

Planning Committee

10.00am, Thursday, 3 December 2015

Planning Enforcement Charter – Statutory Review

Item number	7.2
Report number	
Executive/routine	Executive
Wards	City Wide

Executive summary

The purpose of this report is to seek the Committee's approval for the revised Planning Enforcement Charter. The Charter sets out how the City of Edinburgh Council will deliver the statutory planning enforcement service in the City.

The Planning etc (Scotland) Act 2006 requires local authorities to review planning enforcement charters every two years and it is now time to update and revise it.

Links

Coalition pledges	P15, P28, P40
Council outcomes	CO23, CO24, CO25, CO26
Single Outcome Agreement	SO1

Planning Enforcement Charter – Statutory Review

Recommendations

- 1.1 It is recommended that the Committee approves the revised Planning Enforcement Charter.

Background

- 2.1 The Planning etc (Scotland) Act 2006 introduced a requirement for local authorities to produce and review planning enforcement charters every two years. The current 2013 charter is now due for review.
- 2.2 The Planning Enforcement Charter sets out how the Council will undertake planning enforcement investigations and the statutory and non-statutory guidance that would input into the process.
- 2.3 There have been no changes to enforcement legislation over the last two years but a culture of continuous improvement embedded into the Planning and Building Standards Service ensures a continuous review of processes and procedures in the implementation of statutory powers.

Main report

- 3.1 The 2013 Planning Enforcement Charter has been reviewed, and overall the document remains a robust framework within which enforcement investigations are carried out. The proposed amendments do not seek to alter the general approach to planning enforcement, but reflect the changes in the systems that support the enforcement process. This will help to ensure enquiries can be handled effectively and efficiently for the customer and improve the service provided.
- 3.2 The following main modifications have been incorporated into the Charter:
 - in line with the Council's transformational change objective of 'channel shift', the use of the online enforcement form is reinforced as the main means to raise an enforcement enquiry;
 - to avoid confusion and duplication of effort, the charter clarifies the difference between enforcement enquiries and 'complaints' and how the latter are handled through the Council's complaints process;
 - reference is now included to prosecutions and 'direct action' which sets out the consequences of non-compliance with enforcement notices; and

- updates to contact details in light of the refreshed Planning and Building Standards area based teams and teams which now include an enforcement remit.
- 3.3 Overall, the content of the charter remains up-to-date in terms of legislative and service standard requirements. The proposed new Charter is attached in Appendix 1.

Measures of success

- 4.1 A measure of success is an efficient and effective approach to planning enforcement, where decisions are fair and transparent, taken within an appropriate timescale, and are commensurate with the breach of planning control, where applicable.

Financial impact

- 5.1 There are no financial implications in relation to the review of the Planning Enforcement Charter.

Risk, policy, compliance and governance impact

- 6.1 There are no perceived risks associated with this report. The report has no impact on any policies of the Council.

Equalities impact

- 7.1 There are no impacts on rights and equalities as the report does not seek to change the Council's approach to Planning Enforcement.

Sustainability impact

- 8.1 The impacts of this report in relation to the three elements of the Climate Change (Scotland) Act 2009 (Public Bodies Duties) have been considered, and the outcomes are summarised below.
- The proposals in this report will have no impact on carbon emissions because the report deals with minor changes only to the Council's approach to planning enforcement;
 - The proposals in this report will have no effect on the City's resilience to climate change impacts because the report deals with minor changes only to the council's approach to planning enforcement; and
 - The proposals in this report will help achieve a sustainable Edinburgh because it will ensure that the approach adopted by the Council is proportionate and fair.

Consultation and engagement

- 9.1 No consultations have been undertaken in respect of this review, as the proposed changes do not impact on the practical approach to planning

enforcement. The process for 'channel shift' has been consulted on through the Planning and Building Standards draft engagement strategy and customer charter. The outcomes of this are being reported to the same committee meeting.

Background reading/external references

[Planning Enforcement Charter – Statutory Review, Planning Committee 8 August 2013](#)

[Planning Enforcement Charter – City of Edinburgh Council 2013](#)

[Planning etc \(Scotland\) Act 2006](#)

John Bury

Acting Director of Services for Communities

Contact: Damian McAfee, Senior Planning Officer

E-mail: damian.mcafee@edinburgh.gov.uk | Tel: 0131 469 3720

Links

Coalition pledges	P15 Work with public organisations, the private sector and social enterprise to promote Edinburgh to investors P28 Further strengthen our links with the business community by developing and implementing strategies to promote and protect the economic well being of the city P40 – Work with Edinburgh World Heritage Trust and other stakeholders to conserve the city's built heritage.
Council outcomes	CO23 – Well engaged and well informed – Communities and individuals are empowered and supported to improve local outcomes and foster a sense of community. CO24 – The Council communicates effectively internally and externally and has an excellent reputation for customer care CO25 – The Council has efficient and effective services that deliver objectives CO26 – The Council engages with stakeholders and works in partnership to improve services and deliver agreed objectives
Single Outcome Agreement	SO1 Edinburgh's economy delivers increased investment, jobs and opportunities for all.
Appendices	Appendix 1: Planning Enforcement Charter 2015

