



**THIS PAPER RELATES TO
ITEM 06
ON THE AGENDA**

Development Services



Planning Enforcement Charter

June 2018

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Foreward

Clackmannanshire Council as a planning authority is responsible for enforcing planning rules. This is a complicated area and we want you to understand the importance of what we do and have confidence in the enforcement service that we provide.



The Charter has been reviewed and updated for 2018. This review reflects my appointment as Convenor of the Planning Committee and also the introduction of the Planning (Scotland) Bill 2017 by Scottish Government. The Bill will strengthen processes, engagement and participation in the planning system and introduce measures to improve enforcement powers available to the Council as a planning authority.

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.

We do not always have to take enforcement action and it will not always be in the public interest to do so. To help to try and avoid the need for enforcement action at any time, please contact the Council's Development Service if you plan to carry out any work. Planning officers will be happy to advise you on whether you need any form of permission.

I hope this Charter explains to you how these decisions are taken and, as we have set out our service standards, I am confident that you will be able to rely upon a high level of customer service.

Councillor Balsillie
Planning Committee Convenor

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

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 making further enquiries. If you send us accurate details of what you intend to do, we will reply by email or letter

You can contact us at planning@clacks.gov.uk

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 permission or before permission has been given. A developer may also carry out work differently to what was approved by the Council.

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
- 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 has to 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.

The Council does not have to take action on a specific breach of planning control and will often decide that no action is necessary

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 16 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
- 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:

- 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
- Contact the party being complained about to get relevant information

If we contact you for information, please help us 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.

We will prioritise breaches of planning control which are or could be significant. This would include circumstances where the breach:

- Was or had the potential to result in serious harm
- Involved unauthorised works to a listed building or protected tree
- Involved a breach of a planning condition which affects amenity or safety

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.

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

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. 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 it is in the public interest.

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
- A ten year limit – this applies to all other development: principally the change of use of buildings or land, and breaches of condition. After the years the development becomes lawful, and again, no enforcement action can be taken

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, but 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. 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.
- **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 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. 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.
- **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 us to consider granting planning permission, possible with conditions to make development acceptable. If a retrospective application was not submitted within the prescribed period, we would decide whether enforcement action was appropriate.

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 Scottish Government.
- **Replacement Tree Notice.** Where a tree protected by a Tree Preservation Notice (TPO) is removed, 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 Scottish Government.

- **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 find 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.
- **High Hedge Notice.** The High Hedges (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 conclude 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 Scottish Government.
- **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, we 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 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 of:
 - Commitment, trust and partnership
 - Openness and accountability
 - Respect and dignity
 - Equity, fairness and inclusion
- 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 meet 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 16) 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.

The planning service has officers dedicated to:

- Business and commercial development
- Residential development
- Householder development

You can contact the relevant officer on the telephone number and email address above

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 of Planning and Environmental Appeals

4 The Courtyard
Callendar Business Park
Callendar Road
Falkirk
FK1 1XR

Tel 01324 696465
Email dpea@scotland.gsi.gov.uk

Directorate of the Built Environment

Victoria Quay
Edinburgh
EH6 6QQ

Tel 08457 741741
Email modernisingplanning@scotland.gsi.gov.uk

Planning Aid for Scotland (covers planning advice)

3rd Floor, 125 Princes Street
Edinburgh
EH2 4AD

Tel 0131 220 9730
Helpline 0300 323 7602

Advertising Standards Agency (covers suitability or wording or images)

71 High Holborn
London
WC1V 6QT

Tel 020 7492 2222

Health & Safety Executive

Belford House
59 Belford Road
Edinburgh
EH4 3UE

Fax only 0131 247 2121

Public Services Ombudsman

SPSO Freepost

Tel 0800 377 7330
Web www.spsso.org.uk

National Housebuilding Council (NHBC)

NHBC House
Davy Avenue
Knowhill
Milton Keynes
MK5 8FP

Tel 0800 035 6422
Web 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 03000 99 66 99
Web www.sepa.org.uk

