Clackmannanshire Council | Comhairle Siorrachd Chlach Mhanann
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Development Services

Planning Enforcement Charter

September 2025

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This Charter sets out the current powers available to Clackmannanshire Council as planning authority. These powers are set out in the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

Foreword

Planning permission is needed for most types of development, including new buildings and extensions and the change of use of land or buildings. Sometimes developers or householders undertake work without planning permission or fail to keep to the permission they have been given.

In such cases Clackmannanshire Council must consider whether it is necessary to take action, through its planning enforcement powers, to address breaches of planning control.

This Charter explains the work of the Council's Enforcement service. It describes the investigation work that takes place, what we take into account in deciding whether there is a breach of planning control and what further action is appropriate. The Charter also tells you the standard of service you can expect and what to do if you are not satisfied with the outcome.

The Council's Planning Officers welcome queries if any clarification or explanation is needed – planning enforcement is a complex subject for everyone involved, and together we can improve understanding, in turn helping to simplify and reduce enforcement cases in the County.

Councillor Coyne
Planning Committee Chair

A Guide to planning enforcement – what is a breach and how do you contact us

Most forms of development need planning permission from the Council. It is always advisable to contact us to check before you start work. **You can contact us at planning@clacks.gov.uk.** We can give you the correct advice, and tell you whether planning permission or some other permission is required. This will help to avoid us having to make further enquiries. If you send us accurate details of what you intend to do, we will reply by email or letter

In addition to this advice from officers, you can also apply for a Certificate of Lawful Use or Development from the Council.

Sometimes development may take place without planning permission, or before permission has been given. An individual or developer might also carry out work differently to what was approved by the Council. In each case, a breach of planning control may occur.

We will investigate all alleged breaches of planning control including whether development is in accordance with the approved plans or planning conditions. This might include:

- Building or engineering work being carried out without planning permission including freestanding structures, fences and walls
- The change of use of a building or an area of land
- Development not complying with approved plans
- Development not complying with conditions attached to a permission
- The display of advertising on buildings or land. Please note that the wording or images on adverts are not covered by planning control and would be a matter for the Advertising Standards Authority
- Unauthorised work to a listed building or protected trees

The objective of planning enforcement is to resolve the problem rather than necessarily punish the mistake. Any action taken must be proportionate to the nature and scale of the breach, and the sensitivity of the location.

Enforcement is a discretionary power. This 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.

Since the Planning Act (Scotland) 2019, it has been permissible for Councils to charge a discretionary 25% supplement on retrospective applications, and a number of Scottish Planning Authorities do this. At time of publication of this Enforcement Charter, Clackmannanshire does not levy the additional charge. However, this is currently being explored. If introduced, it will be implemented via the Council's annual budgetary process

The Council does not have to take action on a specific breach of planning control and will sometimes decide that no action is necessary - This approach is in line with Scottish Government guidance which states that formal enforcement action should not normally be taken where the breach does not cause wider public harm.

Any decision will be based upon the circumstances of the case and relevant planning policy.

It is the developer's responsibility to ensure that any necessary permission has been obtained before starting work.

The Council is not required to nor able to monitor all developments all of the time. Therefore, members of the public, Community Councils and groups have a vital role in reporting and monitoring potential breaches of control, including whether development is following the approved plans or planning conditions. If you have any concerns, you should tell us. You can use the Report It function on the home page of the Council's website, you can phone or visit the Council offices at Kilncraigs, Greenside Street, Alloa. However, we recommend that you follow your enquiry up in writing or by email. Contact details are provided on page 15 of this document. If you want to report a suspected breach of planning control, it is essential that you provide us with as much relevant information as possible.

Please include:

- The address of the property concerned and details of the owner of the property or the person involved if known (plus postcode if known)
- Details of the suspected breach of planning control, with times and dates if relevant
- Your name, telephone number, email and postal address
- Information on how the breach affects you, or the harm it is causing
- Whether or not you wish the enquiry to be treated confidentially

We will keep your details confidential, unless the Council is required to release information by law or as a result of a ruling from the Scottish Information Commissioner.

