

Glasgow City Council

# Planning Enforcement Charter

2018 - 2020



# **PLANNING ENFORCEMENT CHARTER**

## **CONTENTS**

- **INTRODUCTION**
- **WHAT IS A BREACH OF PLANNING CONTROL**
- **WHAT IS NOT A BREACH OF PLANNING CONTROL**
- **THE PRINCIPLES UNDERLYING GOOD ENFORCEMENT**
- **HOW THE COUNCIL'S ENFORCEMENT PROCESS WORKS**
- **THE ENFORCEMENT SERVICE PLEDGES**
- **THE ENFORCEMENT SERVICE STANDARDS**
- **REQUESTING AN INVESTIGATION**
- **MAKING AN APPLICATION FOR A HIGH HEDGES NOTICE**
- **MAKING A SUGGESTION OR COMPLAINT ABOUT THE PLANNING ENFORCEMENT SERVICE**
- **APPENDIX 1**
- **ADDITIONAL SOURCES OF INFORMATION**
- **KEY CONTACTS**

## INTRODUCTION

Planning legislation requires the Council to prepare a Planning Enforcement Charter which states the Council's policy towards taking enforcement action and explains to stakeholders how they may raise a complaint about a breach of planning control and what service they may expect to receive in the circumstances. This document is Glasgow City Council's Planning Enforcement Charter (the Charter). The [Council's website](#) contains a wide range of information on planning matters including this Charter. The Charter will be made available at all City libraries and at the offices of Development and Regeneration Services and is updated every two years.

Through planning legislation, building works and changes in use of land are referred to generally as "development". Many developments of limited impact benefit from permitted development rights which are granted permission by statute. However, occasionally developers (which means anybody undertaking a development, including householders) exceed these rights or fail to keep to the terms of the permission, in which case the development may be unauthorised.

The Council has planning enforcement powers to take action against unauthorised development where it is considered harmful in planning terms and in the public interest to do so. Authorised developments may also be checked to ensure works are carried out in accordance with the planning permission, where a problem is indicated.

The majority of cases investigated by the Planning Enforcement Team are raised by members of the public. The negative impact created by unauthorised development is assessed and higher priority is given to cases where a greater level of harm is considered to have occurred. (The Council's system for prioritising action is described later in this Charter). However, certain breaches have limited impact and despite being unauthorised may be acceptable. The Charter will also explain the process for dealing with these to ensure consistency and transparency of service delivery.

## WHAT IS A BREACH OF PLANNING CONTROL?

The majority of planning enforcement investigations involve the following alleged breaches which may require planning permission:

- Operational development such as building or engineering works.
- Material change of use of land or buildings which has a different and tangible impact in terms of land use.
- Development which has not been carried out in accordance with an approved planning permission.
- Failure to comply with a condition or legal agreement attached to a planning permission.

Other matters which also fall under the scope of planning control are:

- Demolition taking place in Conservation Areas, without Conservation Area Consent,
- Works carried out to a Listed Building which affect the historic character or setting, without Listed Building Consent.
- Removal of, or works carried out, to protected trees without consent being granted or proper notification given.
- Advertisements, which require consent under the Advertisement Regulations, which are displayed without express consent.
- Failure to comply with the requirements of a planning notice.
- Excessively untidy private land or property which is not the result of an authorised use.
- Applications for action to be taken under the High Hedges Act.

### Enforcement Action is Time Limited

Formal action can only be taken against unacceptable breaches within time periods which are set by legislation:

• **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 to a change of use to a single dwellinghouse. If it is confirmed that the development was substantially completed more than four years ago the development becomes lawful and no enforcement action can be taken.

• **A ten year limit** - this applies to all other development including **changes of use** (other than to a single dwellinghouse) and **breaches of condition**. If the use has subsisted for a continuous period exceeding ten years and no formal enforcement action has been taken within this period, the development becomes lawful.

### Certificate of Lawful Existing Use or Development

After the periods listed above, the Council cannot take action. The landowner can apply for a **Certificate of Lawful Existing Use or Development (CLEUD)**; if in the “balance of probability” the development is considered to have existed longer than the immunity periods, lawfulness will be confirmed through the certificate being granted.

Although service of an Enforcement Notice “stops the clock” in terms of the above immunity periods, appeals against Enforcement Notices can be made on grounds that the development was immune from enforcement action in the first place. Information received from complainants in assisting establish the existence of a breach is important. However, knowledge of the date of commencement of a use or substantial completion of a building may be critical to the success of an enforcement action.

