

Planning Enforcement Charter (Draft Update May 2024)

a guide to enforcing planning controls

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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 explains the purpose of the Council's planning enforcement service, the process for handling enquiries, and sets out the standards of service we seek to achieve. It also explains where planning enforcement has no remit. 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.

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 act in respect of a breach of planning control and any action that is taken must be reasonable and proportionate to the breach.

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 of

planning enforcement is to resolve breaches rather than punish those who carried out the work. This may be achieved through a retrospective planning application, for example.

This charter sets out the planning enforcement powers currently available to the Council and explains how we intend to use them.

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.

Government policy on planning enforcement is set out in Circular 10/2009: Planning Enforcement.

Identifying and reporting possible breaches of planning control

Reporting a breach of planning control

Members of the public have a vital role to play in the enforcement system by reporting breaches of planning control. If you are concerned that someone is carrying out work without permission, or that the works are not in line with a related planning permission, please contact the Enforcement Team of our Development Management Team within Strategic Place Planning. The preferred method is through filling in the online webform, which is available on our website: [insert link]. This will ensure that all necessary information is submitted. Alternatively, you can phone or email us to discuss any potential breaches of planning control.

The following information is important 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);
- Photographs of the potential breach of planning control; and
- Dates and times of when the activity is carried out, where appropriate.

Be aware that we cannot investigate anonymous complaints. Only in exceptional circumstances will anonymous complaints be taken into consideration, for example if it results in significant harm to public amenity or public safety.

You can request that your correspondence be treated as confidential. However, whilst we will do our best to honour such requests, this is subject to the requirements of the Freedom of Information (Scotland) Act 2002 and the Environmental Information

(Scotland) Regulations 2004. Any requests for complete confidentiality may limit our ability to take formal action and we cannot guarantee this if the case leads to court proceedings.

What is a breach of planning control?

Possible breaches of planning control, and what the Enforcement Team will investigate, include:

- The erection of buildings and structures without planning permission, or development not in accordance with approved drawings;
- Works to listed buildings without listed building consent and/or planning permission;
- The change of use of land or buildings without planning permission;
- Carrying out of engineering works without planning permission (for example engineering works would include infill or excavation greater than 0.5m);
- Non-compliance with planning conditions;
- Display of advertisements without advertisement consent;
- Works to or felling of protected trees which are the subject of a Tree Protection Order (TPO) or are located in a conservation area without consent;
- Neglect to land or buildings which causes significant harm to public amenity.

The following does not constitute a breach of planning control, and will not be investigated by the Enforcement Team:

- Disputes over landownership, title deeds, rights of access and/or maintenance;
- Devaluation of property;
- Loss of view;
- Competition between or overprovision of businesses;
- On-street parking, allocation of parking spaces or road closures;
- Unsafe buildings and structures;
- Site working practices, including hours of construction;
- Noise complaints and hours of operation (unless specified in a planning condition); and
- Light pollution.

Some of the above matters would be civil/legal matters, and others would fall under different legislative regimes. Where appropriate, the Enforcement Team will pass enquiries onto other relevant Council Services to investigate.

Time-Limited Procedures

Where a breach of planning control has occurred, time limits apply to pursuing enforcement action. This means that where a breach has been in place for a specified period, and no enforcement action has started, the Enforcement Team cannot take any further action. The following time limits apply:

- A four year limit: This applies to a change of use to a single dwelling house and for 'unauthorised operational development'. This is the carrying out of building, engineering, mining or other operations in, on, over, or under land. This could include development such as replacement windows, extensions and the erection of outbuildings. After four years following the initial breach of planning control, 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 dwelling house) and breaches of condition. After ten years following the initial breach of planning control, no enforcement action can be taken.

Listed Buildings

Any works related to the demolition of a listed building, its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest requires listed building consent.

There is no time limit in relation to unauthorised works to a listed building, and these do not become immune from enforcement action. In taking a view on works that are relatively old, the Council will have regard to the nature of the works and whether they have previously given rise to complaints.

It is also important to note that if works to a listed building constitute development, separate planning permission may also be required. Where unauthorised works constitute a breach of both planning and listed building control, the Council can act in respect of either or both breaches.

Advertisements

Enforcement also covers the unauthorised physical display of advertisements such as hoardings, banners, billboards and fascia signs. The display of advertisements is covered by the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984. A wide range of signs and advertisements can be displayed without having to apply for advertisement consent if they meet certain criteria and conditions, and if the landowner has given permission for the advertisement to be displayed on their property. This is known as deemed consent. Advertisements which are displayed without authorization or deemed consent constitute a breach of advertisement control. Adverts which are attached to and affect the character of a listed building will also require listed building consent.

It is important to note that the actual content of an advertisement is not covered by planning control. any complaints about this should be made directly to the Advertising Standards Authority. [add in weblink]

It is important to note that a breach of planning control is not a criminal offence. However, a breach of listed building control or advertisement control is a criminal offence.

