Development & Planning Authority

PRACTICE NOTE 6

PLANNING ENFORCEMENT - MAKING A COMPLAINT UNDER THE COMPLIANCE PROVISIONS

Background

Most new developments on Guernsey affect someone, somewhere. In many cases, the most affected party will be the owner or occupier of land neighbouring that on which the development is being carried out.

Generally speaking, most new development will require prior planning permission and/or Building Control approval. There are however a number of exemptions from the need to obtain express planning consent for a range of relatively minor developments, and these are set out in the Land Planning and Development (Exemptions) Ordinance, 2007. Effectively, these specified developments and changes of use are exempt from the requirement for planning permission, subject to the conditions or limitations as set out in the relevant exemption being satisfied. The exemptions have been extended within the new Exemptions Ordinance from those previously available (under the 1997 Exemptions Ordinance); for example they now cover small domestic extensions and outbuildings in certain specified circumstances. There are also some minor works that do not amount to development under the Law so that planning permission will not be required; this includes internal maintenance works to buildings other than protected buildings and monuments.

It is part of our responsibilities to administer the enforcement of planning control. This includes compliance with the Building Regulations. The key enforcement powers available to us are set out in the Land Planning and Development (Guernsey) Law, 2005 and in the Land Planning and Development (Enforcement) Ordinance, 2007. There are also some further existing enforcement powers in the Building Regulations which remain in place.

Although we will increasingly be pro-actively enforcing the planning restrictions and requirements, it is still true to say that the majority of its enforcement workload originates from complaints regarding developments that are taking place that are received from neighbours and other members of the public or their elected representatives.

Guidance

The following guidance is intended primarily to assist those who want to make an enforcement complaint to us about a development that is taking place.

1. Should I make a complaint?

If you are concerned that a particular development is taking place without planning permission, or in breach of a condition that may have been attached to a planning permission, then you may choose to make a complaint and ask us to look into the matter on this basis.

You should however be aware that the works concerned may prove to not amount to development, or may be exempt from planning control, in which case you will be informed of this and there will be no further action taken by us.

You should also be aware that in considering your complaint, we would in general only be able to take into account planning considerations as set out in the legislation and could not intervene in boundary disputes, or other matters irrelevant to planning.

It is also possible that some minor matters, even if technically amounting to development, may not be pursued by us where it would not be in the public interest to do so.

2. How may I make a complaint?

Enforcement complaints should normally be made to us in writing. Although it is appreciated that in some urgent cases it may be necessary for complaints to be made by phone or in person (for example where a protected tree is being felled or damaged or demolition works are proceeding without consent), a written approach from the complainant assists the process of investigating and acting upon any complaint received and is therefore encouraged.

We will not normally act on anonymous complaints.

3. How long will it take you to deal with my complaint?

We will aim to acknowledge your complaint, if made in writing, within three working days of its receipt. It will thereafter endeavour to keep you informed, normally in writing, of any significant developments concerning the matters raised in your complaint and of the outcome of that complaint.

However, the time taken to deal with your complaint will vary according to the nature of the complaint and investigation process required and, generally, planning enforcement matters may take some time to resolve. We have enforcement powers under the legislation, which we will employ efficiently in the public interest when it is expedient to do so. However, it must be recognised that the legislation sets out minimum timescales for service of notices, etc, on developers and include rights for developers to make an appeal to the Planning Tribunal against enforcement action. A developer may also apply to us for planning permission for development he has already carried out.

The Law says that where an appeal has been made against a Compliance Notice or where a planning application is made in a certain timeframe, no proceedings for an offence may be taken or continued. In the case of an appeal this applies until the appeal is finally determined by the Planning Tribunal.

It is not, therefore, possible to indicate in this guidance how long it will take us to deal fully with any particular complaint.

4. Will a developer find out about my complaint?

Enforcement complaints are treated by us as confidential between the person making the complaint and us. Complainants can be assured that their details will not be released by us. However, if we subsequently serves a compliance notice, as described below, and the appellant appeals against that notice it is possible in certain cases that a developer may have to be given the opportunity to comment on complaints made or the complainant may be asked to appear where his complaints are central to the case.

5. What happens to my complaint?

When received, complaints are registered on our enforcement database, and a preliminary investigation is carried out. This may confirm that the matter that has been raised does not involve a breach of planning control, in which case the complainant will be informed of this and no further action will be taken. Alternatively, it may be evident that a breach of the Law is likely to be involved, and the matter will then proceed to an enforcement investigation.

6. How do you pursue any complaint?

If an enforcement investigation is warranted, the site is normally visited by our enforcement staff and the owner and/or developer is contacted.

We may decide to issue a Challenge, Compliance or, in certain circumstances, Interim Compliance Notice regarding an alleged breach of planning control.

Challenge Notices are essentially used to gather further information about a suspected breach.

The Compliance Notice is the principal type of enforcement notice that can be served by us. This will specify the alleged breach of control and the steps required to remedy the breach. It will also set out a period or periods within which these steps should be taken.

An Interim Compliance Notice can be served only when a Compliance Notice has also been served and can require an activity to cease before the expiry of the compliance period specified in the Compliance Notice.

A Compliance Notice can be appealed on certain grounds to the Planning Tribunal. An application can be made to the Royal Court for an Interim Compliance Notice to be set aside.

Failure to comply with these notices (if not successfully appealed or set aside) constitutes an offence and may result in prosecution and a fine and in serious cases imprisonment. Possible maximum penalties are 3 months in Prison and a £100,000 fine in the Magistrate's Court (or 2 years in prison and an unlimited fine in the Royal Court).

7. What happens if a planning application is submitted?

Developers may make a planning application to regularise a breach of planning control. Where the works concerned have commenced, this is known as a 'retrospective application'. Where a fee is chargeable under the Fees Ordinance for the application the amount is doubled when the application is retrospective.

Enforcement complaints differ from representations made about planning applications. If an application has been received and advertised, by site notice or otherwise, then any comments on that application should be made in writing to us as set out on the site notice or as otherwise publicised. This applies even where an application is retrospective.

An enforcement complaint is not treated as a representation on a planning application even where an application is subsequently received in relation to the matter being complained about. We are obliged to take any relevant representations into account when making our decision and for this reason there may be cases where in the interests of fairness details of objections may be released to developers. Also it should be noted that letters of representation on planning applications are sent, on request, to applicants after a decision on their application has been reached and again, for reasons of fairness, the developer is likely to have to be given the opportunity to comment on relevant representations in the event of an appeal against a decision.

This note is issued by the Development and Planning Authority to assist understanding of the provisions of the planning legislation. It represents the Authority's interpretation of certain provisions of the legislation and is not intended to be exhaustive or a substitute for the full text of the legislation copies of which are available from the Greffe. Electronic copies are also available at www.guernseylegalresources.gg Substantive queries concerning the legislation should be addressed to the Authority by email at planning@gov.gg. The Authority does not accept any liability for loss or expense arising out of the provision of, or reliance on, any advice given. You are recommended to seek advice from an independent professional advisor where appropriate.