

Planning Enforcement Charter

Introduction

Planning permission is required for most development that takes place in Scotland with the exception of some minor works. Sometimes developers or householders undertake work without planning permission or fail to implement correctly 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 development to ensure planning controls are being followed but the public has an important role in alerting the Council to any problems of which they become aware.

About This Charter

This charter explains how the enforcement process works in West Dunbartonshire, the current powers available to the Council and the service standards it sets itself. It explains what happens at each stage of what can be a lengthy process. The aim of this charter is to ensure that our adopted procedures are fair and reasonable and that all interested parties are kept informed at each stage of the process and are clearly made aware of what is required.

Within West Dunbartonshire Council the planning enforcement function is operated by the Planning & Building Standards service which is part of the Regeneration & Economic Development Division which is with the Department of Housing, Environmental & Economic Development. The Development Management team operate the Planning Enforcement function whilst Building Standards have separate enforcement powers under the Building (Scotland) Act 2003.

Breaches of planning control are an issue that concerns many members of the public. We welcome your comments on this charter and how we could improve the planning enforcement service further. We will monitor the contents of the charter to ensure standards are being met.

Key points on Planning Enforcement:

- **Resolve the problem rather than punish the mistake;**
- **Any action taken will be appropriate to the scale of the breach;**
- **Council has to consider if it is in the public interest to take enforcement action and can decide that no action is necessary;**
- **The Council will not act as an arbiter in neighbour or similar disputes, where there is no wider public interest involved.**

Stages of Enforcement

Stage	Service Standard
Receipt of initial complaint <ul style="list-style-type: none"> acknowledgement and determination if constitutes development response to complainant following initial investigation <p>If no progress is made with the case</p> <p>If no enforcement action is to be taken</p>	<p>5 working days</p> <p>10 working days</p> <p>Inform interested parties when necessary</p> <p>Inform interested parties when decision is made</p>
IF ENFORCEMENT ACTION IS TO BE TAKEN	
Unauthorised Development <p>Invitation to make a planning application</p> <p>If no submission made, consider serving Section 33A Notice</p> <p>If no progress made consider enforcement action</p> <ul style="list-style-type: none"> Seek removal or cessation of development 	<p>4 weeks allowed for submission</p> <p>4 weeks allowed for submission</p> <p>Give 4 to 12 weeks to comply depending on circumstances</p>
NOT IN ACCORDANCE WITH PLANS OR IN BREACH OF CONDITION	
either; <ul style="list-style-type: none"> Invitation to submit revised application <p>If no submission made consider enforcement action</p>	<p>4 weeks allowed for submission</p> <p>4 weeks to make decision</p>
or; <ul style="list-style-type: none"> Inform developer to adhere to approval <p>If no progress made consider enforcement action</p>	<p>4 weeks to comply</p> <p>Time allowed depends on circumstances</p>

Identifying Possible Breaches of Planning Control

Possible breaches of planning control can include:

- Work carried out or 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 permissions;
- carrying out works to trees that are protected by a planning condition or a Tree Preservation Order.

Members of the public have an important role in reporting potential breaches of planning control. Any concerns should be raised with the Council by email, telephone or in person at the Council offices. All concerns should be followed up by email or by letter.

The following information is essential when reporting a potential breach:

- The address of the property concerned;
- details of the potential breach of planning control with times and dates (if relevant);
- your name, address and telephone number and/or email address. (Anonymous complaints will not normally be investigated except for protected trees, danger to the public and listed buildings);
- information on how the breach affects you and others.

In accordance with the Environmental Information (Scotland) Regulations 2004 and the Freedom of Information (Scotland) Act 2002 the personal details of complainants will not be disclosed without their consent unless as a result of a ruling by the Scottish Information Commissioner or Court of Law.

The Role of the Public

Members of the public have a role in monitoring the conditions that are placed on certain planning consents. There are a large number of permissions granted each year and it is not practical nor is it expected that the Council monitors all conditions at all times. Breaches of conditions are investigated in the

same way as other breaches of planning control. You can provide information where it is believed that conditions attached to a consent have not been complied with or are not being discharged in a satisfactory way.

Some complaints such as neighbour disputes over boundaries or other legal disputes relate to matters over which we have no control, we will not investigate further. We will not act as an arbiter in neighbour or similar disputes. Details of the Council Mediation Service can be found at www.west-dunbarton.gov.uk/community-life-and-leisure/crime-prevention-and-community-safety/neighbourhood-mediation-service.