Trees

Works to or felling of protected trees which are the subject of a Tree Protection Order (TPO) or are located in a conservation area without consent also constitute a breach of planning control. In the first instance, the Council's Environmental Policy Team will deal with complaints relating to tree works. However, these can be reported through the same methods as any other breaches of planning control.

Engineering works

The point where an engineering operation constitutes development is not specifically defined in legislation. However, as a rule of thumb, the Council considers works raising or lowering ground by 0.5m or more to constitute development, and this would require planning permission.

Reporting

The Council does not actively monitor the implementation of consents or search for breaches of planning control and relies on members of the public to report potential breaches. Before reporting a possible breach, you should use the Council's [online planning](#) portal to check if the works have the appropriate consents. If you still believe there is a breach, you should submit an enforcement enquiry through the online webform [add in weblink] or via email to pi@aberdeencity.gov.uk providing as much information as possible.

Planning Enforcement: Our Processes

Our Approach to Enforcement

The Planning Authority has statutory powers to investigate alleged breaches of planning control and to take enforcement action where it is expedient to do so, having regard to the development plan and to any other material planning considerations.

It is important to understand that planning enforcement is a discretionary power, and it is for the Council to take a view on whether 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 breach is causing, or is likely to cause. 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.

Council-Owned Land

Sometimes breaches of planning control occur on land which is under the ownership and control of the Council. In these circumstances it is not expedient to take formal planning enforcement action. The Enforcement Team will work with other relevant Council services to try and secure an appropriate resolution.

Receipt of breach of planning control

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

A member of the Planning Service will then 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 valid planning permission or planning condition or has a harmful effect on the area. In some cases, additional investigation, or consultation with external bodies (such as Historic Environment Scotland) or other Council services may be needed.

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

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

1. Negotiate a Solution: We will encourage the person responsible for the breach to solve the problem through discussion and negotiation. They may either choose to stop the activity and/or carry out work to correct the problem. The time given to either of these actions will depend on the severity of the breach and its impact.
2. Retrospective Application: A retrospective planning application is an application for development that is submitted after the work has 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. There is no guarantee that a retrospective application will be approved.

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

- The Development Plan;
- The severity of the breach and its impact on the surrounding area, including:
 - the visual impact,
 - the environmental impact
 - the effect on residential amenity; and
 - the effect on road safety.

The length of time required to resolve a case or act can be affected by several factors. Progress can be delayed to gather further evidence, to allow negotiations to take place or to conclude formal procedures. Similarly, an application to regularise the breach of control or an appeal against a decision of the planning authority can also delay the 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.

Formal Enforcement Action

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 Council must consider each case on its merits and decide on the best solution. We are unlikely to 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. All 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. There is no right of appeal against a breach of condition notice.

If someone does not comply with a notice, we may take further action. This can include a range of 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, amenity notices and stop notices are entered into an Enforcement Register. You can inspect these documents [online](#).

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.

Types of Notice

Enforcement Notice - This notice is generally used to deal with unauthorised development and/or change of use. An Enforcement Notice will specify a time period to take effect (usually a minimum of 28 days); and will specify what steps must be taken to remedy the breach and the period by which these steps must be completed. There is a right of appeal against an Enforcement Notice, and the terms of the notice are suspended until a decision is reached on the appeal to the Scottish Ministers. Failure to comply with the terms of an Enforcement Notice within the time specified is an offence and may lead to the imposition of a fine in the Sheriff Court.

Listed Building Enforcement Notice - Used when unauthorised works have been undertaken to a listed building. This must be served on the current owner, lessee, occupier and on anyone else with an interest in the property. The procedures involved are like those outlined above. The notice must specify the steps to be taken to remedy the breach and specify a final date for compliance. If the current owner fails to meet the terms of the notice by the date specified, they are guilty of an offence. There is a right of appeal to Scottish Ministers against the notice. Breaches of listed building controls are a serious matter. It is a criminal offence to undertake unauthorised works to demolish, significantly alter or extend a listed building, and this could, in certain circumstances, lead to either an unlimited fine or imprisonment.

Advertisement Enforcement Notice – Used when an unauthorised advertisement is displayed. This must be served on the current owner, lessee, occupier and anyone else with an interest in the property. The procedures involved are like those outlined for an Enforcement Notice. The notice must specify the steps to be taken to remedy the breach. The notice should specify the time period for compliance. This is normally set at 28 days. 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.

There is a right of appeal to Scottish Ministers against the notice. Similar to a breach of listed building control, a breach of advertisement control is a criminal offence and the Courts can impose a fine.

Breach of Condition Notice - Makes provision for enforcing the conditions to which any planning permission is subject. It is effective on the date of service. It may be used as an alternative to an enforcement notice 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 against this notice. Those receiving the notice may make representations to the planning authority if they believe the notice to be unreasonable. Summary prosecution in Court is available for contravening a breach of condition notice.

