

Planning Enforcement Charter - A guide to enforcing planning controls

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INTRODUCTION

Planning permission is required for most development that takes place in Scotland, with the exception of some minor works. Sometimes, however, developers or householders undertake work without planning permission or fail to keep to the permission they have been given.

Councils have powers to enforce planning controls in such cases, if they consider it is in the public interest to do so. Councils monitor developments to ensure planning controls are being followed but there is also a role for the public in alerting the council to any problems they become aware of.

This Charter explains how the enforcement process works, the role of the Council and the service standards it sets itself. It also explains what happens at each stage of what can be a lengthy process.

Enforcement is one of the most complex parts of the planning system. The aim of this Charter is to ensure that adopted procedures are fair and reasonable, and that interested parties are kept informed and are made aware of what is required.

This is an issue that concerns many members of the public. We hope you will find this Charter useful and will let us know if you think we could improve the service further.

This Charter sets out the current powers available to planning authorities. These powers are set out in the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc. (Scotland) Act 2006.

KEY POINTS ON PLANNING ENFORCEMENT

A breach of planning control is not a criminal offence. The purpose of planning enforcement is to resolve the problem rather than to punish the mistake. In addition, any action taken has to be appropriate to the scale of the breach.

Your Council has statutory powers to investigate breaches of planning control and the conditions attached to planning consents, and to take formal action where a satisfactory outcome cannot be achieved by negotiation. However, enforcement is a discretionary power. That means that, even where there is a breach of planning control, the Council has to consider if it is in the public interest to take enforcement action. The Council is not required to take any particular action on a specific breach of planning control and, indeed, can decide that no action is necessary.

Fuller information on the use of enforcement powers can be found in the Scottish Government's Planning Circular 10/2009: *Planning Enforcement*.

Planning enforcement also covers the physical display of advertisements such as billboards and advertisement hoardings, although slightly different procedures apply.

These are set out in a separate section at the end of the document. The actual content of an advertisement is not covered by planning control. Any complaints about the content of an advertisement should be made to the Advertising Standards Authority.

SERVICE STANDARD

By publishing our standards and targets, we aim to improve our enforcement service and make it responsive to the needs of our customers. We will monitor the contents of this charter to ensure that standards and targets are being met.

SERVICE STANDARD

Further copies of this Charter are available on the Council's website, in local libraries and at:
(Council office address).

IDENTIFYING POSSIBLE BREACHES OF PLANNING CONTROL

Possible breaches of planning control can include:

- work being carried out without planning permission or consent;
- an unauthorised change of use;
- failure to comply with conditions attached to a permission or consent;
- departures from approved plans or consent.

Members of the public have a vital role in reporting breaches of control. Any concerns should be raised with the Council. You can make preliminary enquiries by telephone or in person at the Council offices but these must be followed up in writing or by e-mail.

The following information is essential when reporting a suspected breach:

- the address of the property concerned;
- details of the suspected breach of planning control, with times and dates if relevant;
- your name, telephone number and address;
- an e-mail address if available or if the complaint is submitted electronically;
- information on how the breach affects you;
- whether or not you wish the enquiry to be treated confidentially.

While the Council will do its best to honour requests for confidentiality, it is subject to the requirements of the Freedom of Information (Scotland) Act 2002. Requests for total confidentiality may limit the ability of the authority to take formal action and cannot be guaranteed if the case leads to court proceedings.

Contact details for planning authority: address of offices, relevant phone numbers, email addresses etc. Enquiries by e-mail can be made by (insert Council specific details, including any e-mail address)

Members of the public can play an important role in monitoring the conditions that are placed on certain planning consents. Details of the conditions attached to a grant of planning permission are included within the decision notice attached to the permission. Monitoring of development is undertaken by the Council's *development management service (insert appropriate department if different)* to ensure it complies with conditions or limitations. However, there are a large number of permissions granted each year and it is not practical, nor is it expected, that Councils monitor all conditions at all times.

Your involvement is therefore invaluable in providing information where it is believed that conditions attached to the consent are not being complied with or have not been discharged in a satisfactory way. Breaches of conditions are investigated in the same way as other breaches of planning control.

Information received by the Council's planning enforcement section is checked to ensure that it involves a possible breach of control and includes all the detail required for a possible investigation. After preliminary checking and compliance with the requirements for investigation, the complaint will be registered. Once registered, a written or e-mail acknowledgement will be sent to the person who made the complaint.