## WHAT IS NOT A BREACH OF PLANNING CONTROL?

Often complaints are received regarding matters that are **not** breaches of planning control. Works which do not fall within the definition of development cannot be controlled under planning legislation. Other works may constitute development which has been granted planning permission by statute; these works are called “permitted development”. Many complaints received by the service relate to works which have the benefit of these rights. However, in Conservation Areas, the majority of these permitted development rights have been removed.

It is a common misperception that Planning can intervene to resolve all amenity problems caused by neighbours or by nearby businesses. Many problems are controlled not through Planning, but other legislation. The following are examples of what the Planning Enforcement Team cannot assist with:

### Civil disputes

- Neighbour nuisance/boundary and land ownership disputes – these are civil matters that the Council cannot get involved in. The Planning system does not protect one person’s property rights over another’s. Further advice regarding civil disputes may can be obtained from a solicitor or the Citizens Advice Bureau.

### Other legislation

- Dangerous structure or a technical building issue relating to the building standards – please contact our Building Control section on 0141 287 8555
- Fly tipping & fly posting
- Any matter covered by other Environmental and Public Health legislation such as noise and smells, which is not controlled by a planning condition.

If we receive a complaint which involves another Council service we will pass it to the relevant service and we will inform you who we have contacted on the matter. If it involves an organisation outwith the Council we will advise you who should be contacted.

# THE PRINCIPLES UNDERLYING GOOD ENFORCEMENT

## Expediency

Planning enforcement is a **discretionary power**. This means that the Council has to consider whether it is in the public interest to take enforcement action. There is no requirement for the Council to take any particular action on a specific breach of planning control; in many situations it is considered that action is not necessary or would be disproportionate to the breach. This approach is in line with Scottish Government guidance (see Appendix 1) which states that formal enforcement action should not normally be taken where the breach does not cause harm.

In deciding whether it is appropriate to take enforcement action the degree of **harm** the unauthorised development is causing, or is anticipated to cause, will be carefully considered.

Harm can arise through a range or combination of factors:

- Adverse impact on visual amenity due to over-development, excessive size, or inappropriate materials.
- Inappropriate and conspicuous development that is harmful to the surrounding area.
- Failure to comply with a condition of a planning permission, causing adverse impact on amenity.
- Loss of privacy or overshadowing and loss of natural light.
- Loss of protected trees.
- Irreversible damage or unacceptable alteration to listed buildings and demolition of buildings in a Conservation Area.
- Extremely untidy land and derelict buildings that impact severely upon local amenity.

Harm (for planning purposes) however **does not include**:

- Competition caused to another business
- Loss of an individual's view or trespass onto their land (including ownership disputes)
- Loss of value to a property.

## Proportionality

In considering formal enforcement action, the decisive issue for the Council is whether the breach would unacceptably affect public amenity or the existing use of land and buildings, thereby meriting protection in the public interest. Enforcement action should always be proportionate to the scale and nature of the breach of planning control and the seriousness of the harm caused as a consequence.

Often members of the public incorrectly refer to illegal development or works. **It is important to recognise that is not a criminal offence to carry out the majority of works without planning permission.** However, it is a criminal offence to do the following without consent:

- Work affecting the character of listed building.
- Felling, lopping, uprooting or wilful damage/destruction of trees protected by Order (TPO)
- Display of an advertisement requiring consent.
- Failure to comply with an Enforcement Notice which has taken effect.

The Town and Country Planning Act enables people who have carried out unauthorised development to apply for '**retrospective planning permission**'. In dealing with such applications, the Council must consider them in exactly the same way as any other application. The fact that the development has already been carried out is not something that can be taken into account in the determination of the application.

The options for taking action throughout the course of an investigation are varied and should be used proportionately according to the level of harm caused. Whilst an opportunity is always given to allow

the breach to be resolved without formal action, unreasonable delay should not prevent swift action where clearly it is necessary.

The most severe breaches showing flagrant disregard for the planning system and concerns regarding the impact of unauthorised development will be met with swift action, including the use of Temporary Stop Notices (stopping any unauthorised use for 28 days to allow consideration of longer term action) and through the use of Interdicts where a Enforcement Notice has not been complied with. Other relatively minor breaches may be acceptable and therefore a request for an application may be entirely appropriate. At the lowest end of the spectrum, technical breaches with little or no impact will not be pursued for further action, allowing finite resources to be prioritised for other cases requiring action. In all situations the record of an investigation confirming that a breach has occurred may affect the owner's ability to sell the property, as investigations and formal Notices are identified when a solicitor obtains a Property Enquiry Certificate from the Council.

