

# PLANNING ENFORCEMENT CHARTER



West Lothian  
Council

# Contents

INTRODUCTION .....	3
WHAT IS A BREACH OF PLANNING CONTROL? .....	4
PLANNING BREACHES.....	4
NON PLANNING BREACHES.....	4
PRINCIPLES OF GOOD ENFORCEMENT.....	5
HOW WE INVESTIGATE POSSIBLE BREACHES OF PLANNING CONTROL.....	6
Registration.....	6
Priorities.....	6
Investigation.....	7
Closing an enforcement complaint .....	7
WHAT HAPPENS WHEN A BREACH IS CONFIRMED? .....	7
INITIAL ACTION.....	7
Voluntary Compliance through Negotiation .....	7
Retrospective Planning Application .....	7
No Further Action.....	8
FORMAL ACTION.....	8
Enforcement Notice .....	8
Temporary Stop Notice .....	8
Stop Notice .....	8
Breach of condition notice.....	8
Notice requiring application for planning permission .....	8
Notice requiring information as to interests in land .....	9
Planning Contravention Notice.....	9
Amenity Notice.....	9
Listed Building Enforcement Notice.....	9
Advertisement enforcement notice.....	9
Advertisement Discontinuance Notice.....	9
Replacement Tree Notice .....	9
Interdict.....	10
WHAT HAPPENS AFTER A NOTICE IS SERVED?.....	10
Fixed Penalty Notice .....	10
Direct Action .....	10
Prosecution.....	10
IMMUNITY FROM ENFORCEMENT ACTION .....	11

Time Limits.....	11
Lawful Development Certificates .....	11
WHAT HAPPENS IF YOU ARE THE SUBJECT OF AN INVESTIGATION? .....	11
REPORTING BREACHES OF PLANNING CONTROL.....	12
MAKING A SUGGESTION OR COMPLAINT ABOUT THE ENFORCEMENT SERVICE ....	13
FURTHER INFORMATION – ENFORCEMENT POWERS .....	13
APPENDIX 1 - PLANNING ENFORCEMENT SERVICE STANDARDS .....	14

# INTRODUCTION

Planning permission is required for all development that takes place in Scotland, but some of it is 'permitted development' and, therefore, does not require a planning application. Sometimes, however, landowners, developers or householders carry out development which does requires planning permission without submitting an application or having their application approved, or fail to keep to the terms of a permission which has been granted.

Councils, as Planning Authorities, 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.

Enforcement is one of the most complex parts of the planning system and can affect many members of the community. Therefore, it is important that the council's adopted procedures are fair, reasonable, and consistent, and that interested parties are fully aware of the procedures involved in the process, the powers available to the council, and the limits of those powers.

The aim and objectives of the Planning Enforcement Charter are, therefore, as follows:

- To provide a framework for the investigation of alleged breaches of planning control.
- To set out the range of action that can be taken where it is considered appropriate to do so.
- To monitor proactively the implementation of planning permissions.

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 is not achieved by negotiation. However, enforcement is a discretionary power which 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 obliged to take any particular action on a specific breach of planning control and, indeed, can decide that no action is necessary. There is also a right of appeal and the council should have regard to the likelihood of a case being sustained at appeal before it commences such action.

We hope you will find this charter useful. Please let us know if you think it is unclear or have any suggestions about how we could improve the service further.

# WHAT IS A BREACH OF PLANNING CONTROL?

## PLANNING BREACHES

The majority of planning enforcement investigations involves one of the following alleged breaches:

- Building work or engineering operations carried out without planning permission;
- Unauthorised change of use of land or buildings;
- Development which has not been carried out in accordance with an approved planning permission;
- Failure to comply with a condition or legal agreement attached to a planning permission; or
- Any contravention of permitted development rights, which are set out in the [General Permitted Development Order](#).
- Demolition taking place in conservation areas where permission is required;
- Works carried out to a listed building which affect its historic character or setting, without listed building consent being granted;
- Removal of, or works carried out, to protected trees without consent being granted or proper notification given; and
- The unauthorised display of advertisements. (Please note that the wording and images on an advertisement are not covered by planning control, but by the Advertising Standards Authority, Mid City Place, 71 High Holborn, London WC 1V 6QT. Complaints should be sent to [enquiries@asa.org.uk](mailto:enquiries@asa.org.uk) or online at [www.asa.org.uk](http://www.asa.org.uk))