Some complaints, such as neighbour disputes over boundaries or complaints over anti-social behaviour relate to matters over which the planning service has no control and cannot be investigated by planning enforcement officials. In such cases you will be advised of this and, where the complaint should be addressed to a different council department (e.g. environmental health), your complaint will be passed on and you will be advised of appropriate contact details. [this would depend on the relevant planning authority's policy for handling such complaints]

SERVICE STANDARD

If preliminary checking of a complaint suggests a breach of planning control, the complaint will be registered. Once registered, a written or e-mail acknowledgement will be sent to the person who made the complaint within (5) working days. The acknowledgement will include a reference number and contact details for the investigating officer.

INVESTIGATING POSSIBLE BREACHES OF PLANNING CONTROL

A priority system is used for investigating complaints based on matters such as the effect of the breach and the significance of the site.

SERVICE STANDARD

Priority will be given to significant breaches of planning control including:

- breaches of condition for major development;
- irreversible damage to listed buildings;
- unauthorised felling of trees and matters affecting trees protected by Tree Protection Orders;
- significant detrimental impact on amenity

An investigation begins with an enforcement officer visiting the site. Following this visit, the individual who has made the complaint will be informed of what action, if any, is proposed. In some cases, additional investigation may be needed.

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Members of the public who provide information will receive a formal response within (20) working days of receipt of their letter or e-mail. They will also be advised of the proposed action to be taken. This may include the need for additional investigation prior to deciding on a course of action. They will be advised if the matter does not involve a breach of planning control.

The length of time required to resolve a case or take action can be affected by a number of factors. Allowance has to be made for the gathering of further evidence, to allow negotiations to take place or for formal procedures to be concluded. Similarly, where the landowner submits a retrospective planning application to regularise the breach of control or an appeal against a decision of the planning authority this may add to the length of time it takes to resolve the case.

The Council recognises that delays can be a source of considerable frustration to those submitting information, particularly if they consider their amenity is affected. Consequently, we will try to keep interested parties informed of significant stages in the progress of a case but they may wish to contact the case officer for a more regular update. If there has been no progress for a period of (4-6) weeks, the Council will write to complainants to explain the delay.

ACTING ON BREACHES OF PLANNING CONTROL

In some cases action may not be appropriate, even though planning controls have been breached. As stated previously, the purpose of planning enforcement is to resolve problems, not punish mistakes. The planning authority has to consider each case on its merits and decide on the best solution. The Council is unlikely to take formal action, for example, over developments which, in planning terms, are seen as acceptable. It may be more appropriate, in such cases, to seek the submission of a retrospective planning application.

Only a relatively small number of cases require formal enforcement action. Formal enforcement action involves the issue of a notice to the landowner or developer. This may be a notice requiring a retrospective planning application to be made, an enforcement notice, or a breach of condition notice.

A notice requiring a retrospective planning permission alerts the landowner or developer to the fact that the development described in the notice does not have the requisite planning permission and requires them to address the situation by submitting a retrospective application. The planning authority will consider this as they would any application made under planning legislation and may grant or refuse permission, depending on the planning merits of the application. Permission may be granted subject to conditions or limitations which the planning authority considers are required to make the development acceptable.

Enforcement notices and breach of condition notices include the following information:

- a description of the breach of control that has taken place;
- the steps that should be taken to remedy the breach;
- the timescale for taking these steps;
- the consequences of failure to comply with the notice;
- in the case of an enforcement notice, any rights of appeal the recipient has and how to lodge an appeal.

Appeals against enforcement notices are considered by Scottish Ministers and dealt with, in most cases, by Reporters from the Scottish Government's Directorate for Planning and Environmental Appeals (DPEA). Anyone who has submitted information on a breach of planning control is advised of the appeal.

There is no right of appeal against a breach of condition notice.

SERVICE STANDARD

Where a planning breach cannot be resolved and action is justified, a formal notice will be served. This will be either; a notice requiring a retrospective planning application, an enforcement notice, or a breach of condition notice. The Council will write to the recipient of the notice to explain what is required, the timescales involved and the available options to resolve the issue.

Failure to comply with a notice may result in the planning authority taking further action. This can include a range of possible options including:

- referring the case to the Procurator Fiscal for possible prosecution;
- carrying out any work required by an enforcement notice and charging the person for the costs involved;
- seeking a Court interdict to stop or prevent a breach of planning controls.

For more detail, see the 'Enforcement Powers'" section at the end of the Charter.

SERVICE STANDARD

Where the terms of any formal notice are not complied with, every effort will be made to resolve the case to the satisfaction of the Council. Options include:

- in the case of an enforcement notice, direct action by the Council
- for either an enforcement notice or a breach of condition notice, the matter being referred to the Procurator Fiscal for possible prosecution or alternatively offering the opportunity to pay a fixed penalty (issue of a fixed penalty notice).

