



Planning Enforcement Charter

a guide to enforcing planning controls

March 2020



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1. Introduction

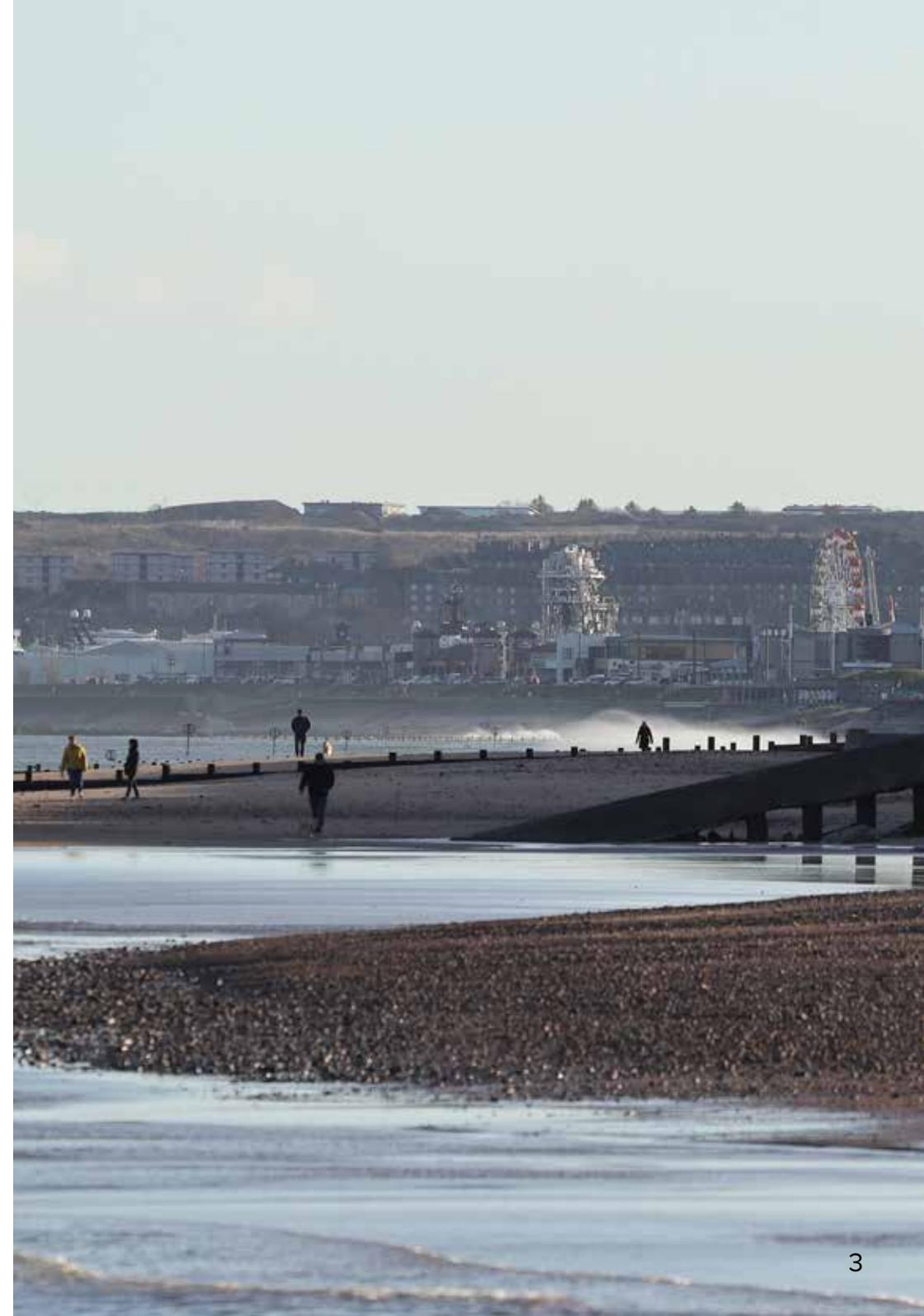
In Scotland, you need planning permission for most development, except for some minor works (known as permitted development). Sometimes however, someone may carry out work without planning permission, or they don't follow the permission they have been given. The credibility of the planning system depends on effective enforcement action.

