



## **PLANNING ENFORCEMENT CHARTER**

### **A GUIDE TO ENFORCING PLANNING CONTROLS**

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## 1. 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.

Enforcement 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. The Planning Etc (Scotland) Act 2006 introduces a number of changes. The guidance contained in this Charter will be revised as necessary as these changes are introduced to keep it up to date.

## 2. 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.

The 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 Executive publication *Planning Advice Note 54 ( PAN54): Planning Enforcement* which can be viewed online at <http://www.scotland.gov.uk/Publications/1999/03/pan54>.

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 this should be made to the Advertising Standards Authority.

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.

Further copies of this charter are available on the Council's website, in local libraries and at Department of Infrastructure Services, Planning and Transport Division, County Buildings, Market Street, Forfar, DD8 3LG.

### **3. 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 the enquiry is 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: Stuart Findlay, Planning Enforcement Officer, 01307-473351, e-mail [FindlaySW@angus.gov.uk](mailto:FindlaySW@angus.gov.uk); Robert Parry, Planning Enforcement Officer, 01307-473294, e-mail address [ParryR@angus.gov.uk](mailto:ParryR@angus.gov.uk). Enquiries can also be made by e-mail to [Planning@angus.gov.uk](mailto:Planning@angus.gov.uk).

Members of the public also have an important role in monitoring the conditions that are placed on certain planning consents. Details of the conditions are included within the decision notice attached to the permission. Monitoring is undertaken by the Council's Development Management Service. 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 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, relate to matters over which the planning service has no control and cannot be investigated.

#### **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.

#### **4. 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:

- unauthorised development that may affect public safety;
- 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: this will normally be within 5 working days of receipt of the complaint with priority given as detailed above. In the case of a major nuisance or breach of planning control that could in the opinion of the Council jeopardise health and safety the site will be inspected as soon as possible within 1 working day following receipt of the complaint. 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.

## **SERVICE STANDARD**

Sites and premises will normally be visited within 5 working days and members of the public who provide information will receive a formal response within 1 month 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 usually be advised within one month if the matter does not involve a breach of planning control and within 2 months if a planning application / remedial action is required or if enforcement action is to be taken. If for any reason the timescales cannot be met the member of the public will be advised.

The length of time required to resolve a case or take action can be affected by a number of factors. Progress can be delayed for the gathering of further evidence, to allow negotiations to take place or for formal procedures to be concluded. Similarly, an application to regularise the breach of control or an appeal against a decision of the planning authority can also delay resolution of 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 1-2 months, the Council will write to complainants to explain the delay.

## **5. 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. This usually begins with either an enforcement or breach of condition notice being served on those involved in the development. Both 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;
- where appropriate, 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 Executive Inquiry Reporters Unit. 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 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 work 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 enforcement notice are not complied with, every effort will be made to resolve the case to the satisfaction of the Council. Options include:

- direct action by the Council and/or
- the matter being referred to the Procurator Fiscal for possible prosecution.

Details of enforcement notices, breach of condition notices and stop notices are entered into an Enforcement Register. You can inspect these documents at Infrastructure Services Department, Planning & Transport Division, County Buildings, Market Street, Forfar, DD8 3LG.

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 adjacent to the site of the 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 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 change 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.

## **6. MAKING A SUGGESTION, COMMENT OR COMPLAINT**

### **Improving Our Service to You**

We want to continually improve on our customer care and increase our customers' satisfaction. If you have any comments about how we can improve our service to you please contact [accessline@angus.gov.uk](mailto:accessline@angus.gov.uk), call ACCESSLine, the Council's direct line for Council services, on 08452 777 778 or tell us online using the [compliments, comments and complaints form](#).

### **Compliments, Comments and Complaints**

Our aim is to provide all our customers with good quality services and wherever possible deal with your concerns as they arise.

You can record your compliment, comment or complaint via our [online form](#) to tell us where we've got things right, help us improve services and sort things out if they've gone wrong.

However we are keen to resolve any problems as soon as possible so if you have a comment or complaint about a service please raise the matter with those delivering that service first of all - we will do our best to help resolve any problem there and then. Alternatively you can contact ACCESSLine on 08452 777 778 or email [accessline@angus.gov.uk](mailto:accessline@angus.gov.uk).

