



Department of Housing,  
Environmental and  
Economic Development

## Enforcement Charter

Updated - February 2010



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## **1. The Planning Enforcement Service.**

The purpose of the charter is to outline the procedures of the planning enforcement system and the standards of service that can be expected when enquiries are made about unauthorised developments in the West Dunbartonshire Council area. It will explain what enforcement means, advise what the Council can and cannot do and explain how the Council carries out its function, in what can sometimes be a lengthy process. In many cases the Council relies on the public to draw its attention to breaches of planning control and it will outline how the public can be involved in the planning enforcement process.

Planning Enforcement is an integral part of the statutory planning process. The legislative framework for the enforcement of planning control is the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006. The Scottish Government's Policy and Guidance on the use of enforcement powers is through Planning Advice Note 54 Planning and Enforcement and Circular 10/2009. Both documents set the framework for the Council to develop their enforcement powers. These documents are available on the Scottish Government website.  
([www.Scotland.gov.uk/planning](http://www.Scotland.gov.uk/planning))

Within West Dunbartonshire Council, the Planning Enforcement function is an integral part of Development Management which in turn is the responsibility of Planning Services (part of the Department of Housing, Environmental and Economic Development). The Council welcomes comments on this charter, how it could be improved and how the Council could improve the service it provides.

## **2. Identification of Possible Breaches of Planning Control.**

Planning Enforcement involves identifying whether a breach of planning control has taken place and whether it is expedient or appropriate to take enforcement action. The decision to take enforcement action lies with the Planning Authority. Enforcement is a discretionary power, even where breaches of planning control have taken place. The decision of the Council not to pursue enforcement action will be based on whether the breach of control would likely receive planning permission or the wider public interest. The Council cannot take enforcement action regarding development which does not require planning permission.

## POSSIBLE BREACHES OF PLANNING CONTROL

- **work being carried out without planning permission or planning consent;**
- **an unauthorized change of use;**
- **failure to comply with conditions attached to a permission;**
- **departure from the approved plans associated with a permission**

### 3. Initial Contact

The public plays a vital role in reporting breaches of planning control. Preliminary enquiries can be made by telephone or at the Reception Desk, Third Floor, Rosebery Place, Clydebank, but must be followed up in writing or by e-mail. You should send your letter to Section Head, Development Management, Rosebery Place, Clydebank G81 1TG.

Enquiries by e-mail can be made by using the Planning Enforcement Breach Form option on the Planning and Building Standards Portal or [development.management@west-dunbarton.gov.uk](mailto:development.management@west-dunbarton.gov.uk). For all preliminary enquiries whether by letter or e-mail, 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;**
- **a contact name and address for the complainant and an e-mail address if available;**
- **how the breach affects you and how long has the alleged breach taken place.**

All initial enquiries will be treated with confidentiality with the name and address of the complainant remaining confidential. However if the Council take formal action on the matter, it cannot be guaranteed that this confidentiality will be maintained, if the case is reported to Planning Committee, or in the Courts or it is the subject of an Enforcement Appeal. The telephone number and e-mail address of the complainant will be removed from all publicly available enforcement documents. Priority will be given to letters and enquiries with a contact name and address. Anonymous letters and telephone calls are discouraged as feedback is difficult if there are no contact details.

When the information is received regarding a possible breach of planning control, the information will be checked to ensure that it constitutes a possible breach of control.

After preliminary checking and compliance with the requirements for investigation of a breach of planning control, the complaint will be registered and a written or e-mail acknowledgement will be sent to the person who made the complaint.

Some complaints relate to matters over which the Planning Service has no control – for example neighbour disputes relating to boundaries. These matters cannot be investigated by Planning Enforcement where the complaint relates to a matter which is the responsibility of another section of the Council. The complaint will be forwarded to that Section and the complainant advised of this and given the details of the Section and Person now dealing with their complaint.

#### **4. Investigating Breaches of Planning Control**

##### Preliminary Investigations

Following registration of a possible breach of planning control, the Planning Enforcement Officer will visit the site.

Priority for both site visits and dealing with the complaints will be established by Planning Services by considering the effect of the breach, the significance of the site and the nature of the breach of control.

Following the site visit the complainant will be advised of what action it is proposed to take. In some cases additional investigation is required to establish if a breach has occurred and this may lengthen the process.

