



# Planning Enforcement Charter

A guide to enforcing planning controls

## 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.

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. 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.

#### 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 the local library and at the Council's Infrastructure Services Department, Development Management Service, Grantfield, Lerwick. (01595 744800)

### **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 enquiries by telephone, in person, in writing or by e-mail, giving all relevant information, to the Council's Development Management Service, Infrastructure Services Department, Grantfield, Lerwick, ZE1 ONT. Telephone: (01595) 744800. E – mail: [planning.control@shetland.gov.uk](mailto:planning.control@shetland.gov.uk).

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. Where appropriate the Council may seek to rely on the exemptions from disclosure of information provided under Section 34 and 36(2) of the 2002 Act.

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.

Some complaints, such as neighbour disputes over boundaries, relate to matters over which the planning service has no control and cannot be investigated.

#### 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:

- 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. 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.

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.

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.

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Members of the public who provide written 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. Members of public who provide information by phone will be contacted by phone, but can receive a formal response on request.

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 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.

## 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.

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Where a planning breach cannot be resolved and action is justified, a formal notice will be served.

This begins with a relevant notice (usually either an enforcement or breach of condition notice - see enforcement powers below) being served on those involved in the development. 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 Government's Directorate for Planning and Environmental Appeals. 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.

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.

Details of enforcement notices, breach of condition notices and stop notices are entered into an Enforcement Register. You can inspect these documents at the Council's Legal Services Section, Market Street, Lerwick.

## 6. MAKING A SUGGESTION OR 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.

Details of the Council's complaints procedure are available from the office and [www.shetland.gov.uk](http://www.shetland.gov.uk).

## 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.opsi.gov.uk](http://www.opsi.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 Government 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.