warning letter issues	Within six weeks
Response from alleged unauthorised developer	Within a further four weeks
Reply issued to complainant by planning authority	Within a further two weeks
Planning authority decides whether further action is required	Within 12 weeks where possible

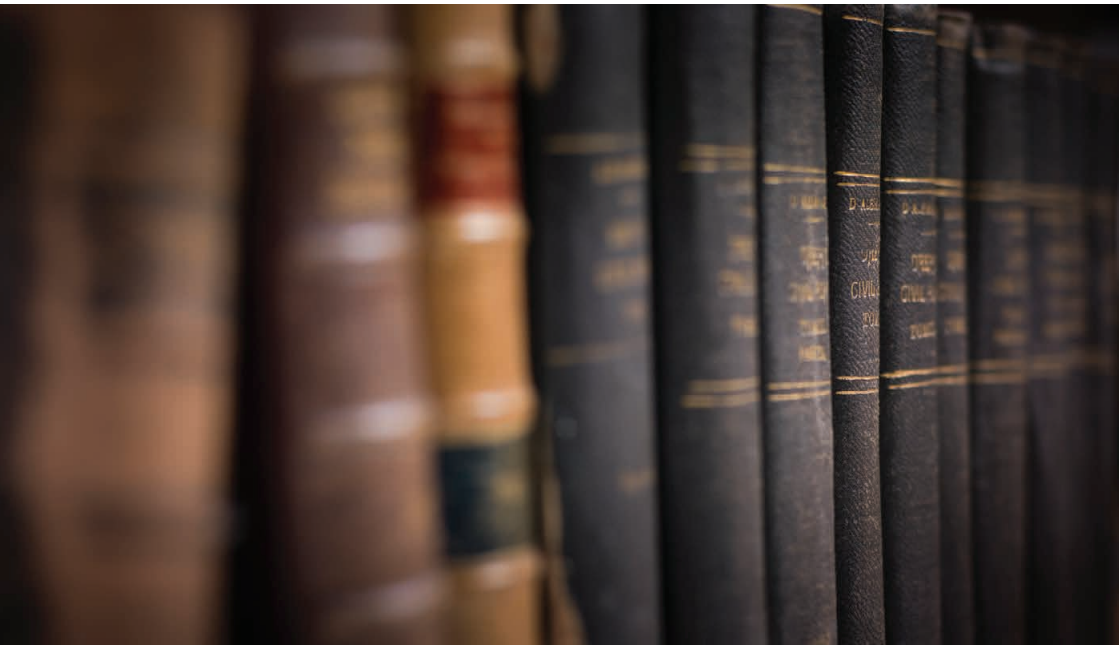
In circumstances where the planning authority believes urgent action is required, it may issue an enforcement notice

without issuing a warning letter. In these circumstances, the person who made the complaint will be informed within two weeks of the issue of the notice.

7. What is contained in an enforcement notice?

An enforcement notice will normally:

- instruct that any development being carried out without planning permission must stop;
- instruct that if the development has planning permission but work is not being carried out in accordance with the conditions of the permission, that steps have to be taken to ensure the development is in line with the planning permission;



- inform what steps are required to be taken within a specified period. These could include removing, or altering a structure, stopping the use of land, or returning land to its previous condition before the unauthorised development began; *and*
- outline that if these steps are not taken within the period stated, that the person may be guilty of an offence and that the planning authority may enter the land and do the work itself. The owner or developer will have to pay the cost of this work. The owner or developer may also have to pay other related expenses such as legal costs.

8. What penalties apply if you do not comply with the enforcement notice?

Where you do not comply with an enforcement notice, the planning authority can take the matter to court. Penalties for breaching planning law are set out in the Planning and Development Act 2000, as amended. These penalties depend on the nature of the offence but, if found guilty, you may face a criminal conviction and a fine and/or a prison sentence.