You will receive a response within 7 working days of receipt of your letter or e-mail. Enforcement can be a lengthy process and the Council recognizes that delays can cause frustration especially if amenity is affected. We will undertake to keep you informed of all significant steps and actions being taken such as a planning application being submitted or Enforcement Notice being issued. You may also wish to contact the Planning Enforcement Officer for a more regular update. Where no breach of planning control has been established the complainant will be advised of this outcome and the case will be closed.

### Resolution of a case without Formal Enforcement Action

In some instances even though a breach of control has occurred it may not be expedient to take enforcement action. This decision will be made by the Council having regard to the development plan and material considerations and to the circumstances of the case. Most enforcement cases are resolved without formal action.

### Retrospective Applications

Where the development is likely to be acceptable, it may be appropriate to require the submission of a planning application, provisions in the Planning Acts allow for retrospective applications.

In these cases, any action proposed is likely to be suspended until a decision is made on the application. The outcome of retrospective applications cannot be guaranteed. An invitation to submit a retrospective application in no way implies that it is acceptable. Such applications will be considered against the development plan and other material considerations including public representations.

### Procedure if the complaint is made about you or your site

It is also important to understand what the procedure is if a complaint is made about you or your development site:-

- a Planning Enforcement Officer will visit the site or premises and give you proof of their identity;
- you will be advised of the purpose of the visit and the alleged breach of control;
- the Planning Enforcement Officer will ask to enter your land or premises however if entry is refused, they have a legal entitlement to enter;
- the Planning Enforcement Officer will take notes of the visit and photographs of any alleged breaches of planning control;
- you will be advised by letter if there is a breach of planning control or not;
- the letter will detail what is needed to rectify the breach and you will be given the opportunity to discuss any matters;
- the letter will advise the time period to address the breach of planning control and what may happen if you do not put it right;
- you will be informed if formal enforcement action is to be pursued or if authority is to be sought from the Planning Committee to take formal or other appropriate action or to start a prosecution or to seek an interdict from the court.

## Negotiation

The majority of cases are resolved before taking formal enforcement action. Negotiation with the parties involved is the favored course of action as formal enforcement action is normally only taken as a last resort. All efforts will be taken to resolve the matter through negotiation rather than embarking on formal enforcement action

## **5. Formal Enforcement Action**

Only a small number of cases in West Dunbartonshire require to be dealt with by formal enforcement action. Formal enforcement action is delegated to officers through the Councils approved scheme of delegation, however in certain cases authority may be sought from the Planning Committee for formal enforcement action. These tend to be cases where formal action would have financial repercussions for the Council or where there are wider community interests. Decision to seek authority from the Planning Committee lies with Planning Services.

Formal action is instigated by the service of notices. All such notices 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, and the time period to carry out the required steps;
- the consequences of failure to comply with the notice;
- rights of appeal where appropriate.

The owner and/or occupier of the land/premises along with other persons who have an interest in the property or land will each be served with separate copies. This would include banks and building societies.

## Planning 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 documents are available for inspection at Planning Services Rosebery Place, Clydebank.

### Power of Entry.

The Council has powers to enter land/premises 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.

These powers are delegated to all Council Planning/Enforcement Officers.

### Time Limit for Formal Action

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

Four Years Limit – This is operational development such as building, engineering, mining or other operations in, or over or under land and change of use to a single house. After four years following the breach of planning control provided the development is substantially complete the development becomes lawful and no enforcement action can be taken.

Ten Years Limit – This applies to any material change of use (other than a single house) or in breach of a condition after which the development becomes lawful and no enforcement action can be taken.

### Appeals

There is no right of appeal against specific enforcement notices such as a Planning Contravention Notice, Breach of Condition Notice and Section 272 Notice. Where appeals are allowed, the appeal is submitted to and considered by the Scottish Ministers. Appeals are dealt with by Reporters from the Directorate of Planning and Environmental Appeals. Anyone who has submitted information on a breach of planning control is advised of the appeal. The majority of enforcement appeals are usually determined through the submission of written statements from both parties and a site inspection, although some cases are determined through a hearing or public local inquiry. Appeals must be made before the date specified in the enforcement notice has taken effect. Should the appeal be dismissed, the appellant will require complying with the notice, although the terms of the notice may alter.



### Enforcement Notice Not Complied With

Where compliance with an enforcement notice is not achieved, it is open to the Council to take action through the issue of a fixed penalty notice or by seeking a prosecution or direct action. Where it is decided to take direct action, the Council has the right to enter land and carry out the works required to ensure compliance with the notice. Any expenses incurred can and will be recovered from the landowner or lessee through legal and court procedures.