Investigating Possible Breaches of Planning Control

Information received is first checked to ensure that it involves a possible breach of control and includes all the details required for a possible investigation.

The complaint will be recorded and an email or written acknowledgement will be sent to the person who made the complaint within 5 working days.

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

- Breaches of condition for major development;
- damage to listed buildings ;
- unauthorised felling and works to trees protected by a Tree Preservation Order;
- significant detrimental impact on amenity or public safety.

A Development Management Officer will visit the site to assess the situation. Following this visit, the complainant will be informed of what action, if any is proposed. In some cases additional investigation may be needed.

A formal response will be issued within 10 working days of the receipt of the first email or written acknowledgement. You will be advised of the proposed action to be taken. There may be a need for additional investigation prior to deciding on a course of action and you will be advised if this action is required. You will be advised if the matter does not involve a breach of planning control or if no further action is intended.

The length of the required time 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. An application to regularise the breach of control or an enforcement appeal can delay resolution of the case. It is recognised that delays can be a source of considerable frustration to those affected by the breach.

We will keep complainants informed at significant stages in the progress of a case. However they should feel free to contact the case officer for an update.

Please note that the preferred method of communicating with all parties is electronically.

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 the problems not punish mistakes. Enforcement action will only be taken when it is in the public interest and not to protect the interests of one party against another. The extent to which enforcement measures will be pursued will

depend on whether or not the development complies with the policies of the local plan (development-plan-online.west-dunbarton.gov.uk) and how significant its impact is or is likely to be on the wider area. The outcome of many enforcement cases may be the submission of a retrospective planning application. If a development is likely to be acceptable, a retrospective planning application may be required to regularise the situation. In these cases, any action proposed is likely to be suspended until a decision is made on the application. The outcome of retrospective applications can not be guaranteed. An invitation to submit a retrospective application in no way implies that it is going to be approved.

The Decision to Take Enforcement Action

Only a relatively small number of cases require formal enforcement action. It will only be taken when in the opinion of the Council, the breach is significant and would unacceptably affect public amenity, public safety or the use of the land and buildings need protection in the public interest.

An Enforcement Notice or Breach of Conditions Notice will be served on those involved in the development. Both 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 failing to comply with the notice and in the case of an Enforcement Notice, any rights of appeal, the recipient has and how to lodge an appeal.

The majority of Enforcement Notices are served by officers under delegated powers; however in a small number of more significant cases, authority may be sought from the Planning Committee regarding the service of an Enforcement Notice or other Notice.

Appeals against Enforcement Notices are considered by Scottish Ministers and dealt with in most cases by reporters from the Scottish Government. Directorate of Planning & Environmental Appeals. Anyone who has reported a breach of planning control is advised of any related appeal. There is no right of appeal against a Breach of Condition Notice.

Where the terms of any enforcement notice are not complied with, the Planning Authority can take further action. This can include a range of possible options:

- 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 control .

Enforcement action

For a Section 33A Notice, Breach of Condition Notice, Stop Notice or Temporary Stop Notice there is no appeal against the notice or its terms. If they are not complied with, the case may be referred to the Procurator Fiscal, or an interdict or interim interdict sought.

For an Enforcement Notice, Listed Building Enforcement Notice, Advertisement Enforcement Notice or Amenity Notice the developer may lodge an appeal with the Scottish Ministers. Procedures are held in abeyance until the appeal is determined. The Ministers may vary the terms of the notice. Failure to comply with the notice can be reported to the Procurator Fiscal.

Information on Valid Enforcement Notices

Details of Enforcement Notices and other Notices are entered into an Enforcement Register. You can inspect the register and these documents at the Planning & Building Standards Reception, Council Offices, Rosebery Place, Clydebank, G81 1TG.

Power of entry

Council officers have powers to enter land or buildings 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 or buildings and may involve officials entering land adjacent to the site of the breach.

Time limits for action

Enforcement action has to be taken within strict time limits.

4 year limit – this applies to “unauthorized 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 dwelling house. After four years following the breach of planning control, the development becomes lawful, and no enforcement action can be taken.

10 year limit – this applies to all other development including change of use (other than to a single dwelling house) and breaches of condition. After ten years, the development becomes lawful if no enforcement action has begun.

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 ‘deemed consent’ which means they do not require express consent 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 development to be removed or altered in the interests of public safety, or if the advertisement can be removed without any other work being required.