Fixed Penalty Notices - Where an Enforcement Notice (or Breach of Condition Notice) has been served and has not been complied with, the Council can serve a Fixed Penalty Notice on the recipient of the notice. The fine is £2000 for a Fixed Penalty Notice relating to a Planning Enforcement Notice and £300 in respect of failure to comply with a Breach of Condition Notice. There is no right of appeal against these notices, although timeous payment prevents the council from reporting the non-compliance with the original notice to the Procurator Fiscal.

Stop Notice - This is only used in particularly urgent or serious cases where unauthorised activity must be stopped. This is usually where there are implications for public safety or a significant impact on public amenity. A Stop Notice is served with an Enforcement Notice. A Stop Notice cannot prohibit the use of a building as a dwellinghouse or prohibit the carrying out of any activity if the activity has been carried out for a period of more than four years. If a Stop Notice is served without due cause, or a subsequent appeal against a parallel Enforcement Notice is sustained, the Council may be open to claims for compensation. The use of Stop Notices therefore needs to be carefully assessed by the Council. There is no right of appeal against a Stop Notice, and failure to comply with its terms is an offence.

Temporary Stop Notice – In certain cases where a breach of planning control is considered to have a severe impact on amenity, a Temporary Stop Notice can be served. These do not require to be accompanied by an Enforcement Notice and last for a maximum of 28 days.

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.

Other Powers

Planning Contravention Notice – Used to obtain information about activities on land where a breach of planning control is suspected. It is served on the owner or occupier of the land in question; on a person with any other interest in the land; or on a person who is using or carrying out operations on the land. Those who receive a Planning Contravention Notice are required to provide specific information about development or operations being carried out on the land or relating to conditions or limitations which apply to any planning permission granted in respect of the land. Supplementary information or representations on the matters raised in the notice may also be requested. 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 – Section 179 (of the 1997 Planning Act) allows planning authorities to serve a notice on the owner, lessee or occupier of land which is adversely affecting the amenity of an 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.

Power to Enter Land – The Council has powers to enter land to find out if there has been a breach of planning control, to check whether there has been compliance with a formal notice, or to check whether 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.

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.

Removal and Obliteration of Placards and Posters – The Council has powers to remove or obliterate placards and posters that do not have express or deemed advertisement 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.

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 advice.

Monitoring Major Developments

The Planning (Scotland) Act 2019 introduces provision for Planning Authorities to set out how they monitor and record compliance with planning permission for major developments.

It is primarily the responsibility of the developer to ensure they are following the terms of a permission. Where permission has been granted subject to conditions which prohibit the commencement of development on site, Officers undertake to ensure that these conditions are complied with. Information relating to the compliance with conditions is recorded in the application file and is available to view via the planning portal.

Aberdeen City Council monitor compliance with such planning permissions by actively engaging with developers and their agent. As part of the process on site reviews of relevant ongoing developments is undertaken. The findings of those monitoring activities are recorded and displayed to the public on the Council website, published quarterly.

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:

1. Please contact the officer dealing with the enforcement to discuss your complaint in the first instance
2. If you need to find out who to contact, please use the contact details below, and your complaint will be directed to the appropriate person
3. If you are not satisfied with the response to the complaint, please contact the officer's line manager
4. If you are still not satisfied your complaint will be dealt with in accordance with the Council's Corporate Complaints Procedure. This is also available on paper at Marischal College.

How to contact us

T: 01224 053746

E: pi@aberdeencity.gov.uk

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

Our address:

Development Management

Strategic Place Planning

City Regeneration & Environment

Marischal College

Ground Floor North

Broad Street

Aberdeen

AB10 1AB

Development Management Manager: Daniel Lewis

Chief Officer – Strategic Place Planning: David Dunne

Appendix 1: Useful Links

Aberdeen City Council planning information:

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

Aberdeen City Council Corporate Complaints procedure:

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

Scottish Government Planning - for legislation:

www.gov.scot/policies/planning-architecture

Scottish Government Circular in relation to permitted development for residential properties:

<https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2021/04/householder-permitted-development-rights-guidance-updated-2021/documents/guidance-householder-permitted-development-rights-updated-2021/guidance-householder-permitted-development-rights-updated-2021/govscot:document/guidance-householder-permitted-development-rights-updated-2021.pdf?forceDownload=true>

Appendix 2: Service Standards

- By publishing our standards and targets, we aim to improve our enforcement service so that we can respond to the needs of the public. We will monitor the contents of this charter to ensure that we are meeting our standards and targets.
- The most significant breaches of planning control will be given top priority to ensure the most effective use of the staff resource available in the enforcement team to rectify breaches that affect long term public interest. such cases include:
 - significant negative effects on amenity;
 - breaches of condition for major development;
 - damage to listed buildings;
 - breaches on Union Street and City Centre; 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.
- 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.
- Where a planning breach cannot be resolved and action is justified, a formal notice will be served in most cases. this will be either an enforcement notice or a breach of condition notice. The notice will explain what is required, the timescales involved and the available options to resolve the issue.
- 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.
- This charter does not compromise an authoritative interpretation of the planning acts.