Details of notices requiring retrospective planning permission, enforcement notices, breach of condition notices, temporary stop notices and stop notices are entered into an Enforcement Register. You can inspect these documents at *(insert appropriate details)*

The Council has powers to enter land to:

- establish if there has been a breach of planning control;
- check if there has been compliance with a formal notice;
- check if a breach has been satisfactorily resolved.

This power applies to *any* land and may involve officials entering land owned by neighbours adjacent to the site of the breach or alleged breach.

Enforcement action has to be taken within strict time limits.

- A four year limit - this applies to 'unauthorised operational development' (the carrying out of building, engineering, mining or other operations in, on, over or under land) and to a change of use to a single dwellinghouse. After four years following the breach of planning control, the development becomes lawful and no enforcement action can be taken.
- A ten year limit - this applies to all other development including changes of use (other than to a single dwellinghouse) and breaches of condition. After ten years, the development becomes lawful if no enforcement action has begun.

MAKING A SUGGESTION OR COMPLAINT

(Individual councils may have slightly different procedures and different titles for officials involved in the various steps outline below; however, the general framework should be similar. Councils may wish to insert a link to already available material on complaints procedures, but should bear in mind that the 2006 Act requires that the Charter contains an account of how any complaint to the authority is to be made and of the authority's procedures for dealing with any such complaint.)

The Council hopes the public will be satisfied with the planning enforcement service. However, if you have any suggestions, concerns, or difficulties, we want to hear from you. We are committed to improving our service and dealing promptly with any failures.

We will consider all complaints made about the way an enforcement enquiry was dealt with. Some people may disagree with the outcome of an investigation but, of itself, that is not grounds for complaint. As noted above there is a separate appeals' procedure for a recipient of an enforcement notice.

In the first instance, complaints should be discussed with the member of staff involved. If you are still dissatisfied, talk to the *(Principal Officer -insert appropriate details)* (see list of contacts). If he/she is unable to help, you will be given the name of a more senior manager who will investigate the matter.

Written complaints will be acknowledged *(within 10 working days?)* and then fully and promptly investigated *(any timescale - e.g. 4 weeks?)*. The complainant will be given a written response explaining the outcome of the investigation and any action that the Council proposes to take. If no action is proposed, the reasons will be explained.

SERVICE STANDARD

We will get in touch with you within (10) working days of receiving a complaint or suggestion to let you know what is happening. We will monitor all complaints and suggestions made and use them to review and improve the service we provide.

If you are not happy with the initial response, you can take the complaint further. You can complete a Complaints Form (available from all Council public offices and buildings- *(presume most LAs have similar procedures in this respect)* and return it to the Council's Customer Care Unit -see list of contacts. *(Different councils may have different names for this dept.)*. If that fails to resolve the problem, you can seek the advice and help of your local councillor or the Chief Executive of *(insert name)* Council. Lastly, if you are unsatisfied with the Council's complaints process, you have the right to take your complaint to the Scottish Public Services Ombudsman, at:

**SPSO FREEPOST EH641
EDINBURGH EH3 0BR**

Telephone: 0800 377 7330, or e-mail: ask@spsso.org.uk

Generally, you must contact the Ombudsman within 12 months.

ENFORCEMENT POWERS

The planning enforcement powers available to your local planning authority are set out in the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc. (Scotland) Act 2006. Listed building enforcement notices are covered by the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. The Planning Acts are available from HMSO, 71 Lothian Road, Edinburgh and can be viewed online at the Office of Public Sector Information (OPSI) website; <http://www.opsi.gov.uk/>

Government policy on planning enforcement is set out in Planning Circular 10/2009: *Planning Enforcement*. The circular is published on the Scottish Government website and can be viewed at www.scotland.gov.uk/Topics/Built-Environment/planning/publications/circulars.

Types of Notice

Breach of Condition Notice - this is used to enforce the conditions applied to any planning permission. It comes into effect 28 days after being served. It may be used as an alternative to an enforcement notice (see below) and is served on any person carrying out the development and/or any person having control of the land. There is no right of appeal. Contravening a breach of condition notice can result in the Council deciding to prosecute, with a fine of up to £1,000.