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Appendix 1

Planning & Building Standards

Planning Enforcement Charter

December 2015



Foreword

The government places a strong emphasis on the role of planning enforcement in delivering key policy objectives and maintaining public confidence in the planning system. The Planning etc (Scotland) Act 2006 introduced a requirement for councils to produce enforcement charters as a means of raising the profile of planning enforcement and to update it every two years.

This Charter explains what enforcement means, what the Council can and can't do, the service standards we set ourselves and what happens at each stage of what can be a lengthy process.

Sometimes people either undertake work without planning permission or fail to keep to the permission they have been given. The Council has the power to take action in cases like this and enforce the planning controls. But we need the public to alert us where there are such breaches by writing to us. In particular, any unauthorised work to a listed building should be reported immediately.

To help us improve the service we offer and as part of our move towards 'channel shift' we recommend that you use the 'report it' option on the Council's website. It really is the quickest and easiest way for you to report work which may not have permission and is accessible at any time.

www.edinburgh.gov.uk/planningenforcement

Enforcement is a discretionary power; even if there is a breach of planning control we are not bound to act because sometimes it might not be in the public interest to do so.

We know that enforcement is an issue that concerns many members of the public and we hope therefore that you will find this Charter useful and that you will let us know if you think there are areas where we could improve the service we provide.



Councillor Denis Dixon
Vice Convener of
Planning Committee



Councillor Ian Perry
Convener of
Planning Committee

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The Planning Enforcement Service

This Charter outlines how the planning enforcement system operates, and the standards of service that can be expected when enquiries are made. Enforcement can be one of the most complex parts of the planning system, and can have long and unpredictable timescales. The aim of this Charter is to ensure that our enforcement procedures are fair and reasonable, and that interested parties are kept informed of what is required.

The Council has statutory powers to investigate breaches of planning control and breaches of condition, and allow formal action to be taken where a satisfactory outcome cannot be achieved by negotiation. A planning authority is not required to take action on a breach of planning control, but any action taken must be reasonable and proportionate to the breach. A planning authority may issue an enforcement notice where it appears to them to be appropriate to do so, having regard to the development plan and to any other material considerations. It is important to remember that a breach of planning control in itself is not a criminal offence.

Possible Breaches of Planning Control

Planning enforcement involves two issues - whether a breach of planning control has taken place, and whether it is appropriate to take enforcement action. That decision is at the discretion of the planning authority and is a matter of judgement.

Identifying possible breaches of planning control

Possible breaches of planning control can include:

- work being carried out without planning permission or other consent;
- an unauthorised change of use;

- failure to comply with conditions attached to a permission or consent; and
- departures from plans approved in association with a planning permission or consent

Planning enforcement is an area where the public play a vital role in reporting breaches of control. Initial enforcement enquiries should be made using the Council's online form below.

www.edinburgh.gov.uk/planningenforcement

For all initial enquiries the following information is essential:

- the address of the property concerned;
- details of the suspected breach of planning control, with times and dates if relevant;
- your name, telephone number and address;
- an e-mail address if available;
- how the breach affects you;
- and, whether the enquiry is to be treated confidentially

In accordance with the provisions contained in section 36(2) of the Freedom of Information (Scotland) Act 2002, we will treat the identity of complainants in confidence. This is an absolute exemption. In addition, information directly relating to all enforcement cases will be considered to represent exempt information where the public interest test applies under section 34 of the Act. We will only release such exempt information where it is in the public interest to do so or as a result of a ruling by the Scottish Information Commissioner or court of law.

Monitoring of Conditions

Monitoring of conditions attached to planning consents is required to ensure that development complies with the consent granted. Details of the conditions are included within the decision notice attached to the permission. Conditions must be discharged before work can start on site and monitoring is carried out by planning officers.

Members of the public can provide information to the Planning Service if they think that the conditions attached to a consent are not being complied with or have not been discharged in a satisfactory way. The large number of permissions granted each year makes the involvement of members of the public invaluable in the monitoring process.

When breaches of conditions are identified, they are investigated in the same way as other breaches of planning control.

What Happens Next?

When information is received by the Planning Service on a possible breach of planning control, we firstly check it to ensure that it includes all the detail required for a possible enforcement case to be investigated.

Service Standard

After preliminary checking, your enforcement enquiry will be registered within five working days of receipt. Once registered, an email or written acknowledgement will be sent to the person who made the enquiry.