## **6. Notification of Initiation and Completion of Development (NID/NCD) and Display of Notices**

The applicant/developer is now required to provide 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. For any development for which permission has been granted, an NID has to be submitted to the Council informing them of the date on which the development will commence. It is to be submitted before development has commenced. Failure to submit an NID is a breach of planning control and the Council may consider enforcement action. An NCD is required to be submitted once a development has been completed.

An on-site notice will be required to be displayed for all major development and developments such as a hot food shop, licensed premises, fun fair etc (Schedule 3 classes of development). The site notice will contain basic information about the site and the development, contact details to find out more information or report alleged breaches of planning control. It is a breach of planning control to fail to display an on-site notice when required to do so.

## **7. Complaints and Performance**

An “enforcement complaint” is not a complaint against the Council. We are committed to improving our service and dealing promptly with any failures. If you are dissatisfied with the way in which an enforcement enquiry was dealt with the quickest way to sort things out is to talk to the Planning Enforcement Officer. If you are still dissatisfied; talk to the Team Leader. If he/she is unable to help you will be given the name of a more senior manager who will investigate the matter.

Written complaints will be acknowledged and then fully investigated. You can complete a Complaints Form (available from all Council Public Offices and the Council's web-site). The complaint will be given a written response explaining the outcome of the investigation and any action which the Council proposes to take. If no action is proposed, the reasons will be explained.

If you are still not happy, after you have gone through our complaints process, you have the right to take the complaint to the Scottish Public Services, Ombudsman, If you have any questions, you can telephone or email us for advice.

## **8. Service Commitment**

We will endeavor to:

- Observe high standards of personal conduct including politeness, fairness and sensitivity at all times.
- Acknowledge all communications promptly.
- Answer all telephone calls promptly.
- Respond promptly to all messages left.
- Provide as much information and immediate advice.
- Advise customers of the name and contact details for the officer responsible for dealing with their enquiry.
- Keep customers informed of the progress of their enquiries and check you have a clear understanding of what will happen next and when.
- Make our Complaints procedure readily available to all.
- Listen to the concerns and views of our customers and consult regularly to ensure that their needs are being met and to continually improve the service.
- Revise this statement on a regular basis in the light of feedback from our customers and legislative changes

## **Appendix 1**

### **Enforcement Powers**

#### **Types of Notices and Powers**

##### **Enforcement Notice (EN)**

This is served by the Council to deal with unauthorized development where there has been a breach of planning control. It can also be used for a breach of planning conditions as an alternative to a Breach of Condition Notice. An enforcement notice will specify a time period to take effect (normally a minimum of 28 days) and 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 up to £20,000 in the Sheriff Court.

##### **Breach of Condition Notice (BCN)**

In the event of a failure to comply with a condition(s) a Breach of Condition Notice may be served. It takes effect on the day it is served on any person carrying out the development and/or any person having control on 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. Failure to comply with a Breach of Condition Notice may involve a prosecution with a fine of up to £1,000.

##### **Listed Building Enforcement Notice (LBEN)**

Breaches of listed building control are a serious matter and it is a criminal offence to undertake unauthorized works to a listed building. The procedures involved in the serving of the Listed Building Enforcement Notice and the parties involved are similar to those of an Enforcement Notice. There is also a right of appeal against a Listed Building Enforcement Notice.

### Advertisement Enforcement Notice (AEN)

The siting or erection of an unauthorized advertisement or that any conditions attached to an advertisement consent has not been complied with an Advertisement Enforcement Notice can be served. The Advertisement Enforcement Notice can take effect within 7 days where it is considered urgently necessary in the interests of public safety. In any other case a minimum of 28 days. There is a right of appeal against the Notice.

### Notice Requiring Application for Planning Permission for Development Already

#### Carried Out

This encourages the submission of a retrospective planning application which allows the council to consider the grant of planning permission subject to any conditions or limitations that make the development acceptable in planning terms. If the retrospective application is not submitted by the date specified the Council may consider further enforcement action. There is no right of appeal.

### Section 272 Notice - Information Notice

This enables information to be obtained regarding interests in the land and the use of land. It is often used before issuing an Enforcement Notice. Failure to provide the information required is an offence and can be reported to the Procurator Fiscal

### Section 179 Notice - Amenity Notice

The Council may serve a notice on the owner, lessee or occupier of the land if it appears that the amenity of the area is adversely affected by the condition of the land. This notice can also deal with buildings. The Notice sets out the steps to be taken to reduce the adverse effect of the condition of land within a specified period. Failure to comply with the notice is an offence. There is a right of appeal against this Notice.