## NON PLANNING BREACHES

The council regularly receives correspondence about matters which are not breaches of planning control. While the Planning Enforcement Team may not be able to deal with such matters there may be other legislative controls open to a complainant. The most common examples are:

- Neighbour nuisance, boundary and land ownership disputes. These are civil matters rather than planning matters. Further advice can be obtained from a solicitor, or, if the property is owned by the council, [Property Services](#) should be contacted.
- Unauthorised development on the highway, footway or verge that is covered by highway legislation is the responsibility of the council's [Roads and Transportation Service](#).
- [Dangerous structures](#) are investigated by [Building Standards service](#).
- Anti-social behaviour including noise and smell are the remit of the council's [Environmental Health service](#).

These services can also be contacted via the Council's Customer Contact Service on 01506 280000.

If we receive a complaint which involves another council service we will pass it to the relevant service and we will inform you who we have contacted on the matter. If it involves an external agency - an agency out with the council - we will advise you who should be contacted.

## PRINCIPLES OF GOOD ENFORCEMENT

The council does not condone the carrying out development without having first established the requirement for, and then having obtained the necessary planning permission or approvals. That said, the main purpose of the Planning Enforcement Team is not to punish mistakes but to remedy the undesirable effects of unauthorised development, particularly on the amenity of neighbours, to bring unauthorised activities under control as soon as practicable and to maintain public confidence in the credibility of the planning system. It is important to be aware that planning enforcement is a discretionary power and that it is for the council to take a view on whether or not to exercise that power. In making that decision the council will carefully consider whether the degree of harm the unauthorised development is causing, or is likely to cause, warrants its intervention.

'Harm' can be defined in many different ways but is generally considered to arise through a combination of factors, including;

- Adverse impact on visual amenity due to poor design or inappropriate materials.
- Loss of privacy or overshadowing and loss of natural light.
- Inappropriate development that is harmful to the landscape or the setting of a heritage asset.
- Untidy land and run down or derelict buildings that present a very poor quality environment and/or prejudice community safety.
- Failure to comply with a condition of a planning permission leading to an adverse impact on amenity.
- Danger and disturbance due to significantly increased traffic flows.
- Loss of protected trees.
- Loss or damage to listed buildings and demolition of buildings in a conservation area.
- Disruption or nuisance arising from the construction or operation of the development.

Harm, for the purposes of planning, does not however include:

- Breaches of title deeds or restrictive covenants.
- Private disputes.
- Competition between businesses.
- Ownership disputes, loss of an individual's view or trespass onto their land.
- Damage to property.
- Reduction in value of land or property.
- Loss of a view.

The council follows these guiding principles in relation to planning enforcement:

- Consistency:* To ensure that similar enforcement activities are dealt with in the same manner.
- Fairness:* To ensure equitable and fair enforcement.
- Proportionality:* To ensure that enforcement action relates directly to the degree of breach of planning control.
- Clarity:* To ensure that any enforcement action taken by the council is easily understood by citizens, organisations and businesses.
- Equality:* To ensure that any decision is not influenced by the ethnic origin, gender, age, religious or political beliefs or sexual orientation of the offender or interested parties.

Provided that there is the prospect of an appropriate resolution being achieved, and in a timely manner, the council will first seek to negotiate compliance before pursuing formal enforcement action in all but the most serious cases. Negotiations aim to achieve one or more of the following outcomes:

- To have the developer undertake work to comply with the planning permission granted.
- To have the owner / developer apply for retrospective planning permission for the works undertaken, or a variation to the works that are more likely to secure permission.
- To remove an unauthorised development.
- To cease an unauthorised use.
- To remove disruption or nuisance arising from the construction or operation of the development.