This charter outlines how the planning enforcement system operates and the standards of service that we seek to achieve when enquiries are made. Like all Councils in Scotland, Aberdeen City Council has legal powers to enforce planning controls. We do this where we believe that it is in the public interest to do so. We also monitor development that has been given permission, to make sure that it is in line with the approved plans and any conditions that may apply.

Enforcement is one of the most complex parts of the planning system, but it is something that concerns many people and may be their first experience of the planning process. We therefore encourage you to play a role by letting us know if you think planning controls may have been broken.

In Scottish Planning Policy the Scottish Government sets the upholding of the law and the terms of planning decisions as one of the core values expected of the Planning Service. The Council has statutory powers to investigate breaches of planning control and breaches of planning conditions. Formal action can be taken where a satisfactory outcome cannot be achieved by negotiation. A planning authority is not necessarily required to take action in respect of a breach of planning control and any action that is taken must be reasonable and proportionate to the breach.

THIS CHARTER SETS OUT THE PLANNING ENFORCEMENT POWERS CURRENTLY AVAILABLE TO THE COUNCIL AND EXPLAINS HOW WE INTEND TO USE THEM.



A planning authority may issue an enforcement notice where it appears to them to be expedient to do so, having regard to the development plan and to any other material planning considerations.

It is important to remember that a breach of planning control is not a criminal offence unless an enforcement notice has been issued and not complied with. The aim is to resolve breaches rather than punish those who carried out the work. This may be achieved through a retrospective planning application, for example.



2. Identifying and reporting possible breaches of planning control

Members of the public have a vital role to play in the enforcement system by reporting breaches of planning control to us. If you are concerned that someone is carrying out work without permission, or that the works are not in line with the related planning permission, please contact the Enforcement Section of our Development Management Team within Strategic Place Planning. You can phone or email us on the contact details found at the end of this document.

Possible breaches of planning control can include:

- **work being carried out without planning permission or other consent (this includes conservation area consent, listed building consent or advertisement consent);**
- **unauthorised change of use of land or buildings;**
- **undertaking development which is not in line with the approved plans or consent;**
- **carrying out work which is not in line with conditions attached to a permission or consent; or**
- **carrying out work to trees that are protected by a planning condition, a Tree Preservation Order, or by virtue of their location in a Conservation Area.**

The Council does not have the staff resource to actively monitor the implementation of consents or search for breaches of planning control and it is therefore useful if members of the public report information to the planning service if they think that a breach of planning permission has taken place.

You can check if works have consent online through the Council's Planning Portal using the site address:

<https://publicaccess.aberdeencity.gov.uk/online-applications/search.do?action=simple&searchType=Application>

The following information is important and helpful to us when you report a suspected breach in planning control.

- **the address or location of the property or land concerned;**
- **details of the suspected breach of planning control (for example, the nature of the building work or activities being carried out and information on who may be responsible for it); and**
- **dates and times of when the activity is carried out, where appropriate.**

If the suspected breach in planning control directly affects you, or you simply wish to know the outcome of our investigation, please also provide us with contact details for yourself including:

- **your name, telephone number, address and e-mail address (if submitted online).**

In accordance with the Environmental Information (Scotland) Regulations 2004 we will treat the identity of complainants in confidence. We will only release information regarding the identity of a complainant where it is in the public interest to do so, as a result of a ruling by the Scottish Information Commissioner or directed to do so by a court of law.

It is important to understand that planning enforcement is a discretionary power. This means that it is for the Council to determine if it is appropriate to exercise that power. Even if there is a breach of planning control, the Council must consider if it is in the public interest to take enforcement action. In doing so, the Council will consider the level of material 'harm' that the unauthorised development is causing, or, is likely to result in. Although not exhaustive, 'harm' in planning terms can include:



- **impact on the character and appearance of the built and natural environment;**
- **loss of protected trees;**
- **loss or damage to a listed building and demolition of buildings in a conservation area;**
- **impact on amenity including privacy, daylight, overshadowing, noise.**

It may be that these matters require to be properly considered through a planning application.