Some enforcement enquiries relate to matters over which the Planning Service has no control, for example, neighbour disputes relating to land ownership or matters associated with feu superior's consent. These matters cannot be investigated by the Planning Service.



Investigating Breaches of Planning Control

Initial Investigations

Following registration of a possible breach of planning control, an enforcement officer will visit the site. The timescales for the site visit will be based on the nature and urgency of the possible breach.

Unauthorised work on procted trees will be investigated as a matter of urgency. Following the initial site visit a course of action will be decided as soon as practicable. In some cases, an additional investigation is required to establish if a breach has occurred, and this may lengthen the process involved in taking action.

Service Standard

You will receive a follow-up response within 20 working days of receipt of your enforcement enquiry. If your information does not concern a planning matter, you will be advised accordingly.

It is not always possible to anticipate the length of time required for a decision or for action on a case, nor for a case to be resolved. Progress can be delayed for a number of reasons, for example where evidence must be collected and verified over a period of time, where negotiations take place, or where formal procedures have to be used.

A planning application can be submitted to regularise the breach of control, or an appeal can be made to Scottish Ministers if an enforcement notice is served. If this happens, it will affect the timescale to resolve the case. It is important to note that there is no right for the enquirer to make any comments on the appeal.

The Council recognises that delays can be a source of considerable frustration to those affected by potential breaches

particularly if they consider that their amenity is affected. We will try to keep you informed of significant stages in the progress of a case, for example when an application is received for the site.

Resolving Cases

In some instances, even though a breach of control has occurred, it may not be appropriate to take further action. This is because a planning authority has to consider whether, having regard to the development plan and material considerations, and to the circumstances of each case, it is necessary and proportionate to issue a notice. In many cases, the harm being done by the breach does not justify any action with most enforcement cases resolved without formal action.

Where the development is likely to be acceptable, it may be more appropriate to seek the submission of a planning application. There are provisions in the Planning Acts for the planning authority to require applications to be made in retrospect. In these cases any action proposed is suspended until a decision is made on the application.

Formal Action

Only a small number of cases require to be dealt with by formal enforcement action.

Service Standard

The planning authority will aim to serve the enforcement notice within 4 months of the date of the original complaint.

With only a few exceptions, the Head of Planning and Building Standards has delegated authority to proceed with such action without referral to the Development Management Sub-committee.

Formal action is instigated by the service of a notice (see Section 5, Types of Notice). All of these include the following information:

- a description of the breach of control which has taken place;
- the steps which should be taken to remedy the breach;
- the timescales for taking these steps;
- the consequences of failure to comply with the notice; and
- rights of appeal where appropriate

If an appeal is lodged against a Notice, this appeal is submitted to and considered by Scottish Ministers. In almost all cases appeals are dealt with by Reporters from the Scottish Government Directorate for *Planning and Environmental Appeals*.

Service Standard

When an appeal is submitted on an enforcement notice served by the Council, we will inform the original complainant within 5 working days of the receipt of the appeal.

The planning authority has additional powers, including the use of interdicts, which complement the serving of notices. For more detail, please see the 'Enforcement Toolkit' on page 5.

The Council may take action to ensure compliance with an Enforcement Notice. Such action may include:

- prosecution through the Sheriff Court;
- carrying out works in 'default' of an Enforcement Notice. In other words the Council may arrange for works required by an Enforcement Notice to be carried out and then recover the cost of this work from the recipient of the notice.

The Council will consider the most effective way of ensuring that someone who is contravening an enforcement notice complies with its requirements. It may, for example, be appropriate to initiate prosecution proceedings and take 'direct'



before



after



action, especially if the offence is blatant and causes serious environmental harm.

If an owner / occupier is found guilty, a maximum fine of £20,000 may be imposed by the Courts. If the Notice is still not complied with, a second prosecution may be sought with a recommendation that the courts impose a 'continuance fine', which will apply every day the notice is in breach.

When a notice has been complied with, a closing report will be prepared and posted on the [Council's website](#). The enquirer will be notified when this has been completed.

Enforcement Register

Details of enforcement notices, breach of condition notices and stop notices are entered into an Enforcement Register, which forms part of the Planning Register. These are available at Waverley Court, 4 East Market Street, Edinburgh EH8 8BG and on the Council's [website](#).

Powers of Entry

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.

Time-Limited Procedures

In some cases, the Council is time-barred from taking enforcement action.

Time limited to Four Years for Enforcement Action

This applies to "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 dwellinghouse. 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.

Time limited to Ten Years for Enforcement Action

This applies to all other development including change of use (other than to a single dwellinghouse) and breaches of condition, after which the development becomes lawful if no enforcement action is commenced.