9. Are there any other ways to stop unauthorised development?

In more serious cases, or in an escalation of existing enforcement cases, a planning authority may apply to the Circuit Court or the High Court for an ‘injunction’ to prevent an unauthorised development from commencing or continuing. Individuals or groups can also apply for an injunction, even

if the planning authority has not taken this step.

10. I am unsure whether my development requires planning permission, how can I avoid becoming subject to enforcement measures?

Certain types of development are exempted from planning control, so do not require planning permission. Planning regulations contain lists of developments that do not require planning permission. The Planning and Development Act 2000, as amended, also defines works that are considered exempted development within the provisions of the Act.

However, if you are still uncertain about whether a particular development requires planning permission, you can ask the planning authority for a written answer under the ‘Section 5 Declaration’ process (see Planning Leaflet 1 – “Introducing the Planning System” for further advice on this process). You have to supply all necessary information and pay a nominal fee for this service. Unless the planning authority requires additional information, it must respond to you within four weeks giving reasons for its decision.

There is a right of appeal of the decision to An Bord Pleanála.

11. I have made a genuine mistake, can unauthorised development be regularised and how?

Genuine mistakes can be made regarding the need for planning permission. If you discover that you have undertaken unauthorised development, you may apply for permission to retain it. This approach should not be relied on in order to avoid seeking planning permission before starting work as you may not be granted planning permission for retention, or you may be required to carry out costly modifications. To disincentivise unauthorised development, planning application fees for retention are much higher than for an application made before development starts.

In addition, making an application for permission to retain an unauthorised development does not mean that you cannot still be prosecuted if enforcement action has already been initiated. An application for retention will be considered 'de novo'. This means that it will be considered as a new application and normal standards and policies will be adhered to. A planning authority is not obliged to grant permission for a retention application.

It is also important to note that it is not always possible to seek planning permission to retain unauthorised development in circumstances where impacts on the environment have occurred. For example, in most circumstances, a planning authority

cannot accept an application for permission to retain development which would have required:

- Environmental Impact Assessment (EIA),
- a determination as to whether EIA was required (i.e. screening for EIA), *or*
- an Appropriate Assessment (AA) under the Habitats Directive.

The provisions of the planning acts regarding the above are extensive and complex. Therefore, if you believe that your development is in any of these categories, you are strongly advised to consult with your local planning authority. Otherwise, you face the risk of enforcement action requiring the land to be restored.

12. Are there any cases where enforcement action cannot be taken against an unauthorised development?

Any legal action taken by the planning authority against unauthorised development, with the exception of quarrying operations and peat extraction, must start **within seven years** of the breach of planning law taking place. Irrespective of the time that has elapsed, an enforcement notice can be served, or an injunction can be sought where a person has failed to satisfy a planning condition concerning the use of land. Finally, in cases where the seven year rule applies and the planning authority has not taken enforcement action within that timeframe; this does not alter the planning

status of the development i.e. it does not become authorised. The development will continue to be unauthorised, albeit immune from action. This may have implications for the future sale of the property or compliance with other codes of legislation e.g. environmental licencing, building control.

13. Where can I find out more about planning enforcement?

A more detailed user's guide to planning enforcement (**A Guide to Planning Enforcement in Ireland, November 2012**) is available on the Department of Housing, Local Government and Heritage website, www.gov.ie/housing. The law governing the planning system is set out in the Planning and Development Act 2000, as amended and the Planning and Development Regulations 2001, as amended. You can purchase these from the Government Publications Office by phoning the call centre on (046) 9423100 or at publications@opw.ie or download them for free from the Department of Housing, Local Government and Heritage's website www.gov.ie/housing. Legislation is also available to view and download from: www.irishstatutebook.ie.

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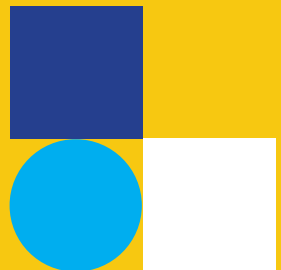
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