Some enquiries are about matters that are not breaches of planning control; these may be civil/legal matters, fall under different legislative regimes or cannot be controlled or conditioned through the powers available to planning. These can include the following:

- **private dispute over landownership/title deeds/right of access/maintenance;**
- **devaluation of property;**
- **loss of view;**
- **competition between businesses;**
- **on street parking or allocation of parking spaces.**

Where appropriate, planning will pass enquiries onto the relevant Council service to investigate.

3. Time-Limited Procedures

In some cases, the Council is time-barred from taking enforcement action. The time is limited to four years for enforcement action for “unauthorised operational development” (i.e. the carrying out of building, engineering, mining or other operations in, on, over or under land) and change of use to a single dwelling house. This could include development such as replacement windows, extensions or satellite dishes. ‘After four years following the breach of planning control, the development becomes lawful and no enforcement action can be taken’

A time limit of ten years for enforcement action applies to all other development including change of use (other than to a single dwelling house) and breaches of conditions, after which the development becomes lawful if no enforcement action has been commenced within the 10-year time limit.

There is no time limit for breaches of Listed Building Control (works undertaken to a Listed Building).

You can read further information on the use of enforcement powers on the Scottish Government website at: <https://www.gov.scot/publications/planning-enforcement-charter-guide-enforcing-planning-controls/>

Planning enforcement also covers the display of advertisements such as signs, billboards and advertisement hoardings, although slightly different procedures will apply). Planning control does not cover the actual content of an advertisement, and any complaints about this should be made directly to the Advertising Standards Authority.

4. Monitoring planning conditions

In a large number of cases, conditions will be included within the decision notice attached to the granting of permission. These conditions are part of the approval and must be met in order for the development to be considered lawful.

Monitoring these conditions is undertaken by the Enforcement Section of our Development Management Team. However, as we grant such a large number of permissions each year, it is not possible for the Council to monitor all conditions at all times.



5. Planning enforcement: our processes

Any information that we receive is checked to ensure that the matter raised firstly involves a possible breach of control and secondly includes all the details we need for a possible investigation. After these preliminary checks, the complaint will be registered. We will then send an acknowledgement by letter or e-mail to the person who made the complaint.

When a complaint is registered, it is recorded on the Council's Enforcement Register and delegated to the appropriate officer. Complaints relating to previous / ongoing applications will generally be dealt with by the Planning Officer responsible for that application. The Council's Tree Officer will deal with complaints relating to tree works.

A member of the Planning Service will then visit the site in order to establish if a breach has occurred, and if so, to what extent. The main concern when investigating any breach is whether the development or activity requires planning permission, or breaches a planning permission or planning condition, or has a harmful effect on the area. Where this is the case, we must then decide if action is needed. In some cases, additional investigation or consultation with external bodies (such as Historic Environment Scotland) may be needed.

Throughout this investigative process, we will provide regular updates to the complainant on the progress of the case or the outcome of the investigation. Example outcomes may include the submission of a retrospective planning application, or confirmation that an operation may be exempt from planning control.

Enforcement investigations and any related discussions or meetings will be clearly documented by the appropriate officer in the electronic case file to ensure transparency and clarity in the process.

If it is decided that an unacceptable breach has occurred, there are three main routes that we may take:

Negotiate a Solution: we will encourage the person responsible for the breach to resolve the problem through discussion and negotiation. They may either choose to stop the activity and carry out work to correct the problem, or they may wish to submit a retrospective application. The time afforded to the person responsible to undertake either of these actions will depend on the severity of the breach and its impact.