### **Consistency**

Whilst each situation presents its own unique circumstances, we will endeavour to carry out our duties in a fair, equitable and consistent manner. We will consider each individual matter on its merits. There will be a consistent approach to enforcement action against breaches of similar nature and circumstance guided by the City Development Plan and supplementary planning guidance to establish what action is required. In reaching decisions we will be mindful of advice contained within relevant Government guidance as well as taking into account emerging planning appeal decisions and case law, where appropriate.

### **Negotiation**

Enforcement powers provide leverage to resolve breaches and are not intended to be used as punishment where planning permission has not been obtained.

In all but the most severe cases requiring immediate action, we will seek to negotiate compliance in the first instance. However, negotiations will not be allowed to cause unreasonable and unjustified delay where clearly action should be taken.

### **Standards**

The Planning Enforcement Charter explains the service which will be provided and the standards of performance that customers can expect to receive. The Planning Enforcement Charter is subject to review every two years. Service standards are monitored quarterly to ensure that performance meets expectations.

### **Openness**

Information and advice will be provided in plain language on the rules that we apply. We are happy to discuss general issues, specific cases or other problems with anyone with an interest with our service, subject to data protection and freedom of information legislation. Enforcement cases are treated as complaints regarding alleged breaches. Accordingly we will refer to a person who has raised the matter as "the complainant". Investigations have repercussions as they are recorded against the property history; they will not be conducted for queries seeking information only, which do not seek resolution of a particular complaint.

### **Helpfulness**

We will work with the public to address their concerns and in dealing with developers will advise them towards compliance in a similar spirit of cooperation. Officers contact details will be provided to enable customers to contact them directly when seeking advice and/or an update on the progress of a

case. We will seek to provide each complainant with a Planning Impact Report in accordance with Service Standard 4.

Whilst we aim to assist wherever possible, Officers will not tolerate abusive language or behaviour either in person or in correspondence. The actions of customers who are angry, unreasonably demanding or persistent may result in unreasonable demands on our resources or in unacceptable behaviour towards staff. Such actions will be referred to the Council's Customer Care Team for potential action in relation to the Council's Unacceptable Actions Policy.

Customers are able to make complaints about the quality of the enforcement service they have received. The Council has a complaints procedure to enable these to be given due attention, details of which are provided at the end of the Charter.



## HOW THE COUNCIL'S ENFORCEMENT PROCESS WORKS

The Council receives a great number of requests from the public to investigate possible breaches of planning control. At any one time, there are approximately 700 - 800 live cases. The following process is applied for every enforcement investigation:

1. Receipt of complaint and assessment of whether it is a matter for enforcement investigation.
2. Investigation, identification and assessment of the impact of the alleged breach. Provide the complainant with a Planning Impact Report detailing one of 5 possible courses of action that will determine what happens next.
3. Negotiation with Developer to resolve.
4. Take formal Enforcement Action if necessary.
5. If an Appeal is submitted, provide Council's Statement of Appeal to Scottish Government.
6. If the appeal is dismissed, seek compliance with the "effective" Enforcement Notice.
7. Where compliance is not achieved consider use of Fixed Penalty Notice potential for legal action.
8. Inform complainant when the case is closed

It should be noted that most formal enforcement action gives the recipient a right of appeal to Scottish Ministers and this is often a contributory factor to the length of time that can be taken to remedy a breach of planning control. The Council will try to deal with any complaints as quickly as possible. However, the length of time required to resolve a case or take action can be affected by a number of factors: for example, the necessary gathering of further evidence; to allow negotiations to take place; or for formal procedures such as a retrospective application or appeal against a refusal of planning permission or Enforcement Notice to be concluded.

## **THE ENFORCEMENT SERVICE PLEDGES**

The way the Council deals with complaints is outlined above. It is, however, necessary to detail the specific approach the Council will take towards breaches of planning control. The Council provides the following service pledges in the delivery of the enforcement service. A service pledge is a public commitment to a basic code of conduct. The service pledges provide the overarching service direction and context to the detailed service standards which follow on from them.

