



Planning Enforcement Charter

A guide to enforcing planning controls

2019

INTRODUCTION

Planning permission is required for most development that takes place in Scotland, with the exception of some minor works. Development is defined in planning legislation as 'the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land, or the operation of a marine fish farm'.

Sometimes, however, developers or householders undertake work without planning permission or fail to keep to the permission they have been given. Councils 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.

This Charter explains how the enforcement process works, the role of the Council and the service standards it sets itself. It also explains what happens at each stage of what can be a lengthy process.

Enforcement is one of the most complex parts of the planning system. The aim of this Charter is to ensure that adopted procedures are fair and reasonable, and that interested parties are kept informed and are made aware of what is required.

This is an issue that concerns many members of the public. We hope you will find this Charter useful and will let us know if you think we could improve the service further.

This Charter sets out the current powers available to planning authorities. These powers are set out in the Town and Country Planning (Scotland) Act 1997 (as amended). The guidance contained in this Charter will be revised as necessary in order to keep it up to date with current legislation.

KEY POINTS ON PLANNING ENFORCEMENT

A breach of planning control is not a criminal offence. The purpose of planning enforcement is to resolve the problem rather than to punish the mistake. In addition, any action taken has to be appropriate to the scale of the breach.

Your 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 cannot be achieved by negotiation. However, enforcement is a discretionary power. That 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 required to take any particular action on a specific breach of planning control, and indeed can decide that no action is necessary.

Planning enforcement also covers the physical display of advertisements such as billboards and advertisement hoardings, although slightly different procedures apply. These are set out in a separate section at the end of the document. The actual content of an advertisement is not covered by planning control. Any complaints about this should be made to the Advertising Standards Authority.

SERVICE STANDARD

By publishing our standards and targets, we aim to improve our enforcement service and make it responsive to the needs of our customers. We will monitor the contents of this charter to ensure that standards and targets are being met.

SERVICE STANDARD

Further copies of this Charter are available on the Council's website, in the local library and at the offices of the Council's Development Management Service, Planning Service, Development Services, 8 North Ness Business Park, North, Lerwick.

IDENTIFYING POSSIBLE BREACHES OF PLANNING CONTROL

Possible breaches of planning control can include:

- work being carried out without planning permission or consent;
- an unauthorised change of use;
- failure to comply with conditions attached to a permission or consent;
- departures from approved plans or consent.

Members of the public have a vital role in reporting breaches of control. Any concerns should be raised with the Council. You can make enquiries by telephone, in person, in writing or by e-mail, giving all relevant information, to the Council's Planning Enforcement Section, Development Management Service, Planning Service, Development Services, 8 North Ness Business Park, Lerwick, ZE1 0LZ. Telephone: (01595) 744293. Email: development.management@shetland.gov.uk.

Enquiries relating to fish farming development should be sent by email to: marine.planning@shetland.gov.uk with written enquiries to the Coastal Zone Management Service, Planning Service, Development Services, 8 North Ness Business Park, Lerwick, ZE1 0LZ. Telephone: (01595) 744293.

While the Council will do its best to honour requests for confidentiality, it is subject to the requirements of the Freedom of Information (Scotland) Act 2002. Where appropriate the Council may seek to rely on the exemptions from disclosure of information provided under Section 34 and 36(2) of the 2002 Act.

Members of the public also have an important role in monitoring the conditions that are placed on certain planning consents. Details of the conditions are included within the decision notice attached to the permission. Monitoring of land-based developments is undertaken by the Council's Development Management Service. However, there are a large number of permissions granted each year and it is not practical, nor is it expected, that Councils monitor all conditions at all times.

Your involvement is therefore invaluable in providing information where it is believed that conditions attached to the consent are not being complied with or have not been discharged in a satisfactory way. Breaches of conditions are investigated in the same way as breaches of planning control.

Due to the fluid nature of marine development and for its potential to impact on safety of navigation, the Coastal Zone Management Service is committed to proactively monitoring all marine fish farm sites whereby a visual inspection of each farm is carried out at least once a year with more detailed on-site inspections carried out as required. For the avoidance of

doubt, fish farming covers both finfish and shellfish sectors and routine monitoring of freshwater farms is also undertaken. Reporting of suspected breaches by members of the public is also an important part of the fish farm monitoring process.