Our Customers

The Council has [Customer Care Standards](#) which sets out the standards that customers should expect in their dealings with the Council.

The Planning and Building Standards Service is committed to providing a high quality customer care service and any suggestions to improve our service are welcomed.

Complaints

The Council hopes you are satisfied with the service we provide. If you have any suggestions, concerns or difficulties we want to hear from you. We are committed to improving our service and to dealing fairly, honestly and promptly with any failures. Enforcement enquiries are not formal complaints as complaints are handled through the process outlined below.

We will consider all complaints made about the way in which your enquiry was dealt with. Disagreement with a decision of the Council will not, in itself, be a ground for complaint and in many situations there is a separate procedure for an applicant to appeal against such decisions.

The quickest way to sort things out is to talk to the officer concerned. However, if you are still dissatisfied, you can use the



Council's [online Complaints Form](#) to receive a formal response.

If, after you have gone through our complaints process, you still feel aggrieved, you have the right to take the complaint to the [Scottish Public Services Ombudsman \(SPSO\)](#).

The power of the SPSO does not extend to the amendment of planning enforcement decisions - the function of the SPSO in planning cases is to judge whether Councils have fulfilled their administrative duties and functions reasonably.

The Enforcement Toolkit

Planning Enforcement powers are set out in Part VI of the Town and Country Planning (Scotland) Act 1997, in Part 4 of the Planning etc (Scotland) Act 2006, 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". The Planning Acts and this publication are available on The Scottish Government's Planning [website](#).

Types of Notice

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 (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 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.

Enforcement Notice - this notice is generally used to deal with unauthorised development, but can also be used for a 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 (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.

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 (FPN) on the recipient of the notice. The fine is £2000 for an FPN 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.

Listed Building Enforcement Notice - this must be served on the current owner, lessee, occupier and on anyone else with an interest in the property, and the procedures involved are similar to 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 the 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.



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 Notices - 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.

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 specified information about 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.

Notice under Section 272 (of the Town and Country Planning (Scotland) Act 1997) - provides limited powers which enable information to be obtained regarding interests in the land, and the use of the land.

1997) - provides limited powers which enable information to be obtained regarding interests in the land, and the use of the land.

Failure to provide the information required is an offence.

Notice under Section 179 (of the Town and Country Planning (Scotland) Act 1997) - provides planning authorities with the power to serve a notice on the owner, lessee or occupier of land, the condition of which is adversely affecting the amenity of the area.

The notice, which is also known as an 'Amenity Notice' sets out the steps to be taken to decrease the adverse effect of the condition of the land within a specified period.

Interdict and Interim Interdict - this is used to stop or prevent a breach of planning control. Such applications are considered by the courts. Before initiating proceedings, the planning authority will need to assess the likely outcome and the risk of incurring wasted expenditure.

Contacts

ENFORCEMENT ENQUIRIES

Enforcement enquiries should be made in writing.

The quickest and easiest way to do this is to use our online form:

<http://www.edinburgh.gov.uk/planningenforcement>

PLANNING HELP DESK

(Monday – Friday 9am -1pm)

Waverley Court
4 East Market Street
Edinburgh
EH8 8BG

Telephone: 0131 529 3550

Email: planning@edinburgh.gov.uk
www.edinburgh.gov.uk/planning

EMERGENCY CONTACT

0131 200 2000

HEAD OF PLANNING AND TRANSPORT

John Bury
The City of Edinburgh Council
Planning and Transport
Waverley Court
4 East Market Street
Edinburgh
EH8 8BG

Other Contacts

BUILDING WARRANTS

Telephone: 0131 529 4655/4644/7826

E-mail:

buildingwarrant.applications@edinburgh.gov.uk

COUNCIL COMPLAINTS AND SUGGESTIONS

www.edinburgh.gov.uk/complaints

The City of Edinburgh Council
Customer Care C.3
Waverley Court
4 East Market Street
Edinburgh EH8 8BG

SCOTTISH GOVERNMENT PLANNING SERVICE

Helpline: 0131 244 7888

www.gov.scot/Topics/Planning

SCOTTISH GOVERNMENT DIRECTORATE FOR PLANNING AND ENVIRONMENTAL APPEALS

www.dpea.scotland.gov.uk

Telephone: 01324 696 400

SCOTTISH PUBLIC SERVICES OMBUDSMAN

www.spsso.org.uk

SPSO, Freepost, EH641, Edinburgh EH3 OBR
or SPSO, 4 Melville Street, Edinburgh EH3 7NS
Telephone: 0800 377 7330

Email: ask@spso.org.uk

Contact Us

Phone the Council on 0131 200 2000

Planning Enquiries

planning@edinburgh.gov.uk

Building Standards Enquiries

buildingwarrant.applications@edinburgh.gov.uk