### **Service Pledge 1: To follow agreed procedures in resolving cases**

The Council will follow the procedures below in dealing with its enforcement activities. The general approach is that any action taken will be in proportion to the scale and nature of the breach.

- a. Each complaint regarding a possible breach of planning control will be followed up when it is received, in accordance with the Service Standards identified in this Charter.
- b. The Council will investigate all written or email complaints, where the complainant provides an email or postal address to receive a written reply. Anonymous complaints will not be investigated although discretion in this may be exercised where the allegation relates to a very serious breach of control (as described in Service Pledge 4 below).
- c. The Council will treat the complainant's personal details, name, address, phone number and any other contact details as confidential, unless the complaint is made on behalf of a corporate body or public body such as a community council. Complainants should, however, be aware that, if the case progresses to a planning appeal, then their name and some contact details may be released by Scottish Ministers into the public domain.
- d. The Council will attempt to resolve the alleged breach without recourse to the service of a formal notice, but will not allow the process to be unnecessarily delayed where it appears unlikely from the outset that planning or other consent would be granted by the Council.
- e. Where a breach of planning control appears at face value to comply with the City Development Plan and does not unduly impact on amenity or public safety, the Council will initially invite a retrospective planning or other appropriate application to be submitted. Subsequent failure to submit an application under these circumstances may result in the service of a Section 33A Notice (See Appendix 1) which is an enforcement notice formally requiring the submission of an application.

### **Service Pledge 2: To take action where it is considered expedient to do so.**

The Council will take formal enforcement action only where the breach is considered to have an unacceptable effect on public amenity, or where the use of land and buildings merits protection in the public interest. Each case will be considered on its merits and the decision will be informed by the relevant policies of the City Development Plan and the degree of harm caused by the breach, assessing the impact relative to the established appearance or character of the property and area. Generally, a higher priority will be given to a breach where it affects the complainant's amenity in the locality of their own address. Correspondingly, less weight will be given to complaints from one source about many similar breaches located throughout the wider area, which may have little or no direct impact on the amenity of the complainant concerned.

### **Service Pledge 3: To use powers which are in proportion to the harm caused by the breach**

The Council will consider the range of its enforcement powers (see Appendix 1) to remedy an unacceptable breach. The action taken will depend on the nature of the breach. Where an effective Enforcement Notice is not being complied with the case will be risk assessed in term of further action. Legal action may be an option but will depend on the severity of the breach, usually only being possible where the impact of the development is severe and unprecedented. Fixed Penalty Notices may be a more realistic option as these will have repercussions when a Property Enquiry Certificate is obtained by solicitors on behalf of the property owner when selling the property. The threat of the FPN may also provide leverage to bring about resolution and can be a useful tool in respect of this. Direct

Action is possible where a Notice has not been complied with; but given the substantial financial cost with no guarantee of costs being recovered this may not be practical or financially feasible. However, each case will be considered in light of prevailing circumstances at the time and all options will be considered.

**Service Pledge 4: To identify cases for higher priority action**

The Council will generally deal with complaints about alleged breaches in accordance with the order in which they are received except for the following which will be given priority. Where there is a conflict between priorities those cases involving the historic fabric of the City will take precedence.

- Complaints alleging conspicuous irreversible damage to listed buildings.
- Complaints alleging breaches of control which have a severe impact on the character of a conservation area.
- Complaints alleging damage to trees protected by a Tree Preservation Order (TPO), or trees in conservation areas.
- Complaints alleging damage to Sites of Special Scientific Interest (SSSI), local nature reserves and other environmentally designated sites as identified in the City Development Plan.
- Complaints alleging the storage of hazardous substances.
- Complaints alleging breaches of planning control which have more than a local impact on amenity and/or public safety.
- Non-compliance with the terms of a legal agreement entered into between the Council and a developer.

## THE ENFORCEMENT SERVICE STANDARDS

A service standard is a public commitment to a measurable level of performance that clients can expect *under normal circumstances*. The following service standards are consistent with the priorities and objectives of the service. Performance in relation to the service standards will be monitored and reviewed over the life of the Charter which expires in April 2020.