The Council will not normally investigate anonymous reports of potential breaches of planning legislation unless there are extenuating circumstances. This is to avoid the submission of vexatious reporting but also so that enquirers can be updated on the progress of an enforcement enquiry.

Our enquiries will relate entirely to relevant planning legislation. Some complaints, such as disputes regarding boundaries, land ownership or rights of access, relate to matters over which the Council, as a planning authority, has no control or responsibility. Similarly, some complaints may relate to matters outwith planning legislation, but where the Council nevertheless has an interest eg as landlord, or in relation to environmental or building safety legislation. Such enquiries will be redirected accordingly, and we will tell you the steps we have taken. There is a contacts list at the end of this Charter which includes details of other services in the Council.

How we investigate alleged breaches of planning control

When we get an enquiry, we may:

- Contact the party being complained about to get relevant information
- Visit a site to record the circumstances, take photographs and assess any relevant approved plans. Planning officers have the right to enter land or property to establish if there has been a breach of planning control or to establish if a formal notice has been complied with
- Check planning applications and decisions related to the site
- Check any previous correspondence relating to the site or the alleged unauthorised development
- Obtain additional information about land ownership and use, associated activities, interest in the land, constraints or legal issues

If we contact you for information, please help by responding quickly.

We are happy to discuss issues over the telephone although any information should preferably be submitted in writing. This will help to avoid a formal notice being served (see "other powers" on page 11) and avoid any delay in clarifying the planning position. You can provide whatever additional information you wish. If you think it would be helpful to speak to an officer, we will try to make suitable arrangements.

The time taken to respond to a case can vary. 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, a review of a decision of the Council's Appointed Officer, or an appeal against a decision of the Council, can also take time.

We recognise that delays can be a source of frustration to those submitting information. We will try to keep interested parties informed of progress on a case, but you can contact the case officer for an update at any time.

If we decide that there is no breach of planning control, we will advise the complainant and explain the reasons for the decision. The case will then be closed. If we decide that there is a breach of planning control, further investigation will be carried out to establish the severity of the situation and decide what further steps, if any, should be taken by the Service.

We will prioritise breaches of planning control which are or could be significant.

The following selected breaches have been categorized into Significant, Medium and Low harm to give **examples** of how the Council would prioritise breaches.

Significant harm: Full or partial demolition or significant alteration of a listed building, unauthorised works to a Scheduled Ancient Monument,

unauthorised works in statutory designations (SSSI's), unauthorised large scale engineering operations, unauthorised felling/works to trees subject to a Tree Protection Order.

Medium harm: Any unauthorised development/activity which causes clear, immediate and continuous harm to the locality including the living conditions of adjoining residents and including a serious breach of conditions, new buildings of medium scale.

Low harm: Minor or small-scale developments and breaches of condition that result in a non-serious harm to the amenity of a neighbourhood or property.

Table 1: Prioritisation of Alleged Breaches

Type of case	High Priority	Medium Priority	Low Priority
Advertisements (on non-listed buildings)			
Fences/trellis fencing			
Small garden sheds			
Unauthorised works to listed buildings/scheduled ancient monuments or statutory designation (SSSI for example)			
Non compliance with approved plans/conditions			
Minor unauthorised works in conservation areas			
Minor works outwith conservation areas			
Unauthorised felling/lopping to a tree covered by a TPO			
Unauthorised change of use of building			
Large scale engineering operations			

What we do about breaches of planning control

If a breach of planning control has occurred, we can:

- Tell the relevant parties that they are in breach and ask that the unauthorised activity or development ceases and/or is removed
- Ask for a retrospective planning application and advise on the relevant issues. If an application is submitted, formal enforcement action will usually be suspended until the application is decided
- Offer to negotiate an improved or acceptable development solution
- Consider taking formal enforcement action
- Offer the opportunity to apply for a Certificate of Lawful Use or Development, a procedure that was introduced to allow anyone to obtain a formal Council decision on whether or not the development is lawful
- Decide to take no action, having considered all relevant information

Even if a breach of planning control has occurred, the Council may decide only to take limited action, or take no formal action at all. What matters is whether the breach of planning control unacceptably affects the wider public interest or public amenity, the natural or built environment and safety, as expressed in the Development Plan. In practice, this is likely to mean that only a relatively small number of cases will result in formal enforcement action.