Information received by the Council's Planning Enforcement Section is checked to ensure that it involves a possible breach of control and includes all the detail required for a possible investigation. After preliminary checking and compliance with the requirements for investigation, the complaint will be registered.

Some complaints, such as neighbour disputes over boundaries, relate to matters over which the planning service has no control and cannot be investigated.

INVESTIGATING POSSIBLE BREACHES OF PLANNING CONTROL

A priority system is used for investigating complaints based on matters such as the effect of the breach and the significance of the site.

SERVICE STANDARD

Priority will be given to significant breaches of planning control including:

- breaches of condition for major development;
- irreversible damage to listed buildings;
- unauthorised felling of trees and matters affecting trees protected by Tree Protection Orders;
- significant detrimental impact on amenity;
- breaches that result in a hazard to safe navigation.

An investigation begins with an enforcement officer visiting the site. The Council has powers to enter land to:

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

This power applies to any land, including that covered with water, and may involve officials entering land adjacent to the site of the breach.

Following this visit, the individual who has made the complaint will be informed of what action, if any, is proposed. In some cases, additional investigation may be needed.

Enforcement action has to be taken within strict time limits.

- A four year limit – this applies to “unauthorised operational development” (the carrying out of building, engineering, mining or other operations in, on, over or under land) and change of use to a single dwellinghouse. After four years following the breach of planning control, the development becomes lawful, and 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 dwellinghouse) and breaches of condition. After ten years, the development becomes lawful if no enforcement action has begun.

In respect of marine fish farming development, both the four and ten year limits are relevant with the applicable time limit dependant on when development took place. Fish farming equipment placed or assembled in marine waters after 01 April 2007 is immune from enforcement action against breaches of planning control if a minimum of four years has passed since those works were substantially complete. Where such placement or assembly of equipment occurred prior to 01 April 2007, enforcement action cannot be taken if ten years has passed since that development first took place. Marine development is fluid in nature and in the case of fish farming operations, the scale and location of equipment can change frequently over time. For the avoidance of doubt, enforcement immunity relating to a breach of planning control only applies where the relevant development has not altered in scale and location for the applicable four or ten year period.

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

The Council recognises that delays can be a source of considerable frustration to those submitting information, particularly if they consider their amenity is affected. Consequently, we will keep interested parties informed of significant stages in the progress of a case if requested but they may wish to contact the case officer for a more regular update.

ACTING ON BREACHES OF PLANNING CONTROL

In some cases action may not be appropriate, even though planning controls have been breached. As stated previously, the purpose of planning enforcement is to resolve problems, not punish mistakes. The Planning Authority has to consider each case on its merits and decide on the best solution. The Council is unlikely to take formal action, for example, over developments which, in planning terms, are seen as acceptable. It may be more appropriate, in such cases, to seek the submission of a retrospective planning application.

SERVICE STANDARD

Where a planning breach cannot be resolved and action is justified, a formal notice will be served.

This begins with a relevant notice (usually either an enforcement or breach of condition notice - see enforcement powers below) being served on those involved in the development. 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;*
- *where appropriate, any rights of appeal the recipient has and how to lodge an appeal.*

Appeals against enforcement notices are considered by Scottish Ministers and dealt with, in most cases, by Reporters from the Planning and Environmental Appeals Division (DPEA) of

the Scottish Government. Anyone who has submitted information on a breach of planning control is advised of the appeal.

There is no right of appeal against a breach of condition notice.

Failure to comply with a notice may result in the Planning Authority taking further action. This can include a range of possible options including:

- referring the case to the Procurator Fiscal for possible prosecution;
- carrying out work and charging the person for the costs involved;
- seeking a Court interdict to stop or prevent a breach of planning controls.

Details of enforcement notices, breach of condition notices and stop notices are entered into an Enforcement Register. You can inspect these documents at the Council's Planning Service, 8 North Ness Business Park, Lerwick.