Retrospective Application: a retrospective application is an application for development that is submitted after the work has actually started or has been completed. It should be noted that an owner or developer should never carry out work with the expectation of getting retrospective permission for the work. To do so is taking a considerable risk and may lead to formal enforcement action.



Formal Enforcement Action: where a breach in planning control is considered to have caused unacceptable harm to the area, and where negotiations have failed to deal with the problem successfully, we will typically pursue formal enforcement action. This may also occur if we have received a retrospective application that is considered to be unacceptable in planning terms and cannot be rendered acceptable by applying conditions to a planning approval.

When considering taking formal enforcement action, we will take the following into account:

- **the Development Plan, enforcement policies and relevant Scottish Government Circulars;**
- **the severity of the breach and its impact on the surrounding area, including:**
 - ▲ **visual impact;**
 - ▲ **environmental impact;**
 - ▲ **effect on residential amenity; and**
 - ▲ **effect on road safety.**

Current Council priorities will also be relevant in determining whether to pursue enforcement action, for example the current focus on regeneration in Aberdeen City Centre may result in amenity notices being served on properties on Union Street.

Service standard

The most significant breaches of planning control will be given highest priority to ensure the most effective use of the staff resource available in the enforcement team to rectify breaches that are in the long term public interest. Such cases include:

- **significant negative effects on amenity;**
- **those which have a negative impact on the amenity of the City Centre**
- **breaches of condition for major developments;**
- **damage to listed buildings; and**
- **unauthorised felling of, or damage to trees protected by tree preservation orders.**

If you provide us with information, you will receive a formal response within the timescales set out in the customer charter. (See below)

Following our investigation, you will also be advised of any proposed action to be taken. This may include the need for additional investigation prior to deciding on a course of action.

We will let you know 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. 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 cause considerable frustration to those people who have submitted information, particularly if they consider their amenity is affected. Throughout this investigative process, we will provide regular updates to the complainant on the progress of the case or the outcome.

6. 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 to punish mistakes. The planning authority must consider each case on its merits and decide on the best solution. We are will not? take formal action, for example, over developments which we consider to be acceptable in planning terms. It may be more appropriate in such cases for us to ask for a retrospective planning application to be submitted.

Only a relatively small number of cases require formal enforcement action. This begins with either an enforcement notice or a 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; and**
- **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 Planning and Environmental Appeals Division (DPEA). 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 cant think of a circumstance were we wouldn't serve?. 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.

If someone does not comply with a notice, we may take 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**

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. These 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, wasteland notices and stop notices are entered into an Enforcement Register. You can inspect these documents in our offices.

The Council has powers to enter any land to:

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

7. Enforcement and advertisements

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 advertisement consent providing 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 for unauthorised advertisements. 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 without permission would be considered as a breach of the notice.

Planning control does not cover the actual content of an advertisement. Any complaints about this (for example the use of language or symbols which are perceived to be offensive) should be made to the Advertising Standards Authority.

8. Making a suggestion or complaint

Aberdeen City 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.

If you would like to make a complaint about how we have followed our procedures and/or failed to comply with the levels of service set out in this Charter, the following course of action is recommended:

- **Please contact the officer dealing with the enforcement case to discuss your complaint in the first instance**
- **If you need to find out who to contact, please telephone our general enquiries number below or email the address shown below and your complaint will be directed to the appropriate person**
- **If you are not satisfied with the response to the complaint, please contact the officer's line manager, details are on the website of the Council's website.**

If you are still not satisfied your complaint will be dealt with in accordance with the Council's Corporate Weblink to <https://www.aberdeencity.gov.uk/services/have-your-say/make-complaint>. This is also available on paper at Marischal College.

This charter does not comprise an authoritative interpretation of the planning acts.

Planning legislation is complex and therefore if you are in receipt of any formal notice from the council you are advised to seek legal or independent professional planning advice.



9. Enforcement powers

Planning Enforcement powers are set out in Part VI of the Town and Country Planning (Scotland) Act 1997, in part VII, regulations 24 to 26A of the Town and Country Planning (Control of Advertisements)(Scotland) regulations 1984, and in Chapter IV of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

The Planning (Scotland) Act 2019 has introduced charging orders to assist in the recovery of costs to the Planning Authority in association with enforcement notices in order to remedy a breach of planning control.