The type of enforcement action will also be in proportion to the seriousness of the breach and the seriousness of the harm caused as a consequence. This usually depends on the nature and scale of the development and the sensitivity of the location.

The Council is more likely to take enforcement action in cases where a retrospective planning application has not been submitted, and the unauthorised development has resulted in or is likely to cause unacceptable harm to people, land or buildings.

The Council will not normally serve an Enforcement Notice simply to regularise a situation if the unauthorised development is acceptable in planning terms. We will encourage the submission of a retrospective planning application and may serve a notice which requires an application for planning permission to be submitted.

The Council will offer a reasonable period of time to remedy a breach of planning control, depending upon the case. We will take enforcement action where the unauthorised development has not been remedied within that time and appears contrary to planning policy, unless there are exceptional circumstances. However, we will take prompt or immediate enforcement action where the unauthorised development is causing serious harm to residential amenity, public safety or protected land or buildings.

Where a breach relates to a small business or the self-employed, the Council will try to remedy the breach without harming the viability of the business.

This could include temporary measures to allow a business to mitigate the impact or to relocate.

The Council will not normally take enforcement action against unauthorised development by householders that only marginally exceeds permitted development limits. Nor will action be taken against minor or technical breaches that cause no unreasonable harm.

Some breaches of planning control relate to quite specific areas of legislation, such as tree preservation orders (or trees in conservation areas), listed buildings and advertising. Works to a protected tree or a listed building require the Council's permission. The felling of a protected tree, or the carrying out of work that affects the character of a listed building without the Council's prior approval, or the display of an advert in contravention of legislation is a criminal offence. The Council may seek the prosecution of the owner or other parties who have committed the offence by reporting the offence to the Procurator Fiscal (PF). The decision whether or not to prosecute rests with the PF and is based on the information submitted and whether or not prosecution is in the public interest.

In some cases, having reviewed all circumstances and information available, and having taken advice from the Procurator Fiscal, a decision may be taken that the Council has exhausted its enforcement powers and therefore will opt to cease actions in relation to specific cases. However, this action would be rare and only likely in a very small number of cases.

Enforcement powers and procedures – the enforcement toolkit

Enforcement action has to be taken within the following time limits:

- A four-year limit – this applies to building, engineering and other operations and change of use to a single house. After 4 years following the breach of planning control, the development becomes lawful, and no enforcement action can be taken in most circumstances
- A ten-year limit – this applies to all other development: principally the change of use of buildings or land, and breaches of condition. After 10 years the development becomes lawful, and again, no enforcement action can be taken in most circumstances

Types of Notices

Details of all enforcement notices served by the Council are entered in an Enforcement Register. The register is available for inspection at Kilncraigs, Greenside Street, Alloa and details are published on our website at the above link.

There are a variety of notices and powers available to the Council for breaches of planning control. For most, a minimum 28-day period applies before any notice comes into effect. Notices include:

- **Breach of Condition Notice (BCN**). Used to enforce the conditions applied to any planning permission and served on any person carrying out the development and/or any person having control of the land. There is no right of appeal, and any contravention of the notice may lead to a prosecution. However, instead of prosecution, the Council could serve a **Fixed Penalty Notice.** By paying the fixed penalty (£300 or £225 if paid within 15 days) the person in breach can no longer be prosecuted, however the requirements of the BCN remain in force.

- **Enforcement Notice**. This is generally used to deal with unauthorised development. There are similar notices and powers to deal with listed buildings and advertisements. An Enforcement Notice will:

  - describe the breach of planning control;
  - describe the steps to be taken to remedy the breach;
  - specify the timescales for taking the remedial action;
  - explain the consequences of failing to comply with the notice;
  - summarise the grounds of appeal

  There is a right of appeal to the Scottish Government and if an appeal is made, the terms of the notice are suspended until a decision is reached.

