

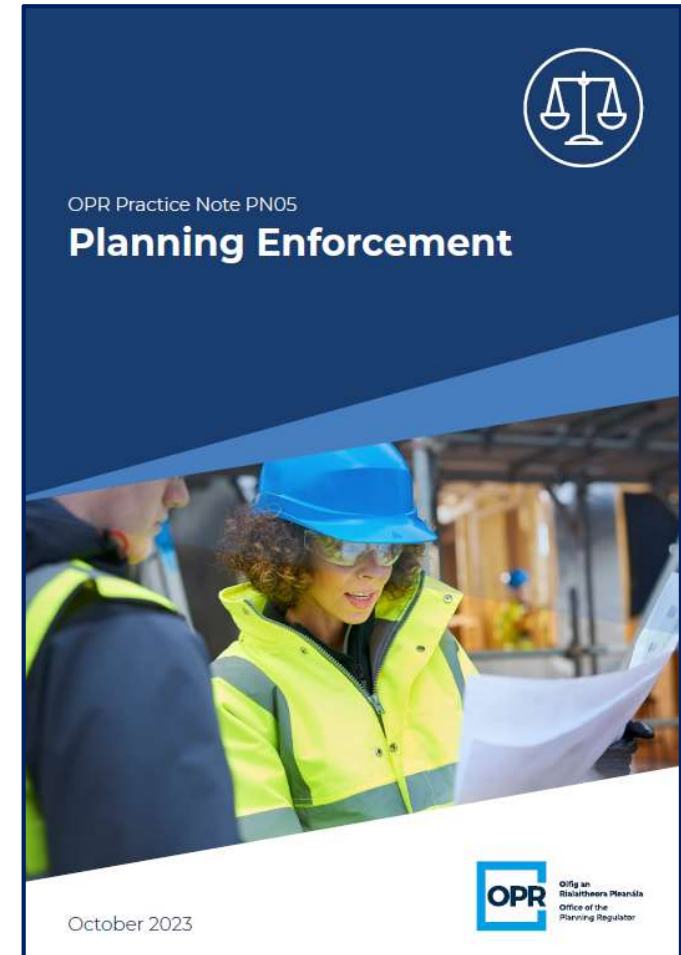
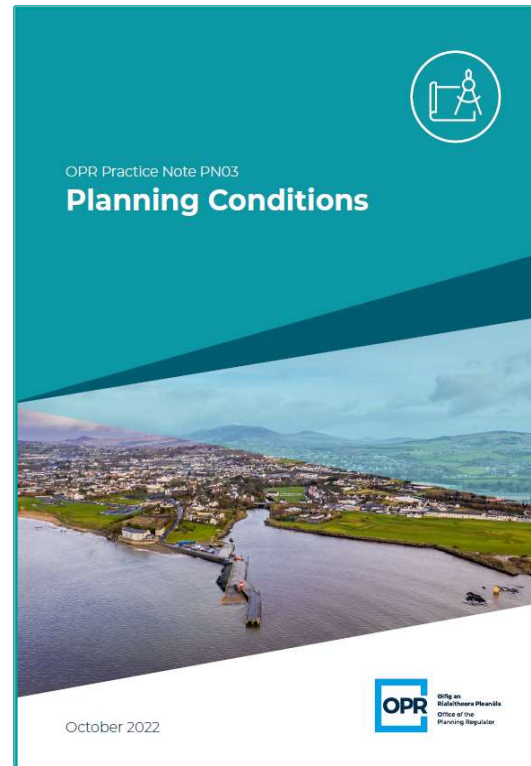
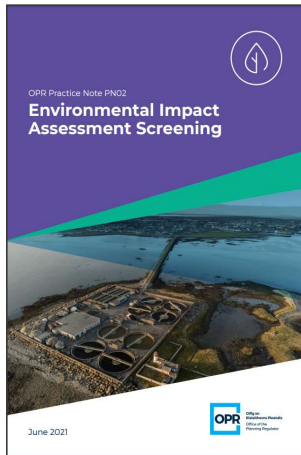


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An Overview of Practice Note (PN05) Planning Enforcement





1 December 2023

Publications - Practice Notes:



What is a 'Practice Note'?



-  Paper that examines a specific subject matter from the perspective of the practitioner.
-  Key messages translated from policy and legislation into pragmatic advice for day-to-day work of a planning practitioner.
-  Complementary tool to give support and reassurance.
-  Sharing collective knowledge and learnings

A 'Practice Note' is not



- × **Not** a procedural or operational manual
- × **Not** a substitute for learning, understanding or reading the principal legislation, guidelines or case law.
- × **Not** binding – a planning authority does not have to adopt or incorporate any recommendations outlined.
- × **Not** legal advice

Why now?