Service Standard	Aim	Target Timescale	Additional Information
Service Standard 1	To acknowledge the complaint	Within 10 working days of receipt of the complaint	The acknowledgement will contain the Council's case reference number and the investigating officer's name and contact details.
Service Standard 2	To undertake a preliminary investigation and visit the site.	Within 25 working days from the acknowledgement date	It can often take some time to access the site to establish the nature of a breach and identify who is legally responsible.
Service Standard 3	To prioritise high priority cases (as described in Enforcement Service Pledge 4)	Visited on a same day/ next day basis	
Service Standard 4	To provide the complainant with a Planning Impact Report (stating one of five possible categories of action A-E)	Within 2 months of the acknowledgement of the case, in <b>80%</b> of all cases received.	The Council recognises that delays can be a source of considerable frustration to those making a complaint, particularly if they consider their amenity is affected. The Planning Impact Report will indicate what action is intended to be taken.

### Planning Impact Report (PIR)

This version of the Charter introduces a new standard (Service Standard 4) which is to aim in not less than 80% of all cases to provide the complainant with a firm statement of the assessment of the alleged breach (and what action is intended as a consequence) within 2 months of the date of the case being acknowledged. The Planning Impact Report will provide summary details of the site visit, the assessed planning impacts of the alleged breach and justification for one of the following 5 potential outcomes, described as CATEGORIES A- E:

#### **PIR (CAT A): Enforcement Action Necessary**

The development causes serious planning harm which requires formal action to be taken.

(Timescales for further action will be provided dependent on circumstances)

**PIR (CAT B): Submission of an application is required**

The development may be acceptable subject to conditions. Submission of an application will enable full consideration of the planning implications of the development, including any relevant planning considerations raised by affected neighbours who will be notified of the application where appropriate. A S.33A Notice may be served formally requiring an application to be submitted should the owner not respond to the Council's request for an application to be submitted. This stops the clock in terms of potential immunity being reached through the passing of time.

**PIR (CAT C): Minor technical breach of planning control.**

Some development may technically require consent but have limited or "neutral" impact. Prioritisation of resources indicates that it would not be in the public interest to pursue acceptable development merely to regularise unauthorised works where added quality through adjustment of the development or attachment of a condition mitigating its impact would not be applied.

A Property Enquiry Certificate (PEC) is often required when buying or selling a house. Although the case will be closed the record of unauthorised development will exist and will be identified through any PEC provided in relation to the property history.

**PIR (CAT D): No breach of planning control**

Works carried out are either not considered to constitute development or may be permitted development (as detailed by statutory orders). As no further action can be taken through planning legislation the case will therefore be closed.

**PIR (CAT E): Suspension of investigation:**

**A. Pending requirement for further information (from complainant)**

Initial investigations have not conclusively indicated a particular course of action at this juncture. Further information is required which is *(details to be provided by case officer)*

**B. Following agreement with internal colleagues/ Developer**

Development Management colleagues (who are in discussions with the developer) have recommended to allow *(officer to detail an appropriate period of time)* to enable submission of an application/ resolution of the breach before further action will be considered.

The assessment provided within the PIR will be final and will not normally be overturned. Any requirement for further review would only be available through the submission of a complaint in relation to the Council's Complaint Handling Procedure, the guidelines for which are attached in this **link**.

## REQUESTING AN INVESTIGATION

Members of the public have a vital role in reporting breaches of planning control. Any concerns should be raised with the Council. You can register a complaint by completing the on-line complaint form. Click here to open the form [Planning Enforcement](#)

You can also make a complaint in writing providing the following information:

- The address of the property concerned;
- Details of the suspected breach of planning control;
- Your name, telephone number and address;
- Information on how the breach affects you.

The contact address is given below:

Planning Enforcement Team  
Planning and Building Standards  
Development and Regeneration Services (DRS)  
231 George Street G1 1RX

## **MAKING AN APPLICATION FOR A HIGH HEDGES NOTICE**

The High Hedges (Scotland) Act 2013 (“the Act”) came into force on 1 April 2014. The Act aims to provide a solution to the problem of high hedges where neighbours have not been able to resolve their dispute amicably.

The Act defines a high hedge as being formed by a row of trees or shrubs which exceed two metres in height and which form a barrier to light. The Act allows applications by a domestic owner or occupier to be made to the Council where a high hedge on neighbouring land is considered to be having an adverse effect on the reasonable enjoyment of domestic properties. The applicant is, however, under an obligation to take reasonable steps to resolve the high hedge dispute before making an application to the Council.

Responsibility for processing applications in relation to the Act has been given to the Planning Enforcement Team. A fee of £500 is required to be paid for the Council to validate an application. Where the decision is made to serve a High Hedge Notice, the owner has a right of appeal to the Scottish Government. Similarly, where the Council decides that it is not appropriate to serve a High Hedge Notice, the applicant has a right of appeal.