Failure to comply with an enforcement notice may either lead to the Council serving a Fixed Penalty Notice, or seeking a prosecution. Again, by paying the fixed penalty £2000 or £1500 if paid within 15 days) the person in breach can no longer be prosecuted however the requirements of the Enforcement Notice remain in force. Failure to comply may also result in the Council taking Direct Action to remedy the breach (see "Other Powers" on page 11).

- **Listed Buildings 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 for Enforcement Notices. 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 a manner that affects its character. **Advice about what needs Listed Building Consent should always be obtained from the Council before undertaking <u>any</u> works.**

- **Stop Notice**. This is used in extremely serious cases where unauthorised activity must be stopped urgently. 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 a prosecutable 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. We therefore assess the use of Stop Notices very carefully.

- **Temporary Stop Notice**. Similar to a stop notice, but takes effect as soon as the Council displays a copy of the notice on the land to which it relates. The notice ceases to have effect 28 days after it is first displayed. It is a prosecutable offence to fail to comply with its requirements.

- **Notice Under Section 33(A) Requiring Application for Planning Permission for development already carried out**. We will actively consider the use of such a notice to encourage the submission of a retrospective planning application for development that appears to comply with relevant planning policy guidance. This, in turn, allows the Council to consider granting planning permission, possibly with conditions to make development acceptable. If a retrospective application is not submitted within the prescribed period, we would decide whether enforcement action should be initiated.

Other Powers

- **Advertisement Enforcement Notice**. This is similar to an enforcement notice but relates to unauthorised advertisements. There is a right of appeal to the DPEA.

- **Replacement Tree Notice**. Where a tree protected by a Tree

Preservation Notice (TPO) is removed, damaged, uprooted or destroyed in contravention of the order or any condition of consent given under a TPO, the Council can issue this notice requiring the owner of the land to plant a tree or trees. There is a right of appeal to the DPEA.

- **Planning Contravention Notice (PCN).** We will use this to get information about activities on land where a breach of planning control is suspected and we have received no reply to an earlier enquiry. We serve this notice on the owner or occupier, or on a person believed to have an interest in the land or who is carrying out operations on the land. They must provide information about the 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 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 (Amenity Notice).** This allows us to serve a notice on the owner, lessee or occupier of land which is adversely affecting the amenity of the area, and sets out the action that needs to be taken to resolve the problem within a specified time. The Council has the power to take direct action following any non-compliance with the notice. There is a right of appeal to the DPEA.

- **High Hedge Notice**. The High Hedge (Scotland) Act 2013 came into force on 1st April 2014. It aims to provide a solution to disputes over the effects of high hedges but only where neighbours have not been able to resolve matters amicably. If the Council concludes that action should be taken, it will issue a High Hedge Notice to require remedial action to be taken. More detailed guidance about the process is available on the Council's website. There are rights of appeal to the DPEA. Roads Authorities can address issues with hedges affecting roads and pavements under separate powers, although these are not part of the above Act.

- **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 the Council will only seek interdicts in serious cases or where enforcement notices have been ignored in the past. Breaching an interdict is treated as contempt of court and carries heavy penalties.

- **Direct Action**. If a person in breach does not comply with the terms of an enforcement notice within the time specified, The Council can enter the land and carry out the specified work. The Council will normally seek to recover any costs it incurs from the landowner.

Have you been granted planning permission? If so, please make sure that you comply with the following:

Initiation and Completion of Development. Developers and individuals are required to tell the Council when work is to start on development which has planning permission, and then later when the development is complete. We in turn can then check the development complies with the approved plans and any conditions, particularly those associated with the start and bringing into use of the development. We will issue relevant forms for completion when planning permission is granted for development.

Display of Notice While Development is Carried Out. For certain categories of development, the developer must display a sign on the site with information on the development and where people can view the planning permission and decision notice. Failure to do so is a breach of planning control.