However, negotiations will not be allowed to impede or delay whatever formal enforcement action may be required to make the development acceptable in planning terms, or to compel it to stop.

**In considering whether to take enforcement action, the decisive issue for the council will be whether the breach of planning control would unacceptably affect amenity. In other words, the council will need to be satisfied that the breach of planning control is causing harm, and that enforcement action to remedy that harm would be in the public interest, and ultimately defensible if the action is appealed or otherwise challenged. The council will not take enforcement action solely to regularise an otherwise acceptable development which is causing no demonstrable harm.**

## **HOW WE INVESTIGATE POSSIBLE BREACHES OF PLANNING CONTROL**

### ***Registration***

**Each new case is recorded on our database and given a unique reference number within three working days. As part of this process the priority will be assessed and a case officer will be allocated. An acknowledgement email or letter will be sent to the complainer.**

We encourage people who contact us to give full contact details, as this allows us to provide updates, or to contact them for further information if necessary.

In accordance with the Environmental Information (Scotland) Regulations 2004 we will treat the identity of complainants in confidence. The council 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.

### ***Priorities***

The resources available to respond to reports of alleged breaches of planning control are finite and the Planning Enforcement Team must, therefore, ensure that it makes the most



effective use of these by prioritising what it does according to the seriousness and the degree of harm being caused.

Notwithstanding the above, the Planning Enforcement Team undertake to visit the site of all alleged breaches of planning control within 10 working days of receiving a complaint. If it is of a particularly serious nature a visit will be made by an officer on the same day wherever possible.

### *Investigation*

An investigation begins with an officer visiting the site, to gather information before a decision is made on how to proceed. The complainer will be informed of the initial site visit findings and the action proposed or taken.

The service standards relating to these steps, including timescales can be found in Appendix 1. If the council cannot meet this timescale, the complainer will be contacted within the given timescale, informing of the reason(s) for the delay and the likely timescale for a response.

The length of time required to resolve a case or take action can be affected by a number of factors. Progress can be delayed because of the need to gather 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, interested parties will be kept informed of significant stages in the progress of a case and contact details of the officer handling the case will be provided. You may wish to contact the case officer directly for a more regular update.

### *Closing an enforcement complaint*

Complainants will be notified of the outcome of a case within 10 working days of the case being closed, with an account of the outcome provided.

## **WHAT HAPPENS WHEN A BREACH IS CONFIRMED?**

### **INITIAL ACTION**

#### *Voluntary Compliance through Negotiation*

Where it is considered that the breach of planning control is unacceptable, the council will initially attempt to negotiate a solution without recourse to formal enforcement action, unless the breach is causing irreparable harm. Negotiations may involve the reduction or cessation of an unauthorised use or activity, or the modification or removal of unauthorised development.

#### *Retrospective Planning Application*

Where a breach of planning control has occurred and any harm being caused might be removed or alleviated by the imposition of conditions on a planning permission, a



retrospective planning application will be sought. If a retrospective application is not submitted and registered within one calendar month of a written request to do so, the council will consider taking formal enforcement action.

### ***No Further Action***

Scottish Government Circular 10/2009: Planning Enforcement explains that on conclusion of the initial investigation a council may decide that there has been no breach of planning control or that there is insufficient evidence to pursue the matter further. In situations where there has been a breach, the council may nevertheless come to the view that it is of such a minor nature or so insignificant that it would not be in the wider public interest to take formal action. Generally, the council will not take action against a breach of planning control which does not cause demonstrable harm.

## **FORMAL ACTION**

### ***Enforcement Notice***

If development has been carried out without planning permission an Enforcement Notice can be served on all parties with an interest in the land requiring remedial works to be carried out to deal with any harm caused by the breach. 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.