The Planning Authority will also monitor compliance with planning permissions for major developments, with details of how conditions have been discharged uploaded to the associated planning application file, which can be reviewed on our website. Such monitoring is particularly important in relation to conditions placed on ongoing operations and restoration, for example in relation to quarrying operations.

Government policy on planning enforcement is set out in Circular 10/2009: Planning Enforcement. The Planning Acts and this publication are available online.

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); the steps that must be taken to remedy the breach and the time for this to be completed. There is a right of appeal, during which the terms of the notice will be 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 £50,000 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 like 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 to an unlimited fine or even 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, however, be made against the accompanying enforcement notice. If a stop notice is served without due cause, or an appeal against the www.aberdeencity.gov.uk/planning 10 a guide to enforcing planning controls 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.

Temporary Stop Notice - A temporary stop notice requires the immediate cessation of an activity from the moment it is displayed on a site. Typically, a temporary stop notice would be used to stop an activity that would, in the planning authority's view, cause damage to the environment and/or local amenity. The temporary stop notice might not prohibit the activity over the entire site; for example, it might instead restrict it to certain areas or times.

Other Powers

Planning Contravention Notice - under Section 272 (of the Town and Country Planning (Scotland) Act 1997), 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, a person with any other interest in the land or someone 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.

Amenity Notice - under Section 179 (of the 1997 Planning Act) - 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. It 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.

Advert Removal Notice - under Section 187 (of the 1997 Planning Act) - this allows planning authorities to remove or obliterate certain advertisements.

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.

Discontinuance Notice - having regard to the provisions of the Development Plan, and to any other material considerations, the Planning Authority may consider serving this Notice to discontinue the use of land, or impose conditions on the continued use of the land, or that any buildings or works should be altered or removed.

Request the Submission of a Planning Application - Section 33A of the 1997 Act (introduced by section 9 of the 2006 Act) gives planning authorities the power to issue a notice requiring a retrospective planning application to be submitted.

Fixed Penalty Notice - Where a planning authority believes that a person is in breach of an enforcement notice or breach of condition notice, it may issue that person with a fixed penalty notice. They may do so on condition that: the notice is served within the six months period immediately following the compliance period stated in the enforcement notice; and that no prosecution proceedings have been started in respect of the breach.



10. Performance Targets

The Development Management weblink contains our performance targets:

Performance Indicator	Target
Telephone calls answered within 6 rings	85%
Telephone message returned by the end of the next working day	85%
Response to written correspondence received within 10 working days	90%
Response to formal emails within 10 working days	85%
Response to informal emails by the end of the next working day	85%
Visitors to reception with an appointment seen by an officer within 5 minutes of their appointment	90%
Visitors to reception without an appointment seen by an officer within 10 minutes	85%

11. How to contact us

T: 01224 523470

E: pi@aberdeencity.gov.uk

W: www.aberdeencity.gov.uk/services/planning-and-building

Our address:

Development Management
Strategic Place Planning
Commissioning
Business Hub 4
Ground Floor North
Broad Street
Aberdeen
AB10 1AB

Development Management Manager: **Daniel Lewis**

Chief Officer – Strategic Place Planning: **Gale Beattie**

Opening Hours: Monday to Friday 8:30 am – 5 pm
(except for public holidays)

12. Useful Links

Aberdeen City Council planning information:

<https://www.aberdeencity.gov.uk/services/planning-and-building>

Aberdeen City Council Corporate Complaints procedure:

<https://www.aberdeencity.gov.uk/services/have-your-say/make-complaint>

Scottish Government Planning - for legislation:

www.scotland.gov.uk/Topics/Built-Environment/planning

Strategic Place Planning, Marischal College, Business Hub 4,
Ground Floor North, Broad Street, Aberdeen AB10 1AB

