

# Planning Enforcement Charter

December 2019



## 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 sets out 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.

The Council, as part of its Council Business Plan 2017-22, has pledged a commitment to “Improve planning enforcement to ensure that all developers, large or small, conform to Edinburgh’s policies and developer’s commitments”. This commitment demonstrates the importance the Council places on providing an effective enforcement service.

This charter sets out the role the Council plays in enforcement, the service we aim to provide and what happens at different stages of the process. The public also plays a vital role in informing the Council when they suspect there has been work undertaken without planning permission or listed building consent. If you are unsure if work is a breach of planning control you can check this online at [www.edinburgh.gov.uk/planninganddevelopmentonline](http://www.edinburgh.gov.uk/planninganddevelopmentonline).

If you believe a breach of planning control has occurred and the work being undertaken should be investigated by an enforcement officer, you can report this using the online form at [www.edinburgh.gov.uk/planningenforcement](http://www.edinburgh.gov.uk/planningenforcement).

We know enforcement is an issue that concerns many members of the public and hope that the charter provides reassurance of the commitment of the Council to investigating and resolving planning breaches and providing a robust planning service.



**Councillor Neil Gardiner**  
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 we seek to achieve 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.

The Council has statutory powers to investigate breaches of planning control and breaches of condition. Formal action can 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 and 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 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 and the aim is to resolve breaches rather than punish those who carried out the work.**

The Council’s Business Plan 2017-22 sets out 52 commitments the administration pledges to deliver over the next 5 years. Commitment 13 relates to our enforcement service and commits the Council to:

“Improve planning enforcement to ensure that all developers, large or small, conform to Edinburgh’s policies and developer’s commitments”.

This charter sets out our service standards to deliver this commitment.

## Reporting a Breach of Planning Control

Planning enforcement involves two decisions – whether a breach of planning control has taken place and whether it is expedient to take enforcement action. The latter decision is at the discretion of the planning authority and is a matter of judgement.

### A breach 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 and drawings approved as part of planning permission or other consent.

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 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](#).

**If you believe works are being carried out without the appropriate consents, enforcement enquiries can be made using the Council’s [online form](#).**

The Council does not comment on enquiries relating to possible breaches or individual cases on social media. **Anonymous complaints will not be accepted.**



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 take a view on whether or not to exercise that power. Even if there is a breach of planning control, the Council has to 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 resulting, or, is likely to result in. Although not exhaustive, 'harm' in planning terms can include:

- Impact on visual amenity 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 neighbouring amenity including privacy, daylight, overshadowing, noise.

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 private view;
- Competition between businesses;
- Possible fire hazard;
- On street parking or allocation of parking spaces;
- Structural/ Drainage issues;
- Construction noise/arrangements.

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

### 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 is commenced.

## Investigating a Breach of Planning Control

### Registration of Your Enquiry

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. These matters cannot be investigated by the planning service.

### 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. 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.

Unauthorised work on protected 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.

**Service Standard:** You will receive an initial update within 20 working days of registration of your enforcement enquiry. If your information does not concern a planning matter, you will be advised accordingly and the case will be closed.

### Resolving Cases

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. Any possible enforcement action is held in abeyance until the application/appeal is determined.

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. We may contact you if we need additional information/evidence relating to the enquiry.

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.

**Service Standard:** Where the development is likely to be acceptable, the planning authority may request a retrospective planning application including, if necessary, serving a Section 33A Notice for works carried out without planning permission.



## Formal Action



If the case is unable to be resolved and there is a breach of planning control, formal enforcement action will be required.

**Service Standard: The planning authority will aim to serve the enforcement notice within 3 months of the date of the original complaint. (This may take up to 6 months for Short Stay Commercial Visitor Accommodation cases)**

With only a few exceptions, the Chief Planning Officer 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 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.

The planning authority has additional powers, including the use of interdicts, which complement the serving of notices. For more detail, please see 'Enforcement Legislation' 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 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' action, especially if the offence is blatant and causes 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 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 Planning portal. The enquirer will be notified when this has been completed.

**Service Standard: There will be a Report of Handling for every case explaining why we have come to a decision.**

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

## Appeals



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’s Planning and Environmental Appeals Division (DPEA).

**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 receipt of the appeal.

## 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.

## Customer Care and Complaints

There is no provision in the legislation to appeal the decision made by the Council on the enforcement enquiry. Any challenge to that decision would be a legal matter.

*The Planning and Building Standards Customer Charter* sets out the standards that customers should expect in their dealings with the service. The service is committed to providing high quality customer care and any suggestions to improve are welcomed.

We are committed to improving our service and dealing fairly, honestly and promptly with any concerns. However, if there has been a service failure, we want to hear from you.

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 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 duties reasonably.



## Enforcement Legislation



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. The Planning Acts and this publication are available online.

### 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. 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.

## Contact Details

Planning Helpdesk (Monday - Friday 9am-1pm)

Waverley Court 4 East Market Street Edinburgh EH8 8BG

Telephone: 0131 529 3550

Email: [planning@edinburgh.gov.uk](mailto:planning@edinburgh.gov.uk)

**Report a possible breach of planning control at  
[www.edinburgh.gov.uk/planningenforcement](http://www.edinburgh.gov.uk/planningenforcement)**



HAPPY TO TRANSLATE

ترجمہ کیلئے حاضر! آماندوں کے ساتھ انুবاد کر رہا

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The City of Edinburgh Council  
Directorate of Place  
December 2019