Our commitment to service standards

- We will deal with all enforcement enquiries in an even-handed manner, in accordance with the Council's core values:

Be the Customer - Listen to our customers, communicate honestly and with respect and integrity
Be the Team - Respect each other and work collectively for the common good
Be the Leader - Make things happen, focusing always on our vision and outcomes, and deliver high standards of people leadership and corporate governance
Be the Collaborator - Work collaboratively with our partners and communities to deliver our vision and outcomes
Be the Innovator - Look outwardly, be proactive about improvement and strive always for innovation and inclusive growth
Be the Future - Work always towards ensuring that we deliver our vision and live our values, so that we become a valued, responsive Council with a reputation for innovation and creativity

- We will maintain the confidentiality of customers when this is requested, except where we are legally obliged to disclose details

- We will keep any complainant informed of progress. This will normally mean writing to them within 21 days of receiving the enquiry confirming what progress has been made

- We will notify the complainant of the outcome of the case within 5 working days from the case being closed, with an explanation of the outcome

- We will acknowledge receipt of a written enforcement enquiry within 3 working days

- We will visit the site within 14 days in cases where a visit is deemed necessary or more urgently if required

- We will give you clear information in plain English and tell you how to contact us if you need more information

- We will make sure you can speak to the relevant officer in the planning service

- If an enquiry can't be dealt with by the planning service, we will send it to the appropriate service in the Council, where applicable

- We will make enquiries and take action proportionate to each case. If we decide not to take action, we will explain why

- We will keep an up to date register of all enforcement notices we serve and publicise this online

The Council's complaints procedures

We hope that you will be satisfied with our 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 problems.

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

In the first instance, complaints should be discussed with the member of staff involved. If you are dissatisfied, you should contact the Planning & Building Standards Team Leader (contact details are on page 15) who will explain how your enquiry has been handled. If you still remain dissatisfied with our explanation of the circumstances you can use the Council's complaints procedure or email Customer Services, providing us with as much detail as possible, including names, places, dates and let us know how we might put matters right.

Full details about making a complaint can be found on the Comments and Complaints page on our website

Contacts

To make enquiries about any development taking place in Clackmannanshire, please contact us by:

Post
Planning & Building Standards Team Leader
Clackmannanshire Council
Kilncraigs
Greenside Street
Alloa
FK10 1EB

Phone 01259 450000

Email: planning@clacks.gov.uk

Online Click on the Report It page on our website

The Council is here to advise on the need for planning permission for any type of development, the processes involved and the merits of the proposal. Using our service will help you to avoid potential enforcement action.

This Charter focuses on the enforcement of planning control. However, the Council has a number of other enforcement duties and responsibilities:

Dangerous Buildings – please contact the Building Standards Service at buildingstandards@clacks.gov.uk

Noise, Odour Nuisance, Food Safety & Abandoned Vehicles – please contact the Environmental health Service at ehealth@clacks.gov.uk

Licensing – please contact the Licensing Service at licensing@clacks.gov.uk

Other Useful Contacts

Directorate for Planning and Environmental Appeals
Planning and
Environmental
Appeals Division,
Hadrian House,
Callendar Business Park
Callendar Road
Falkirk FK1 1XR
tel 0300 244 6668
Email DPEA@gov.scot

Local Government and
Communities Directorate
Planning and Architecture Division
Victoria Quay
Edinburgh EH6 6QQ
tel 0131 244 7528
www.transformingplanning.scot

Planning Aid for Scotland (covers planning advice)
125 Princes Street
Edinburgh EH2 4AD
tel 0131 220 9730
Helpline 0300 323 7602
office@pas.org.uk

Advertising Standards Agency (covers suitability or wording or images)
71 High Holborn
London WC1V 6QT
tel 020 7492 2222
www.asa.org.uk

Health & Safety Executive
Belford House
59 Belford Road
Edinburgh EH4 3UE
tel
www.hse.gov.uk/scotland

Public Services Ombudsman
Scottish Public Services Ombudsman
Bridgeside House
99 McDonald Road
Edinburgh
tel 0800 377 7330
ask@spso.org.uk

National Housebuilding Council (NHBC)
NHBC House
Davy Avenue
Knowlhill Milton
Keynes MK5 8FP
tel 0344 633 1000
www.nhbc.co.uk

Scottish Environment Protection Agency (for pollution to air, land or water, waste management, fly tipping)
Strathallan House
Castle Business Park
Stirling FK9 4TZ
tel 0800 807 060
www.sepa.org.uk