Legislation

- PD Bill
- Marine Spatial Planning



Why not.....

- Bill enactment
- UD Ceased?
- Statistics
- Logic

Structure of the Practice Note:

- Policy Context
- Key Concepts
- Process
- Common Issues
- Court-related matters
- Key Messages

+ Legal Digest Appendix B.



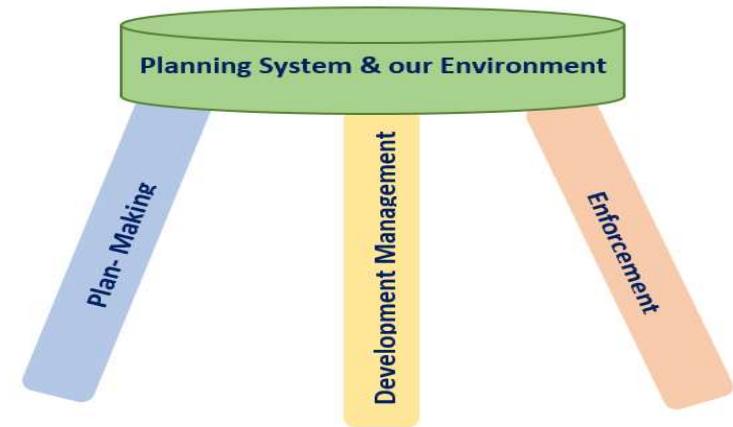
1. Policy Context

Labelled as the poor relative... ??



Section 2 of PN

- Ministerial Directive - Enforcement
- Central to the Planning Policy Statement 2015 etc.





Development Management Guidelines, 2007



Twelve Principles:

1. Oversight & Resourcing
2. Initiative
3. Time Limits
4. Good information management systems
5. Environmentally conscious
6. Large-scale Breaches
7. Injunctions
8. Enforcement Notices
9. Prosecution of Offences
10. Retention Permission
11. Transparency
12. Monitoring & Review

2. Complaint (Forms)

- S152(1) of 2000 Act refers to complaint in writing
- A person should provide their name and address to enable notification
→ **Logical & Practical**
- A complaint via an agent/elected member of behalf of a third party is valid
- Remember Best Practice Principle 2. **Initiative**

Learnings from Courts:

- Planning authorities are not prohibited from investigating anonymous complaints



OPR Template Complaint Form:

Core Form

Basic Information from Complainant

What?



Where?



Who?



Supplementary Complaint Sheet

- Non-essential
- Information is Optional and Requested to Help the PA
- Information is not Required



Key Message in the Form:

- Open-door to complainants whilst highlighting the mutual benefit of sharing information



3.

Site Inspections: Practice v Theory?

Research Found:

Custom & Practice in most Planning Authorities was that complaints were subject to a site inspection by a Case Officer prior to issue of WL

Pros

- The Act is Silent?
- Eliminate vexatious/frivolous cases early?
- Avoid distress for owner/occupier

Cons

- Not required by the Act
- Result in time delays
- Depending on site inspection/level of entry case could be compromised?



4. Calculating time

Seven years?

+ Covid Days

+ 9 days of Christmas



Key Message:

- Act swiftly
- Prioritise cases [Remember: DM guidelines, Minister's Policy Directive]
- Complex cases –engage with your legal team

5. Reports & Evidence Gathering

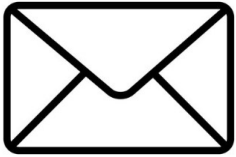
- Section 4 of PN
- Desktop Review
- Table 5 – Key elements of the Enforcement Report
- Sources of Information Internal & External



Important Note

EIA and AA Considerations (s4.9.5)





Key Messages – Management

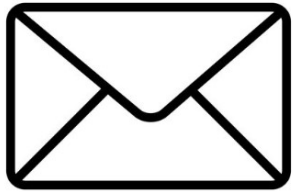
Remember:

“Visible tolerance by planning authorities of breaches of the law in such cases, as indeed in all cases, undermines the whole planning code and brings it into disrepute”.