There is a right of appeal to the Scottish Government's Planning & Environmental Appeals Division (DPEA) against an enforcement notice; if an appeal is lodged the notice will be suspended until the appeal has been determined, and will be actioned if the notice is upheld.

### ***Temporary Stop Notice***

These can be issued if the council considers that an unauthorised activity is causing such immediate and serious harm that it should cease immediately. The notice must be displayed on the land to which it relates and ceases to have effect after 28 days. It is a criminal offence to fail to comply with its requirements.

### ***Stop Notice***

Where a breach of planning control consists of an activity considered to be causing serious harm, a Stop Notice can be served, in conjunction with an enforcement notice. There is no right of appeal against a Stop Notice, and it is a criminal offence to fail to comply with its requirements.

### ***Breach of Condition Notice***

If planning permission has been granted subject to conditions and these have not been complied with, a Breach of Condition Notice can be served on the person(s) responsible for carrying out the development, or on the owner of the land, requiring compliance with the condition. There is no right of appeal against a Breach of Condition Notice and it is a criminal offence to fail to comply with its requirements.

### ***Notice requiring an application for planning permission***

These can be issued on a landowner, requiring the submission of a planning application to rectify development which has been carried out without permission. Whilst there are no

penalty provisions for failing to comply with this notice it constitutes formal enforcement action under the planning act and leaves it open to the council to pursue further action in terms of an enforcement notice. The notice will also appear on any property enquiry should the owner seek to sell the property.

### ***Notice requiring information as to interests in land***

These can be issued on any occupier of land requiring them to confirm in writing their interest in the land along with details of any other party with an interest in land. In addition it can require information on what the land is being used for, when that use began and the time when any activities being carried out began. It is often used to gather information prior to pursuing enforcement action. It is an offence under Section 272(5) (Town and Country Planning (Scotland) Act 1997) to fail to comply with its requirements.

### ***Planning Contravention Notice***

This can be served on an owner of land, any person carrying out operations on land, or who is using the land for any purpose. The notice requires the recipients to confirm whether the use or activities alleged in the notice are being carried out, when they began and details of those engaged in the use/activities. The notice also seeks information on any planning permission that may exist for the use/activities, or any reason why permission is not required. It is a criminal offence to fail to comply with its requirements.

### ***Amenity Notice***

Theses can be served on anyone with an interest in land where the condition of the land is considered to have an adverse impact on the amenity of an area. There is a right of appeal to the DPEA.

### ***Listed Building Enforcement Notice***

This is similar to a Enforcement Notice but relates specifically to unauthorised works affecting the character of a listed building. It is a criminal offence to fail to comply with the requirements of a listed building enforcement notice. There is a right of appeal to the DPEA.

### ***Advertisement Enforcement Notice***

This is similar to enforcement notice but relates to unauthorised advertisements. There is a right of appeal to the DPEA.

### ***Advertisement Discontinuance Notice***

Where an advertisement enjoys deemed consent under the advertisement regulations (which means it is exempt from having to apply for advertisement consent) but the council requires its removal, a discontinuance notice may be served. This can be appealed to the DPEA.

### ***Replacement Tree Notice***

Where a tree protected by a Tree Preservation Order (TPO) is removed, damaged, uprooted or destroyed the planning authority can issue a replacement tree notice requiring the owner of the land to plant a replacement tree or trees. A notice can be appealed to the DPEA.

It is a criminal offence to remove, damage, uproot or destroy a tree protected by a TPO and anyone who carries out such actions can be reported to the Procurator Fiscal for prosecution. The maximum fine on prosecution is £20,000.

### *Interdict*

The council can apply to the Courts to restrain a breach of planning control and the court may grant an interdict if it is considered appropriate in terms of public interest to prevent the breach.

## **WHAT HAPPENS AFTER A NOTICE IS SERVED?**

The recipients of a notice/order will respond in one of three ways:

- Comply fully with the notice/order – at which point the Planning Enforcement Team will close the case.
- Contest the notice/order by way of an appeal to the Scottish Government's [Planning and Environmental Appeals Division](#).
- Fail to comply, fully or in part, with the notice.