Where a High Hedge Notice has been served and takes effect, the owner of the hedge is required to remedy the problem and prevent it recurring. The Act allows the Council to undertake work where owners fail to comply with the High Hedge Notice with the costs of the work being recoverable from the hedge owner. It is the responsibility of the Planning Enforcement Team to take this enforcement action where appropriate and necessary to do so.

The Scottish Government has issued guidance about the Act (*High Hedges (Scotland) Act 2013: Guidance to Local Authorities 2014*). The Council has also published its own guidance to the public in relation to the administration of this new legislation, including the relevant details of the relevant fee. For further information on how to make an application, see [this link](#).

## **MAKING A SUGGESTION OR COMPLAINT ABOUT THE PLANNING ENFORCEMENT SERVICE**

The Council aims to provide a planning enforcement service which the public will be satisfied with. If, however, you have any suggestions for improvement, concerns or difficulties, we want to hear from you. We are committed to improving our service and dealing promptly with the cause of a complaint. We will investigate all complaints made about the way an enforcement enquiry was dealt with. Whilst some people may disagree with the outcome of an investigation, that in itself is not grounds for complaint about the service provided. In the first instance, complaints about the enforcement service should be discussed with the member of staff involved. If you are still dissatisfied, contact the Principal Enforcement Officer by phoning 0141 287 6020. If they are unable to help, you will be given the name of a more senior officer who will investigate the matter. If you are not satisfied with these responses, you can pursue the formal DRS complaint procedure. This is detailed on the Council's website at this [link](#).



## **Appendix 1**

### **Investigatory powers & Enforcement Powers**

#### **Planning Contravention Notice (under Section 125 the Town and Country Planning (Scotland) Act 1997)**

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 anyone carrying out operations on the land. The persons served 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.

#### **Requisition for Information 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.

#### **Rights of Entry (Sections 156 – 158 of the Town and Country Planning (Scotland) Act 1997)**

**Section 156** enables the Council to enter land at any reasonable hour without a warrant to ascertain whether there is or has been a breach of planning control or to ascertain whether there has been compliance with any requirements arising from earlier enforcement action.

**Section 157** provides the Council the right to enter land with a warrant issued by a Sheriff if entry is refused.

**Section 158** provides that the Council has to produce evidence of their authorisation and state the purpose of their entry before they enter the land.

### **Formal Action**

#### **High Hedges (Scotland) Act 2013**

Once the local authority has decided that action needs to be taken regarding a high hedge, it must issue a High Hedge Notice. This Notice gives effect to the local authority's decision and details the action to be taken to restore a suitable balance between the amenity enjoyed by the applicant and the hedge owner, having regard also to the needs of the wider community. A High Hedge notice will specify the 'initial action' and any 'preventive action' required by the owner of the hedge. The Notice will detail what action is required to alleviate the problem (most likely to reduce the height of the hedge) and any maintenance required to prevent recurrence of the problem. A High Hedge Notice remains in existence for as long as the hedge remains on the land or a local authority has withdrawn the notice.

#### **Enforcement Notice (Section 127 – 129 of the Town and Country Planning (Scotland) Act 1997)**

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 and advertisements (see below). An Enforcement Notice will specify a time period to take effect (a

minimum of 28 days), the steps that must be taken to remedy the breach and the timescale within which the remedial action 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 Fixed Penalty Notice of £2,000 or a fine of up to £20,000 in the Sheriff Court if prosecution is pursued. Failure to comply may also result in the Council taking Direct Action to correct the breach (see Further Action).

### **Advertisement Enforcement (under the Town and Country Planning (Control of Advertisement) (Scotland) Regulations 1984**

The Advertisement Regulations and the 1997 Act include various provisions for dealing with the unauthorised display of advertisements, or challenging existing displays. These include:

**Advertisement Enforcement Notice:** This seeks to remove advertisements which do not have consent.

**Discontinuance Notice:** This allows the Council to challenge a consented display which is no longer considered acceptable. This usually applies to displays which have been in place for some time.

**Removal or obliteration notice:** This allows the Council to remove or obliterate placards or posters. This provision was introduced primarily to deal with “flyposting”.

### **Breach of Condition Notice (under Section 145 of the Town and Country Planning (Scotland) Act 1997)**

This can be 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 above), 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 serving a Fixed Penalty Notice for £300 or deciding to prosecute, where a fine can be imposed of up to £1,000.

