

**WRITTEN QUESTION TO THE MINISTER FOR PLANNING AND ENVIRONMENT
BY DEPUTY M.R. HIGGINS OF ST. HELIER
ANSWER TO BE TABLED ON TUESDAY 17th JANUARY 2012**

Question

- (a) Will the Minister list in a tabular form for the years 2005 to date the following information –
- (i) the name and nature of any enforcement notices issued by the Department during that period;
 - (ii) whether any of these notices have lead to a prosecution for breach of the notice;
 - (iii) the result of the prosecutions and the penalties, if any, which were applied;
- (b) Will the Minister explain the process and procedures adopted in issuing enforcement notices identifying who is involved in each stage from instigation to prosecution?

Answer

- (a) This question requires many hours of detailed research and I will provide the answer to Members within one month.
- (b) The process and procedures adopted by the enforcement team are set out in the Supplementary Planning Guidance practice note no. 4, adopted by the former Minister in December 2010. This is available on the States of Jersey website and in hard copy from the department. For convenience, it is copied below.

Enforcement Procedures

Introduction

1. The Minister for Planning and Environment is firmly of the view that the Development Control and Building Control services in the department can only be truly effective if there is a suitable procedure in place to enforce planning legislation (i.e. the Planning and Building (Jersey) Law 2002, and the relevant secondary legislation in the form of Ministerial Orders).
2. The principal activities of the department are directed at avoiding infringements of the Planning and Building laws. However, breaches of the law will occur from time to time, and the purpose of this policy is to ensure that they are resolved in a consistent, balanced, and transparent manner. We understand that enforcement investigations carried out by the department can be distressing for those involved. Accordingly, we will also strive to deal with all enquiries promptly.
3. This means that when carrying out its enforcement function the department will be open about its actions, demonstrate fairness and impartiality, take a consistent approach, be considerate to complainants, treat matters with proportionality and assist service users whenever possible.

4. All enforcement action is primarily based upon the assessment of harm to public health, the economic well being of the Island of Jersey or to its environment.
5. The Enforcement Section of the department is responsible for ensuring compliance with:
 - Planning and Building (Jersey) Law 2002
 - Building Bye-Laws (Jersey) 2007
 - Planning and Building (General Development) (Jersey) Order 2008
 - Planning and Building (Environmental Impact) (Jersey) Order 2006
 - Planning and Building (Display of Advertisements) (Jersey) Order 2006
 - Planning and Building (Island Plan) (Jersey) Order 2007
 - Planning and Building (Moveable Structures) (Jersey) Order 2006
6. In so doing it will also ensure compliance with:
 - Police Procedures And Criminal Evidence (Jersey) Law 2002 (PPaCE)
 - Regulation of Investigatory Powers (Jersey) Law 2005
 - Human Rights (Jersey) Law 2000
 - Data Protection (Jersey) Law 2005
7. The department will deploy staff in the most effective manner to provide an efficient and cost effective enforcement service.
8. The department has various means at its disposal to ensure that the requirements are met. These include: -
 - giving oral or written advice
 - site visits
 - issuing warning letters
 - serving statutory notices
 - injunctions
 - prosecution through the criminal courts
9. Prior to any formal enforcement action being taken, officers will provide an opportunity to the person committing the alleged breach to discuss the case and if possible resolve points of difference. This can include interviewing that person under caution. However, in some cases, immediate action is required, for example in the interests of health and safety, environmental protection or to prevent evidence from being destroyed.
10. Where immediate action is considered necessary, an explanation will be given at the time and confirmed in writing. Where there is a right of appeal against formal action, advice on the appeal mechanism will be clearly set out in writing at the time the action is taken.
11. The department will strive to provide a high quality service which meets the needs of the local community, with performance management processes in place for continuous improvement.

Objectives of the Enforcement Process

12. The main objectives of the enforcement process are: -
- (a) To remedy undesirable effects of unauthorised development;
 - (b) To bring unauthorised activity under control; and
 - (c) to ensure that the credibility of the Planning and Building Law is not undermined.
13. The enforcement function is normally carried out in a reactive manner by responding to complaints from various sources. The identity of all complainants will remain confidential to the department, except where the complainant is agreeable to assist the department by giving evidence at any trial arising out of the enforcement case.
14. Trivial or technical breaches causing no harm might not attract any formal enforcement action. However, negotiations over remedial action should not delay formal enforcement procedure to be instigated where it is appropriate and necessary.