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

The Council also has powers to remove or destroy placards and posters that do not have advertisement consent or deemed consent. If the person who put up the advertisement can be identified, they have to be given at least two

days notice that the Council intends to take the advertisement down. If they cannot be readily identified, then the advertisement can be removed immediately as can those affixed or erected on Council property.

Council officers 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 the 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 from The Office of Public Sector Information (OPSI) at www.opsi.gov.uk.

Government policy on planning enforcement is set out in Circular 10/2009, "Planning Enforcement". This document is available from the Scottish Government and can be viewed electronically at www.scotland.gov.uk/planning.

Types of Notice

Notice Requiring Application for Planning Permission for Development Already Carried Out

– used to encourage the submission of a retrospective planning application, which would then allow the Planning Authority to consider the grant of Planning Permission subject to any conditions or limitations that would make the development acceptable in planning terms.

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, or 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.

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 referring the case to the Procurator Fiscal for possible prosecution, with a fine on conviction 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 to the Scottish Ministers 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 – takes effect immediately it is issued and, unlike a stop notice, does not require the issue of an enforcement notice. It would be used to stop an activity that would, in the Planning Authority's view, cause damage to the environment and/or local amenity. The temporary stop notice might not prohibit the activity over the entire site. For example, it might instead restrict it to certain areas or times. The maximum period a temporary stop notice can be in effect is for 28 days.

Fixed Penalty Notice: issued where Enforcement Notice or Breach of Condition Notice not complied with – this can be served where a person is in breach of an enforcement notice or a breach of condition notice where the notice is served within the six month period immediately following the compliance period stated in the enforcement notice; and that no prosecution proceedings have been started in respect of the breach. There is no right of appeal against a fixed penalty notice. The penalty for breach of an enforcement notice or a breach of condition notice is £2,000 and £300 respectively. The amount payable is reduced by 25% if paid within 15 days. Payment discharges any liability for prosecution but does not however discharge the requirement to comply

with the requirements of the original enforcement or breach of condition notice and the Planning Authority retains the power to take direct action to remedy the breach and recover any costs associated with such work. There is no right of appeal against a fixed penalty notice.

Trees in Conservation Areas

It is an offence to cut down, lop, uproot or willfully damage or destroy any tree or covered by a tree preservation order in a Conservation Area without Council's permission.

Amenity Notices

Section 179 of The Town and County Planning Act (Planning Scotland Act) 1997 enables the Council to serve a Notice on the owner, lessee or occupier of land, if it considers that the condition of the land is adversely affecting the amenity of any part of their area. The Notice specifies the steps considered necessary to reduce the adverse effect within a specified timescale. This notice can also be used for buildings. If no action is taken to respond the Council can enter the land, undertake the steps necessary to comply with the Notice and recover the costs of carrying out the work. Those served with the Notice have the right of appeal to the Scottish Ministers.

Other Powers

Interdict and Interim Interdict – an interdict is imposed by the Courts and is used to stop or prevent a breach of planning control. Such 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.

Enforcement Contacts

Contact details for reporting suspected breaches of Planning control:
Development Management Team
West Dunbartonshire Council
Council Offices
Rosebery Place
Clydebank
G81 1TG
Telephone: 01389 738575
Email: development.management@west-dunbarton.gov.uk

Contact details for general enquiries on Planning issues:
Planning & Building Standards
West Dunbartonshire Council
Council Offices
Rosebery Place
Clydebank
G81 1TG
Telephone: 01389 738575
Email: buildingandplanning@west-dunbarton.gov.uk

Contact details for complaints regarding the level of service:
Ms Pamela Clifford
Manager of Planning & Building Standards
Telephone: 01389 738656
Email: Pamela.clifford@west-dunbarton.gov.uk

Other useful contacts – enquiries regarding building warrants:
Building Standards Team
West Dunbartonshire Council
Council Offices
Rosebery Place
Clydebank
G81 1TG
Telephone: 01389 738575
Email: building.standards@west-dunbarton.gov.uk

Complaints regarding the content of advertisements should be made to the Advertising Standards Authority via its website www.asa.org.uk/asa

For general enquiries regarding the Planning system:
The Scottish Government – Planning helpline
Telephone: 0845 7741741

Planning Aid for Scotland provides a free and independent advice Service for individuals and community groups across Scotland - <http://www.planning-aid-scotland.org.uk> or call the helpline 0845 6037602.