Where a case goes to appeal there can be a significant delay in reaching a resolution. If the appeal against the notice is allowed and/or planning permission is granted this will normally be the end of the matter. If the appeal is dismissed, or no appeal is made, continued failure to comply with the requirements of the notice/order result in the council pursuing a prosecution.

### *Fixed Penalty Notice*

Where an enforcement or breach of condition notice has not been complied with, the council can issue a fixed penalty notice as an alternative to prosecution. The fixed penalty amounts to £2,000 for each step not complied with in an enforcement notice and £300 for each step not complied with in 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.

### *Direct Action*

Failure to comply with the requirements of an Enforcement Notice, Breach of Condition Notice or an Amenity Notice may result in the council carrying out works required by that notice. Any costs incurred in carrying out such works can be recovered from the landowner.

### *Prosecution*

Most breaches of planning control are not a criminal offence. However, non-compliance with the requirements of a formal notice is a criminal offence and on conviction the person served with the notice could be subject to a fine. Where a transgressor has failed to comply with a formal notice the council will normally report the matter to the Procurator Fiscal, the body responsible for instigating prosecution proceedings.

# IMMUNITY FROM ENFORCEMENT ACTION

## Time Limits

- For building, engineering, mining or other operations unauthorised development becomes immune from enforcement action four years after the operations are substantially completed.
- For the change of use of a building, or part of a building, to use as a single dwellinghouse, development becomes immune from enforcement action four years after the change of use first occurred.
- For all other changes of use and breaches of conditions, development becomes immune from enforcement action ten years from the date the breach of planning control first commenced.

These time limits do not apply where the council considers that the unauthorised development has been deliberately concealed or where the council commences any action within the 4 or 10 year time limits.

## Lawful Development Certificates

If owners of land or property consider that a breach of planning control has become immune from enforcement action they may apply for a Certificate of Lawfulness (CLU) for an existing use. The decision to approve or refuse an application for a CLU will be dependent on the applicant submitting sufficient documentation to establish that the existing development has been in place for at least four years (in the case of a building operation) or for at least ten years (for a change of use). In the case of a change of use, evidence of 10 years' continuous use must be submitted.

## WHAT HAPPENS IF YOU ARE THE SUBJECT OF AN INVESTIGATION?

The council understands that in many cases a breach of planning control is not intentional and can be the result of a misunderstanding or a lack of an awareness of planning legislation. Therefore, if you receive a letter from the council or a visit from a Planning Enforcement Officer, the council encourages you to respond positively and provide the information which we need to resolve the matter. It is in the interests of all parties if an identified breach can be addressed at an early stage.

The council has a duty to investigate complaints alleging a breach of planning, even if they prove to be unfounded. If you are contacted about an alleged breach you are entitled to know what the allegation is and to have the opportunity to explain your side of the case. However, please be aware that the council will not disclose the identity of complainants unless it is statutorily or legally required to do so. The matter can be resolved quickly if it is determined that there is no breach. In other cases a resolution may be negotiated, however this does not mean that you can delay any response or action. The council expects you to

respond within the stated timescales and we will pursue prosecutions for failures to respond to formal notices. The council will not allow protracted negotiations to distract it from taking appropriate action.

In many cases, particularly where the development is likely to be acceptable, the council might invite you to submit a retrospective planning application, although this is on the understanding that it will not prejudice any decision the council may take. In cases where planning permission has been obtained and the deviation from the approved plans is minor, you may be entitled to apply for a [non-material variation](#) to your planning permission.

You should be aware that Planning Enforcement Officers have legal rights of entry to land and property in order to investigate alleged breaches of planning or compliance with Enforcement Notices. The Planning Enforcement Officer will make themselves known to the landowner/ tenant/developer when they visit a site but will not normally give advance warning of a visit.

The council will use the information gained from a site visit to help assess the harm being caused and what further action, if any, needs to be taken. In addition, you may be served with a Planning Contravention Notice which requires you to provide information concerning the alleged breach, and ownership of the land.

