

BREACH OF ENFORCEMENT/STOP NOTICE

Planning Act (NI) 2011

- 147** - (1) Where, at any time after the end of the period for compliance with an enforcement notice, any step required by the notice to be taken has not been taken or any activity required by the notice to cease is being carried on, the person who is then the owner of the land is in breach of the notice.
 (2) Where the owner of the land is in breach of an enforcement notice that person shall be guilty of an offence.
 (4) A person who has control of or an estate in the land to which an enforcement notice relates (other than the owner) must not carry on any activity which is required by the notice to cease or cause or permit such an activity to be carried on.
 (5) A person who, at any time after the end of the period for compliance with the notice, contravenes subsection (4) shall be guilty of an offence.
- 149** - (1) Compliance with an enforcement notice whether in respect of—
 (a) the completion, removal or alteration of any buildings or works; or
 (b) the discontinuance of any use of land, or in respect of any other requirement contained in the enforcement notice, shall not discharge the enforcement notice.
 (5) A person who, without the grant of planning permission in that behalf, carries out any development on land by way of reinstating or restoring buildings or works which have been removed or altered in compliance with an enforcement notice shall be guilty of an offence...
- 150** - (1) Where the council considers it expedient that any relevant activity should cease before the expiry of the period for compliance with an enforcement notice, it may, when it serves the copy of the enforcement notice or afterwards, serve a notice (in this Act referred to as a "stop notice") referring to, and having annexed to it a copy of, the enforcement notice and prohibiting the carrying out of that activity on the land to which the enforcement notice relates, or any part of that land specified in the stop notice.
 (12) A person who contravenes a stop notice after a site notice has been displayed or the stop notice has been served on that person shall be guilty of an offence.

Maximum Sentence:

Planning Act (NI) 2011,s147(8)

Offence under s147:

Indictment: Unlimited Fine

Summary: £100,000 Fine

Planning Act (NI) 2011,s149(5)

Offence under s149(5):

Summary: £7,500 Fine

Planning Act (NI) 2011,s150(15)

Offence under s150(12):

Indictment: Unlimited Fine

Summary: £100,000 Fine

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Offence under 147	£15,000 Fine	Fine
Offence under 149	Fine	Fine
Offence under 150	£15,000 Fine	Fine

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
<ol style="list-style-type: none"> 1. Offender initially breached planning laws for financial gain (whether profit or cost-saving) 2. Continuing offence being committed for financial gain (whether profit or cost-saving) 3. Offence being committed on a commercial basis 4. Continuing offence causing harm or nuisance to third persons 	N/A

Relevant Cases:

NI Cases:

Planning Service v Young [2013] NICA 29

English Cases

R v Fehily (1985) 7 Cr App R(S) 82

R v Dunn (1990) 12 Cr App R(S) 225

R v Ayling [1996] 2 Cr App R(S) 266

R v Western Trading Ltd [2020] EWCA Crim 1234
R v Bloor [2020] EWCA Crim 402

Notes:

1. In determining the amount of any fine to be imposed on a person convicted of an offence under this Article, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence. – Articles 147(9) and 150(16) of the 2011 Act.