General Principles

15. The department:
- seeks to carry out its powers and duties under the Laws and Orders efficiently and effectively, and in a way which is open, clear and helpful to all persons and bodies with which it has contact;
 - recognises the complexities of legislation relating to planning and building control and endeavours to communicate the Law's requirements clearly and in plain English, and will distinguish between advice and legal requirements;
 - points out that people committing breaches of the laws cannot rely on ignorance of the law as a defence, and encourages them to obtain their own advice;
 - will endeavour to ensure that householders and businesses do not unnecessarily expose themselves to enforcement action through lack of information or understanding, and that any formal enforcement action is proportionate with the breach of control to which it relates;
 - affirms its commitment to achieving consistent, balanced and fair enforcement of the provisions of the relevant laws.
 - will ensure that all authorised officers are fully acquainted with the requirements of this policy, and are appropriately trained;
 - will endeavour to ensure that resources are targeted effectively for efficient investigation of alleged breaches of control within a framework of 'prioritised' enforcement problems; and
 - will endeavour to ensure that due regard is given to the regulatory powers available through other legislation before determining whether to pursue the matter further through planning powers. The Minister is committed to providing a co-ordinated approach to the regulatory controls available different departments of the States.
16. The department, before coming to any conclusion as to the appropriate form of action, will have regard to this policy document and in particular the following criteria: -
- The nature and impact of the breach of planning control on:
 - public amenity
 - health and safety

- highway safety
- protection of land and buildings in the public interest
- environmental impact
- The acceptability of the breach of control in respect of recognised planning policies and the likelihood of retrospective planning permission being granted to regularise the breach.
- The likelihood of negotiations leading to an acceptable resolution of the breach of planning control.
- The robustness of the systems in place to ensure compliance.
- The likely effectiveness of the various enforcement powers for resolving the breach.
- The likelihood of other regulatory bodies being able to affect a more appropriate resolution of the problem.
- The consequences of non-compliance.

17. The department will endeavour to avoid taking formal action unless it is necessary. Such action will normally only be contemplated if it is satisfied that it has explored all available means of securing compliance, or where: -

- There is a loss of amenity to an interest of acknowledged importance.
- It is unlikely that planning permission would be granted for the breach.
- The breach is of such a nature that other forms of action are inappropriate.

Enforcement Process and Procedures

18. Effective enforcement should, through the harnessing and co-ordinating of corporate skills, result in a breach being remedied quickly, with little detriment to the community during the course of its investigations. Effective enforcement may involve co-operation with other local authority functions, notably: -

- Development Control Section
- Building Control Section
- Land Controls and Agricultural Development Section (Environment Division)
- Environmental Protection Team (Environment Division)
- Health Protection Unit of Health and Social Services
- Housing department
- Trading Standards department
- Transport and Technical Services department
- Parishes
- States of Jersey Police
- Law Officers department

19. The department acknowledges that there is a need for a corporate approach to enforcement and regulation as many cases frequently raise issues which cross over into other areas of Government.

What is a ‘breach of control’?

20. A “breach of development control” is defined in Article 39 the Planning and Building (Jersey) Law 2002 as “a breach of the planning controls or a breach of building controls”.
21. A breach usually means that a person has:
- carried out work (or a change of use) without the correct permission;
 - carried out work (or a change of use) with the correct permission, but has failed to follow the approved plans; or
 - failed to comply with a condition or other restriction on a permission.
22. Through appropriate investigation and research it is important that, without unreasonable delay, the department should establish whether there is a breach of planning and or building control and whether, and in what form, to take enforcement action.
23. Enforcement action cannot be taken if a breach of control took place more than eight years before it was detected. This is not the same as a grant of permission. Once it is immune from enforcement action it is recommended that a request is made for a letter from the department confirming that is the case.