Enforcement Notice - this is generally used to deal with unauthorised development, but can also apply to a breach of planning conditions. There are similar notices and powers to deal with listed buildings (see below) and advertisements. An enforcement notice will specify;

- a notification period before it comes into effect (a minimum of 28 days - but see the section below on advertisements);
- the steps that must be taken to remedy the breach; and,
- a further period (known as the compliance period) which is set by the planning authority and gives the recipient time to carry out any work required to comply with the notice. There is no minimum or maximum period, so long as the amount of time allowed is reasonable and reflects the amount of work that may need to be undertaken.

There are limited rights of appeal against an enforcement notice and, if an appeal is made, the terms of the notice are suspended until a decision is reached.

Failure to comply with an enforcement notice within the time specified is an offence and may lead to a fine of up to £20,000 in the Sheriff Court. Failure to comply may also result in the Council taking **Direct Action** to correct the breach (see other powers below).

Listed Building Enforcement Notice - this must be served on the current owner, occupier and anyone else with an interest in the property. The procedures are similar to those outlined above. The notice must specify the steps to be taken to remedy the breach and a final date for compliance. Failure to meet the terms of the notice by the date specified is an offence. There is a right of appeal to Scottish Ministers against the notice. Breaches of listed building control are a serious matter. It is a criminal offence to

undertake unauthorised works to demolish, significantly alter, or extend a listed building. In certain circumstances, this can lead either to an unlimited fine or imprisonment.

Stop Notice - this is used in urgent or serious cases where an unauthorised activity must be stopped, usually on grounds of public safety. When a stop notice is served, the planning authority must also issue an enforcement notice. There is no right of appeal against a stop notice and failure to comply is an offence. An appeal can be made against the accompanying enforcement notice. If a stop notice is served without due cause, or an appeal against the enforcement notice is successful, the stop notice may be quashed and the Council may face claims for compensation. The use of stop notices therefore needs to be carefully assessed by the Council.

Temporary Stop Notice (TSN) - this is used to require the *immediate* halt of an activity which breaches planning control. The provisions make an exception in that a TSN cannot prohibit the use of a building or a caravan as a dwellinghouse. TSNs are enforceable for 28 days, after which they time they expire. They may, however, be followed by further enforcement action such as an Enforcement Notice and Stop Notice. There is no provision to appeal against a TSN.

Fixed Penalty Notice (FPN) – this provides planning authorities with an alternative process, in addition to the option to seek prosecution, to address situations where a person has failed to comply with the requirements of an enforcement notice (EN) or a breach of condition notice (BCN). By paying the penalty imposed by the FPN, the person will discharge any liability for prosecution for the offence. They will not, however, discharge the obligation to comply with the terms of the EN or BCN and the planning authority will retain the power to take direct action to remedy the breach and recover the costs of such work from that person. The planning authority is not required to offer the option of paying a fixed penalty. Any decision to do so would be dependant on considerations such as the scale of the breach and its impact on local amenity.

Notice Requiring Application for Planning Permission for Development Already Carried out – Where the planning authority considers that a development which does not have planning permission may be acceptable (i.e. they consider that it might be granted planning permission) they may issue a notice requiring the landowner or developer to submit a retrospective planning application. This application will be considered on its planning merits and handled in the same way as any other planning application. Issuing such a notice does **not** guarantee that permission will be granted; the planning authority may, on consideration of the application, decide instead to refuse permission, or to grant permission subject to conditions or alterations to make the development acceptable.

Other Powers

Planning Contravention Notice - this is used to obtain information about activities on land where a breach of planning control is suspected. It is served on the owner or occupier, on a person with any other interest in the land or who is carrying out operations on the land. They are required to provide information about operations being carried out on the land and any conditions or limitations applying to any planning permission already granted. Failure to comply with the notice within 21 days of it being served is an offence and can lead to a fine in the Courts.

Notice under Section 272 (of the Town and Country Planning (Scotland) Act 1997) - this provides limited powers to obtain information on interests in land and the use of land. Failure to provide the information required is an offence.

Notice under Section 179 (of the Town and Country Planning (Scotland) Act 1997) - this allows planning authorities to serve a notice on the owner, lessee or occupier of land which is adversely affecting the amenity of the area. This is also known as an '**Amenity Notice**' and sets out the action that needs to be taken to resolve the problem within a specified period.

Interdict and Interim Interdict - an interdict is imposed by the courts and is used to stop or prevent a breach of planning control. Court proceedings can prove costly and Councils normally only seek interdicts in serious cases or where enforcement notices have been ignored in the past. However, a Council can seek an interdict in relation to any breach without having to use other powers first. Breaching an interdict is treated as a contempt of court and carries heavy penalties.

Direct Action - failure to comply with the terms of an enforcement notice within the time specified can result in the Council carrying out the specified work. The Council may recover any costs it incurs from the landowner.