Statement with respect to major developments

With respect to the monitoring of compliance with planning permissions which have been granted in respect of major developments, the Planning Authority will monitor for compliance with such planning permissions as resources allow and as it deems necessary by seeking in the first instance voluntary cooperation with the developer to facilitate this, in addition to its statutory right to perform its enforcement function in any case. The undertaking and results of such monitoring will be recorded by the Planning Authority in the appropriate planning permission file which is available to view on line on the Council website.

ENFORCEMENT AND ADVERTISING

The display of advertisements is covered by the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984. Many advertisements are displayed with what is called 'deemed consent' which means they do not require planning permission if they meet the criteria and conditions set out in the regulations. One of these conditions is that the landowner has given permission for the advertisement to be displayed on their land.

Displaying an advertisement in contravention of the regulations is an offence and, if convicted in court, an offender can be fined. The court can impose further fines for each day the breach of the regulations continues.

The Council has the power to serve an enforcement notice. This specifies a time period (normally 28 days) for compliance with the notice. However, this period can be reduced to seven days if the Council believes there is an urgent need for the advertisement to be removed or altered in the interests of public safety, **or** if the advertisement can be removed without any other work being required.

An enforcement notice can also require that a particular piece of land should not be used to display advertisements. This remains in force even if the original advertisement is removed. Any subsequent advertising on the site would amount to a breach of the notice.

The Council also has powers to remove or destroy placards and posters that do not have planning permission or deemed 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.

ENFORCEMENT POWERS

The Planning Enforcement powers available to your local Council are set out in Part IV of the Town and Country Planning (Scotland) Act 1997 and in Chapter IV of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. The Planning Acts are available at: www.legislation.gov.uk.

Government policy on planning enforcement is set out in Circular 10/2009, "Planning Enforcement." The circular is published on the Scottish Government website and can be viewed at: <http://www.gov.scot/Topics/Built-Environment/planning/Roles/Scottish-Government/Guidance/Other-Publications>

Types of Notice

Breach of Condition Notice – this is used to enforce the conditions applied to any planning permission. It is effective from the date it is served. It may be used as an alternative to an enforcement notice (see below), and is served on any person carrying out the development and/or any person having control of the land. There is no right of appeal. Contravening a breach of condition notice can result in the Council deciding to prosecute, with a fine of up to £1,000.

Enforcement Notice – this is generally used to deal with unauthorised development, but can also apply to breach of planning conditions. There are similar notices and powers to deal with listed buildings (see below), and advertisements. An enforcement notice will specify a time period to take effect (a minimum of 28 days – but see the section below on advertisements); the steps that must be taken to remedy the breach and the time for this to be completed.

There is a right of appeal and the terms of the notice are suspended until a decision is reached. Failure to comply with an enforcement notice within the time specified is an offence, and may lead to a fine of up to £20,000 in the Sheriff Court. Failure to comply may also result in the Council taking **Direct Action** to correct the breach (see other powers below).

Listed Building Enforcement Notice – this must be served on the current owner, occupier and anyone else with an interest in the property. The procedures are similar to those outlined above. The notice must specify the steps to be taken to remedy the breach and a final date for compliance. Failure to meet the terms of the notice by the date specified is an offence. There is the right of appeal to Scottish Ministers against the notice. Breaches of listed building control are a serious matter. It is a criminal offence to undertake unauthorised works to demolish, significantly alter, or extend a listed building. In certain circumstances, this can lead either to an unlimited fine or imprisonment.

Stop Notice – this is used in urgent or serious cases where unauthorised activity must be stopped, usually on grounds of public safety. When a stop notice is served, the planning authority must also issue an enforcement notice. There is no right of appeal against a stop notice and failure to comply is an offence. An appeal can be made against the accompanying enforcement notice. If a stop notice is served without due cause, or an appeal against the enforcement notice is successful, the Council may face claims for

compensation. The use of stop notices therefore needs to be carefully assessed by the Council.

Temporary Stop Notice (TSN) – this is used to require the *immediate* halt of an activity which breaches planning control. The provisions make an exception in that a TSN cannot prohibit the use of a building or a caravan as a dwellinghouse. TSN's are enforceable for 28 days, after which time they expire. They may, however, be followed by further enforcement action such as an Enforcement Notice and Stop Notice. There is no provision to appeal against a TSN.