### **Stop Notice (under Section 140 of the Town and Country Planning (Scotland) Act 1997)**

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 Council must have first issued 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, which differentiates a Stop Notice from other types of enforcement notice. There are, however, exemptions. For example, a Stop Notice cannot be served on a dwelling.

### **Temporary Stop Notice (under Section 144A of the Town and Country Planning (Scotland) Act 1997)**

This is used to stop the unauthorised activity immediately. It may be served before the issue of an Enforcement Notice and ceases to have any effect after 28 days.

### **Amenity 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 sets out the action that needs to be taken to resolve

the problem within a specified period. There is a right of appeal against an Amenity Notice. Such a notice will normally only be used where serious disamenity is caused to the wider area, not for relatively minor instances of untidiness such as poor maintenance of garden lawns.

### **Interdict and Interim Interdict (Section 146 of the Town and Country Planning (Scotland) Act 1997)**

An interdict may be granted by the courts and is used to stop or prevent a breach of planning control. Court proceedings can prove costly and the Council normally only seeks interdicts in very serious cases e.g. where public safety may be involved or unauthorised works are taking place to a listed building. The Council can seek an interdict, however, 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.

### **Request for Application Notice (Section 33A of the Town and Country Planning (Scotland) Act 1997)**

This may be served where the Council requires the submission of a planning application for development which has already taken place without the appropriate planning permission. Technically, this constitutes formal enforcement action and extends the period within which other enforcement action may be taken.

### **Fixed Penalty Notice (Sections 136A and 145A of the Town and Country Planning (Scotland) Act 1997)**

This may be served as an alternative to seeking prosecution where the terms of a notice have not been complied with. The penalties are £2,000 (£1,500 if paid within 15 days) for non-compliance with an Enforcement Notice, and £300 (£225 if paid within 15 days) for non-compliance with a Breach of Condition Notice. Failure to pay a Fixed Penalty fine may result in the case being referred to the Procurator Fiscal for possible prosecution.

### **Listed Building Fixed Penalty Notice (Section 39A (5) and (13) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997)**

For Listed Building Enforcement Notices the penalties are £2,000, £3,500 for a 2nd breach and £5,000 for 3rd and subsequent breaches. Failure to pay a Listed Building Fixed Penalty fine may result in the case being referred to the Procurator Fiscal for possible prosecution.

### **Tree Replacement Notice (under Sections 167 and 172 Town and Country Planning (Scotland) Act 1997)**

This may be served when a protected tree (either protected by a Tree Preservation Order or a tree located within a Conservation Area) is felled or otherwise destroyed without prior consent. An appeal may be made against a Tree Replacement Notice.

### **Possible Further Action**

If an Enforcement Notice has not been complied with and the time for compliance has elapsed if the breach is continuing, the Council can pursue the following actions:

#### **Fixed Penalty Notice**

This may be served as an alternative to seeking prosecution in the Courts.

## **Prosecution**

The Council may refer the matter to the Procurator Fiscal for possible pursuit of the case in the Sheriff Court. A fine of up to £20,000 may be imposed but this will not necessarily resolve the breach of planning control. If the breach continues, the Council can again refer the matter to the Procurator Fiscal.

## **Direct Action**

Failure to comply with the terms of an Enforcement Notice or a High Hedge Notice within the time specified can result in the Council carrying out the required work. The Council will seek to recover the costs it incurs from the current landowner.

## **Burden on Property**

In some circumstances the Council may decide not to take any action and leave an extant enforcement notice as blight on land/property. This can lead to a delay if a house/land is to be sold and the sellers agents require these breaches to be rectified in order for the sale to conclude. Where there are any outstanding financial implications registered against land/property that appear on a Councils Property Enquiry Certificate, all sums due to the Council will be deducted from the future sale of that land/property.

## **ADDITIONAL SOURCES OF INFORMATION**

Government policy on planning enforcement is set out in Circular 10/2009, 'Planning Enforcement'.

This document is available from the Scottish Executive and can be viewed on-line at the [link](#).

## **KEY CONTACTS**

Development and Regeneration Services (DRS)  
231 George Street  
Glasgow  
G1 1RX  
Phone number – 0141-287 8555

### **Making a complaint**

Members of the public have a vital role in reporting breaches of planning control. Any concerns should be raised with the Council. You can register a complaint by completing the [on-line complaint form](#).