(this section and the following summary section may be attached to the published Charter and/or made available as separate summary documents)

Notification of Initiation and Completion of Development (NID/NCD) and Display of Notices While Development is Carried Out – While not in themselves planning enforcement powers, these notices are intended to improve delivery of planning enforcement by requiring positive confirmation that development has commenced and been completed, and, in the case of on-site notices, to raise community awareness of developments in the local area. Planning authorities will be made aware of active development in their areas, enabling them to prioritise resources with a view to monitoring development.

For any development for which permission has been granted, a NID has to be submitted to inform the planning authority of the date on which development will commence. It is to be submitted after planning permission has been granted and before development has commenced. Initiating development without submitting a NID is a breach of planning control and the planning authority may consider enforcement action.

The NCD requires a developer to submit a further notice as soon as practicable after development has been completed.

Depending on the nature or scale of a development, the developer may also be required to display on-site notices while development is taking place. These notices contain basic information about the site and the development. They also provide contact details where members of the public may find out more information or report alleged breaches of planning control. It is a breach of planning control to fail to display such a notice when required to do so.

ENFORCEMENT CONTACTS

For obvious reasons this section will vary from Council to Council, but at a minimum should contain;

Contact details for reporting suspected breaches of planning control

Contact details for general inquiries on planning issues

Postal address for head of planning department

Contact details for councils complaints department (or equivalent)

Other useful contacts -building standards, etc

SE planning service, Advertising Standards Authority)

A SUMMARY GUIDE TO PLANNING ENFORCEMENT

Planning permission is required for most development that takes place in Scotland. Sometimes, however, developers or householders undertake work without planning permission or fail to keep to the permission they have been given. Local councils have powers to act in such cases.

The Council will investigate breaches of planning control. These can include:

- work being carried out without planning permission
- an unauthorised change of use
- not following conditions imposed by a planning consent
- not following plans approved by a planning consent

The public can play a vital role in reporting such incidents to their Council. Any report of an alleged breach will need to include:

- the address of the property concerned;
- details of the suspected breach of planning control, (with times and dates if relevant);
- contact details for the person providing the information;
- whether that person wishes the matter to be treated confidentially. Councils will do their best to honour such requests but anonymity cannot be guaranteed where statutory enforcement action is undertaken, particularly where court action is required and that person may be called as a witness.

The purpose of planning enforcement is to resolve the problem rather than to punish the mistake. Action can involve negotiating a solution, asking for a retrospective planning application to be made, or more formal action such as the issue of an enforcement notice or a breach of condition notice.

Formal action may require the agreement of the Council's Planning Committee. This can include serving an enforcement notice on the relevant people, spelling out the action they are required to take. They can challenge this notice, through an appeal to Scottish Ministers. If so, enforcement action is suspended until a decision is issued. Failure to comply with an enforcement notice can result in prosecution.

In some cases, the Council is time-barred from taking action. Generally, work carried out more than four years ago or a change of use that took place more than 10 years ago is considered lawful and immune from action.

It is not always possible to anticipate how a particular case will develop, nor how long it will take. The Council will try to keep people informed of progress. The Council has set down the procedures, its service standards, and contact details in its Charter for Planning Enforcement. This is available (*insert relevant contact details, e-mail and telephone contacts as appropriate*)

ENFORCEMENT AND ADVERTISING

The display of advertisements is covered by the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984. Many advertisements are displayed with what is called 'deemed consent' which means they do not require planning permission if they meet the criteria and conditions set out in the regulations. One of these conditions is that the landowner has given permission for the advertisement to be displayed on their land.

Displaying an advertisement in contravention of the regulations is an offence and, if convicted in court, an offender can be fined. The court can impose further fines for each day the breach of the regulations continues.

The Council has the power to serve an enforcement notice. This specifies a time period (normally 28 days) for compliance with the notice. However, this period can be reduced to seven days if the Council believes there is an urgent need for the advertisement to be removed or altered in the interests of public safety, **or** if the advertisement can be removed without any other work being required.

An enforcement notice can also require that a particular piece of land should not be used to display advertisements. This remains in force even if the original advertisement is removed. Any subsequent advertising on this site would amount to a breach of the notice.

The Council also has powers to remove or destroy placards and posters that do not have planning permission or deemed consent. If the person who put up the poster can be identified, they have to be given at least two days' notice that the Council intends to take the poster down. If they cannot be readily identified, then the advert can be removed immediately.

Council officials can enter unoccupied land, if necessary, to remove an advertisement. However they have no powers to remove advertisements displayed within a building to which there is no public access.

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