Fixed Penalty Notice (FPN) – this provides planning authorities with an alternative process, in addition to the option to seek prosecution, to address situations where a person has failed to comply with the requirements of an enforcement notice (EN) or a breach of condition notice (BCN). By paying the penalty imposed by the FPN, the person will discharge any liability for prosecution for the offence. They will not, however, discharge the obligation to comply with the terms of an EN or BCN and the planning authority will retain the power to take direct action to remedy the breach and recover the costs of such work from that person. The planning authority is not required to offer the option of paying a fixed penalty. Any decision to do so would be dependant on considerations such as the scale of the breach and its impact on local amenity.

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. Issuing such a notice does **not** guarantee that permission will be granted; the planning authority may, on consideration of the application, decide instead to refuse permission, or to grant permission subject to conditions or alterations to make the development acceptable.

Other Powers

Planning Contravention Notice – this is used to obtain information about activities on land where a breach of planning control is suspected. It is served on the owner or occupier, on a person with any other interest in the land or who is carrying out operations on the land. They are required to provide information about operations being carried out on the land and any conditions or limitations applying to any planning permission already granted. Failure to comply with the notice within 21 days of it being served is an offence and can lead to a fine in the Courts.

Notice under Section 272 (of the Town and Country Planning (Scotland) Act 1997) – this provides limited powers to obtain information on interests in land and the use of land. Failure to provide the information required is an offence.

Notice under Section 179 (of the Town and Country Planning (Scotland) Act 1997) – this allows planning authorities to serve a notice on the owner, lessee or occupier of land which is adversely affecting the amenity of the area. This is also known as an '**Amenity Notice**' and 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.

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.

Notification of Initiation and Completion of Development (NID/NCD) and Display of Notices While Development is Carried Out - While not in themselves planning enforcement powers, these notices are intended to improve delivery of Planning enforcement by requiring positive confirmation that development has commenced and been completed, and, in the case of on-site notices, to raise community awareness of developments in the local area. Planning authorities will be made aware of active development in their areas, enabling them to prioritise resources with a view to monitoring development.

For any development for which permission has been granted, a NID has to be submitted to inform the planning authority of the date on which development will commence. It is to be submitted after planning permission has been granted and before development has commenced. Initiating development without submitting a NID is a breach of Planning control and the planning authority may consider enforcement action.

The NCD requires a developer to submit a further notice as soon as practicable after development has been completed.

Depending on the nature or scale of a development, the developer may also be required to display on-site notices while development is taking place. These notices contain basic information about the site and the development. They also provide contact details where members of the public may find out more information or report alleged breaches of planning control. It is a breach of planning control to fail to display such a notice when required to do so.

MAKING A SUGGESTION OR COMPLAINT

The 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.

We will consider all complaints made about the way an enforcement enquiry was dealt with. Some people may disagree with the outcome of an investigation but, of itself, that is not grounds for complaint. As noted above there is a separate appeals' procedure for a recipient of an enforcement notice.

Details of the Council's complaints procedure are available from the Planning Service and www.shetland.gov.uk.

ENFORCEMENT CONTACTS

Contact for reporting suspected breaches of planning control and for general enquires on planning issues should be made to: Development Management Service, Planning Service, Development Services, 8 North Ness Business Park, Lerwick, ZE1 0LZ. Telephone: (01595) 744293. Email: development.management@shetland.gov.uk.

Enquiries relating to fish farming development should be sent by email to: marine.planning@shetland.gov.uk or in writing to the Coastal Zone Management Service, Planning Service, 8 North Ness Business Park, Lerwick, ZE1 0LZ. Telephone: (01595) 744293..

The postal address for the Council's Executive Manager - Planning is:

Planning Service
Development Services
Shetland Islands Council
8 North Ness Business Park
Lerwick
Shetland
ZE1 0LZ

Contact for the complaints regarding enforcement is the Executive Manager – Planning at the above address.

Contact for the Councils' Building Standards Service is (01595) 744293 and for the Environmental Health Service is (01595) 745250

Contact for the Advertising Standards Authority:

Advertising Standards Authority Ltd./Committees of Advertising Practice Ltd,
Mid City Place
71 High Holborn
London
WC1V 6QT.

Telephone: 020 7492 2222