If negotiations are unsuccessful or are not appropriate, Planning Enforcement Officers will explain the implications of any action the council may pursue. Whilst we will endeavour to advise you on the planning merits or otherwise of an unauthorised development, Planning Enforcement Officers will not act as your advisor and cannot make decisions on your behalf.

If you receive a letter or notice from the Planning Enforcement Team, you may wish to consider seeking independent advice from a qualified planning consultant, architect, or another appropriate property or legal professional. Alternatively, there is the option of contacting Planning Aid, a voluntary service offering free independent, professional planning advice.

It is important to be aware that if you decide to try and sell a property which has been subject to unauthorised works or an unauthorised change of use, there is a strong likelihood that you will encounter significant delays and legal difficulties. Potential purchasers who instruct standard property searches will be provided with the details of any notices which have been served on the property and also made aware of any breaches of planning permission. It is, therefore, in the best interests of sellers to ensure that any outstanding planning breaches are satisfactorily resolved before any sale is initiated.

## **REPORTING BREACHES OF PLANNING CONTROL**

Members of the public have a vital role in reporting breaches of control. Any concerns should be raised with the council at the earliest opportunity. The council has an [online interactive complaint form](#) for reporting any suspected breaches of planning control.

The council will do its best to honour requests for confidentiality, including refusing requests for disclosure of the identity of complainers under the Freedom of Information Act. It should be borne in mind; however, that total confidentiality cannot be guaranteed if the Information Commissioners Officer requires the release of the information or if the case leads to court proceedings. This is an extremely unlikely outcome in most cases.

Members of the public can have an important role in monitoring conditions placed on planning consents, which are detailed on the decision notice and can be viewed in the case file on the council's website. The council dealt with over 1,000 planning and other applications in 2018 and it is not possible for us to monitor all conditions attached to them. Your involvement is invaluable in providing information where it is believed that conditions attached to a consent are not being complied with. To report conditions which aren't being complied with, please use the enforcement complaint form.

## **MAKING A SUGGESTION OR COMPLAINT ABOUT THE ENFORCEMENT SERVICE**

The council tries hard to meet customers' expectations and we hope that you will be satisfied with the service you receive. However, if you have any concerns or difficulties, we want to hear from you. We are committed to improving our service and dealing promptly with any failures or shortcomings.

We will consider seriously any complaints made about the way an enforcement enquiry was dealt with. In the first instance, complaints should be discussed with the member of staff involved. If you are still dissatisfied, you can submit a [formal complaint via our website](#).

Written complaints about the enforcement service will be acknowledged and then fully and promptly investigated. If you are unsatisfied with the outcome from the council's complaints process, you have the right to take your complaint to the Scottish Public Services Ombudsman, at: Freepost SPSO, telephone: 0800 377 7330, or [spsso.org.uk/online-contact](http://spsso.org.uk/online-contact)

Generally, you must contact the Ombudsman within 12 months of the date of the complaint.

## **FURTHER INFORMATION – ENFORCEMENT POWERS**

The council's authority to take enforcement action comes from government legislation. Fuller information on the use of enforcement powers can be found in the Scottish Government publication [Planning Circular 10/2009: Planning Enforcement](#).

## **APPENDIX 1 - PLANNING ENFORCEMENT SERVICE STANDARDS**

- Sites which are the subject of a complaint will be visited by an enforcement officer within 10 working days.
- A further response, detailing the findings of the initial visit and any action that is proposed or has been taken to remedy the alleged breach, will be sent to the complainer within five days of the initial visit. If the alleged breach is not to be the subject of any further action this response will give the reasons for that decision.
- If it proves impossible or impractical to respond within the above timescale, the complainer will be contacted giving information on the reason(s) for the delay and indicating the likely timescale for response.
- The complainer will be notified of the outcome of the case within 10 working days of the case being closed by the case officer, with an account of the outcome