Likely actions when a breach of control is found

24. Following the detection of an alleged breach of planning or building control there are likely to be a number of options available for the Enforcement Team. These are:
- To take no further action, where the breach is minor and harmless;
 - To advise on remedial work to overcome the breach;
 - To suggest the submission of a retrospective planning application to regularise the position, but only where it is considered, having discussed the matter with senior planning officers, that the breach does not cause harm and there is a prospect of permission being granted. In such cases the investigating officer should advise the perpetrator of the breach that this cannot be construed as a commitment that permission will be granted (Note: the fees for retrospective applications are charged at twice the normal rate)
 - Instigate the taking of formal enforcement action to stop the breach, usually by means of an Enforcement Notice or a Stop Notice.

What is an Enforcement Notice?

25. An Enforcement Notice is a formal and legally binding document which can be served on a person to require compliance with the Planning and Building Law. It can require that work is undertaken, that work is done in a particular manner, or that work is removed or a change of use should cease. It may require a wide range of steps to be taken to make a development comply with the terms of permission or it may require the removal of any harm to amenity caused by the unauthorised development. The notice shall: -
- a) Specify the breach of planning control.
 - b) Specify the measures to be taken to remedy the breach.
 - c) Specify the date on which it is to take effect
 - d) Specify the period for compliance
 - e) Specify the reasons for requiring compliance with the notice.

- f) Identify the land on which the breach has occurred.
- g) Specify that the property may be at risk if the Notice is not responded to.
- h) Specify the options for appeal

26. The wording of notices must clearly state the exact measures to be taken to remedy the breach of control to enable compliance to be effective.

What is a Stop Notice?

27. When the effects of unauthorised activity are considered to be seriously detrimental and require immediate attention, a Stop Notice can be used to ensure the activity does not continue.

28. The advantage of the use of a Stop Notice in relation to building operations or changes of use is that it has the effect of 'freezing' the development at that point for a period of 7 days, to avoid further harm. After the expiry of the 7 day period, the Minister is able to serve additional notices if that is still necessary.

Appeals

29. Article 117 of the Planning and Building (Jersey) Law 2002, as amended, carries the right of appeal to the Royal Court against certain notices served by the Minister. As far as enforcement notices are concerned, the right of appeal applies to:

- (a) an enforcement notice served under Article 40(2);
- (b) a stop notice served under Article 45(2);
- (c) a condition notice served under Article 47(2);
- (d) a site of special interest notice served under Article 54(7);
- (e) a dangerous building notice served under Article 66(2); and
- (f) a land condition notice served under Articles 84(1), 85(1), 86(1); 87(1); 88(1); 89(1); or 90(1) or 90(2).

30. There is a right of appeal against the serving of an Enforcement Notice on any of the following grounds: -

- (a) In respect of any breach of planning control stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged.
- (b) That those matters have not occurred.
- (c) That those matters, if they occurred do not constitute a breach of planning control.
- (d) That, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning or building control which may be constituted by those matters.
- (e) That copies of the Enforcement Notice were not served as required by Article 40 of the Planning and Building (Jersey) Law 2002.
- (f) That the steps required by the notice to be taken or the activities required by the notice to cease, exceed what is reasonably necessary to remedy any breach of planning and or building control that has occurred, or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.

(g) That any period specified in the notice falls short of what should reasonably be allowed to perform the steps specified in the Notice.

31. If an appeal is lodged against an Enforcement Notice, then the effect of that notice is held in abeyance until the resolution of that appeal.

Injunctions

32. The department can also apply to the Royal Court for an injunction to restrain an anticipated, actual or alleged breach of planning control. Injunctions are a discretionary power of the Court and an assessment will be made of the likely outcome prior to commencing proceedings.

33. An injunction can be: -

- (a) Prohibitive - requiring the defendant to refrain from doing a specific act.
- (b) Mandatory - requiring the defendant to carry out a specific act.
- (c) Interlocutory – a provisional measure taken as a measure of urgency.
- (d) Substantive or final - granted by the Court following a full trial.

Prosecution

34. Failure to comply with the requirements of Notices issued by Planning & Building Services is an offence, carrying the risk of a significant fine. Prosecutions can be undertaken in addition to pursuing further action under the relevant legislation. For example, the failure to supply information would not preclude enforcement action being taken.

35. Failure to comply with Notices that have been served may result in prosecution of any person responsible for an offence under the relevant legislation.

36. Where it is considered that a prosecution is necessary, instructions will be given to the Crown Officers for consideration. Unless the Crown Officers consider that a prosecution is not in the public interest, proceedings will be instigated accordingly.