### Fixed Penalty Notice

This notice is issued where an enforcement notice or breach of condition notice is not complied with. It can be served within the 6 month period immediately following the compliance period stated in the enforcement notice and provided no prosecution proceedings have been started. It offers a person the opportunity of discharging any liability for prosecution by paying the planning authority a penalty of an amount specified in the notice within 30 days. The 30 day period starts the day the notice is served, but if payment is made within the first 15 days then the amount is reduced by 25%. The penalty for non-compliance with an enforcement notice is £2000 and for a Breach of Condition Notice the penalty is £300. There is no right of appeal against a Fixed Penalty Notice.

### Direct Action

Where the steps required by an Enforcement Notice have not been taken within the time specified, the Council may enter the land and carry out the steps themselves. The Council may recover any costs it incurs from the land owner.

### Interdict & Interim Interdicts

This involves making an application direct to the Sheriff Court in order to stop an alleged unauthorized development or activity and is used in cases of extreme urgency or importance. An interdict is imposed by the Courts and is used to stop or prevent a breach of planning control. Court proceedings can be costly and before initiating proceedings, the Council will assess the likely outcome as there may be a liability in damages for all loss arising to the developer from the activity having been prevented by the interdict if it is subsequently shown that no breach of planning control has occurred on the land. An interim interdict is an interim measure designed to preserve the status quo or to prevent temporary and imminent wrong.

### Trees in Conservation Areas

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

### Stop Notice

This is used in particularly urgent or serious cases where unauthorized activity must be stopped. It is usually served where there are implications for public safety. When a stop notice is served; an enforcement notice must also be issued. There is no right of appeal against a stop notice and failure to comply with its terms is an offence and can be reported to the Procurator Fiscal. There is a right of appeal with the accompanying enforcement notice and if the appeal is successful and it is found that the stop notice has been served without due cause, (for example the development did not require planning permission), the Council may face claims for compensation. The use of stop notices requires careful consideration by the Council.

### Temporary Stop Notices

This notice takes effect immediately and does not require the issue of an enforcement notice. A temporary stop notice requires the immediate cessation of an activity from the moment it is displayed on site and it should only be used where there is a clear and immediate need for such action. It can be used to stop an activity that in the planning authority's view would cause damage to the environment and/or local amenity. There is no right of appeal and no 3 day notice period.

## Enforcement/Development Management Contacts

### **General Planning Enquires**

Council Offices, Rosebery Place, Clydebank, G81 1TG

Telephone: 01389 738575

Fax: 01389 738584

E-mail: [development.management@west-dunbarton.gov.uk](mailto:development.management@west-dunbarton.gov.uk)

Council website: [www.wdcweb.info](http://www.wdcweb.info)

### **Office hours:**

Monday to Thursday – 8:45 to 4:45pm

Friday – 8:45 to 3:55pm

Enforcement/Development Management Contacts cont..

**Section Head, Development Management**

Pamela Clifford

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Enforcement/Development Management Contacts cont..

**Other Contacts**

Forward Planning & Regeneration Council Offices, Garshake Road, Dumbarton, G82 3PU

Telephone: 01389 737000

Email: [wdp@west-dunbarton.gov.uk](mailto:wdp@west-dunbarton.gov.uk)

Building Standards

Council Offices, Rosebery Place, Clydebank, G81 1TG

Telephone : 01389 738672

E-mail : [buildingandplanning@west-dunbarton.gov.uk](mailto:buildingandplanning@west-dunbarton.gov.uk)

Scottish Government Planning Services

Helpline: 08457 747147

Website: [www.Scotland.gov.uk/planning](http://www.Scotland.gov.uk/planning).

Planning Aid for Scotland

11a South Charlotte Street

Edinburgh

EH2 4AS

Telephone: 0131 220 9730

Email: [office@planningaid.Scotland.org.uk](mailto:office@planningaid.Scotland.org.uk)



Enforcement/Development Management Contacts cont..

Directorate for Planning and Environmental Appeals

4 The Courtyard

Callendar Business Park

Callendar Road

Falkirk

FK1 1XR

Telephone: 01324 696 400

Email: [DEPA@scotland.gsi.gov.uk](mailto:DEPA@scotland.gsi.gov.uk)

Scottish Public Services Ombudsman

Freepost EH641

Edinburgh

EH3 0BR

Telephone: 0800 337 7339

Email: [ask@spsso.ork.uk](mailto:ask@spsso.ork.uk)