If we cannot resolve a problem immediately; within the agreed service standards; or to your, the customer's, satisfaction or if you have a complaint about how you have been treated we will record your complaint and give you our formal response within 10 days. If we cannot respond within that time we will inform you when we will be able to provide you with a response.

Our aim is to work things out so we want you to tell us if you are satisfied with the outcome of your complaint or wish us to take further action and have the matter investigated by a senior officer or ultimately the chief executive.

Although most complaints will be dealt with in this way there are separate complaints procedures for some Council activities and services, such as social work; equal opportunities; recruitment and bus services. In addition an advice and conciliation procedure is in place to assist parents and the Education department address problems or concerns raised.

When you contact us you will be advised of the procedure to be followed when dealing with your complaint.

### **Scottish Public Services Ombudsman**

If a customer is not satisfied with the Council's internal investigation of and response to their complaint they should be advised of their right to refer the matter to the Scottish Public Services Ombudsman for attention where appropriate.

The Ombudsman offers an independent national service and while complaints can be made to the Ombudsman any time, an investigation will usually only be made if the complaint has been investigated by the Council.

Complaints should be made to:

**Scottish Public Services Ombudsman**  
4 Melville Street  
Edinburgh EH3 7NS

or write to

**Scottish Public Services Ombudsman**  
FREEPOST EH641  
Edinburgh EH3 OBR

See [www.spsso.org.uk](http://www.spsso.org.uk) for more information.

## 7. ENFORCEMENT POWERS

The Planning Enforcement powers available to your local Council are set out in Part IV of the Town and Country Planning (Scotland) Act 1997 and in Chapter IV of the Planning (Listed Buildings and Conservation Areas ) (Scotland) Act 1997. The Planning Acts are available from HMSO, 71 Lothian Road, Edinburgh and at [www.scotland-legislation.hmso.gov.uk](http://www.scotland-legislation.hmso.gov.uk).

Government policy on planning enforcement is set out in Circular 4/1999, "Planning Enforcement." Advice on good practice is given in Planning Advice Note 54 (PAN 54), "Planning Enforcement." Both documents are available from the Scottish Executive and can be viewed electronically at [www.scotland.gov.uk/planning](http://www.scotland.gov.uk/planning).

### Types of Notice

**Breach of Condition Notice** - this is used to enforce the conditions applied to any planning permission. It is effective from the date it is 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 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 time period to take effect (a minimum of 28 days - but see the section below on advertisements); the steps that must be taken to remedy the breach and the time for this to be completed.

There is a right of appeal and 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 the 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 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 Council may face claims for compensation. The use of stop notices therefore needs to be carefully assessed by the Council.

### **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).

## **8. ENFORCEMENT CONTACTS**

Contact details for reporting suspected breaches of planning control: Stuart Findlay, Planning Enforcement Officer, 01307-473351, e-mail [FindlaySW@angus.gov.uk](mailto:FindlaySW@angus.gov.uk); Robert Parry, Planning Enforcement Officer, 01307-473294, e-mail address [ParryR@angus.gov.uk](mailto:ParryR@angus.gov.uk).

Contact details for general inquiries on planning issues: Ron McNicoll, Development Control Manager, 01307 473212, e-mail [McNicollRL@angus.gov.uk](mailto:McNicollRL@angus.gov.uk); Alan Hunter, Senior Development Control Officer, 01307-473207; e-mail [HunterA@angus.gov.uk](mailto:HunterA@angus.gov.uk). Dave Scott, Senior Development Control Officer, 01307-473335; e-mail [ScottDI@angus.gov.uk](mailto:ScottDI@angus.gov.uk).

Postal address for head of planning department: Head of Planning & Transport, County Buildings, Market Street, Forfar, DD8 3LG; 01307-473292; e-mail [Planning@angus.gov.uk](mailto:Planning@angus.gov.uk).

Contact details for Council's complaints department ACCESSLine.

SE planning service, Planning Helpline, Victoria Quay, Edinburgh, EH6 6QQ, tele. No. 08457 741 741

## **9. A 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. This 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.

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.

## **10. 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.