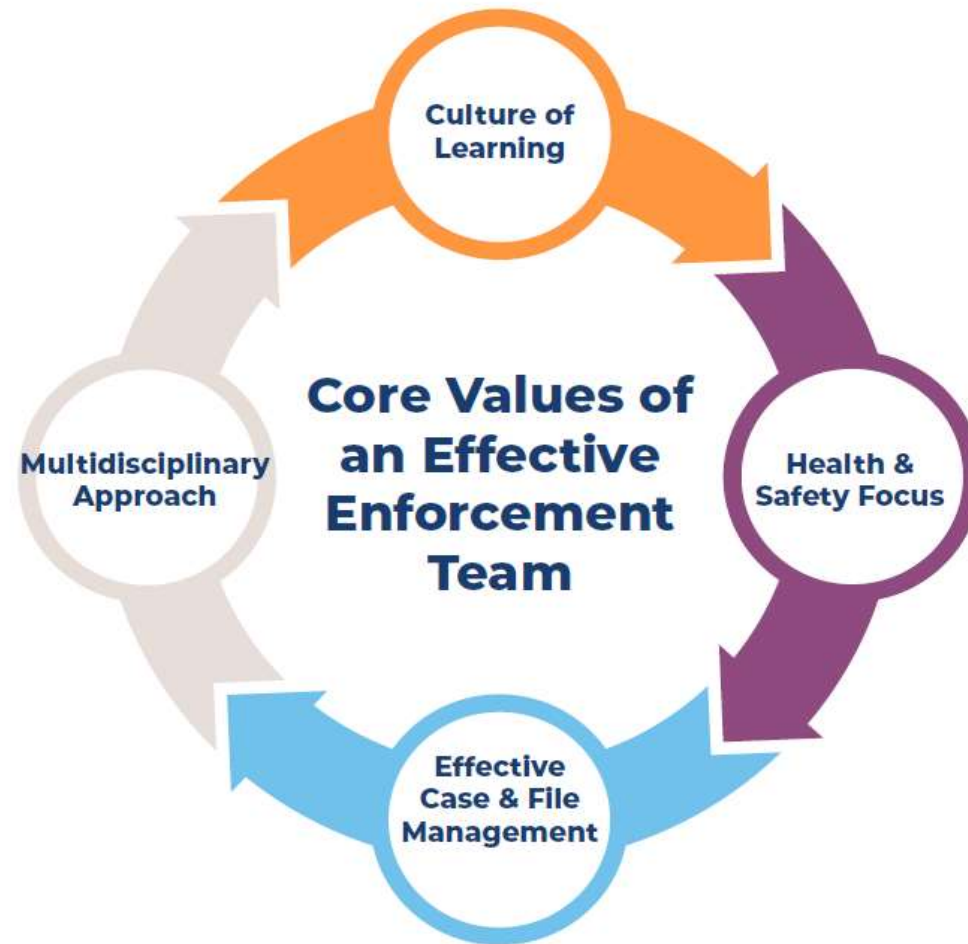
DM Guidelines 2007

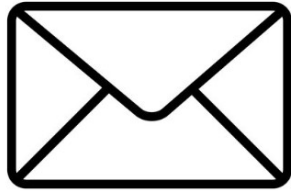
Need to Develop an **Enforcement Policy and Practice Statement:**

- Ownership & Responsibility
- Review & Monitoring
- Resources – including the use of all tools available e.g. S35 Refusal
- Communication



Key Messages - Team





Key Messages – Case Officer



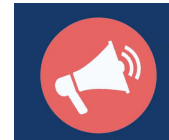
Health & Safety



Understanding the Law



Research & Report Writing



Communications



Court-ready

Last Word....

*“From the Act as a whole, which includes the enforcement provisions from sections 151 to 163, inclusive, it seems clear that the **policy aspiration is one of legislative compliance so that orderly development takes place in a regulated and coherent manner, consistent with an adopted Development Plan, either at area or local level, or both, and having regard to any coordinated policies with neighbours, all under the general direction of national policies. In effect, the armoury as given is to ensure that the environmental and ecological rights/ amenities of the public are preserved and enhanced and that the integrity and efficacy of planning control is maintained. In addition, at the individual level...no person should have to suffer a diminution of his rights, including the enjoyment of his property rights, unless such interference can lawfully be justified”.***

Meath County Council v Murray [2017] IESC 25

*“in one sense the reason is obvious: **without effective planning laws and adequate enforcement procedures to ensure compliance with them, anarchy would rule the roost** with regard to all sorts of developments. Dangerous, unsuitable and haphazard developments would be likely, some of which might be constructed or established in locations where a single citizen could inconvenience neighbours, destroy areas of natural beauty, disrupt traffic and even undermine the capacity of the community to engage in normal social function and activities. In short, **there would be nothing to stop a ‘free for all’ development culture from running riot....** The Planning Acts 1963-2000 provide the law which bind all citizens in this regard. It might be more accurate to say the legislation binds developments, as **planning conditions enure for the benefit of the land and society generally, rather than the individual.** It is the responsibility of the individual developer to conform, to obtain planning permission when required to do so and to comply with conditions attaching to any permission.”*

Wicklow County Council v Kinsella, Judgment of Kearns P., [2015] IEHC 229



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Thank you