

Midlothian Council **Planning Enforcement Charter**

A guide to enforcing planning controls

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INTRODUCTION

An application for planning permission is required for most types of 'development' that takes place in Scotland. Development involves among other things building operations, for example, the erection of and alteration to buildings, and material changes in the use of land or buildings.

Some types of development are granted planning permission automatically without the need either to apply for or obtain planning permission from the Council. This exception is called 'Permitted Development'. The different types of permitted development are specified in the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, as amended by the Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2011. The amendment Order came into force on 6 February 2012. Further guidance on these matters can be obtained from the Council's website at <http://www.midlothian.gov.uk> or from our Duty Planning Officer (tel: 0131 271 3302).

In certain cases, however, developers or householders undertake development without having either sought or obtained the required planning permission from the Council. In other cases they fail to keep to the terms of the planning permission that has been granted.

Councils have powers to enforce planning controls in such cases, if they consider it is in the public interest to do so. Councils monitor developments to ensure planning controls are being followed but there is also an important role for the public in alerting the Council to any problems they become aware of.

This Charter explains how the enforcement process works in Midlothian. The first part of the Charter outlines the key points about Planning Enforcement, including a brief description of existing planning enforcement powers.

This is followed by the Council's procedures relating to planning enforcement matters. These include the role of the Council and the service standards it sets itself. It also explains what happens at each stage of what can be a lengthy process.

The final part of the Charter contains the Council's detailed policies relating to planning enforcement.

These policies are based on current Government policy on planning enforcement, which is set out in Circular 10/2009, "Planning Enforcement." This document is available from the Scottish Executive and can be viewed electronically at <http://www.scotland.gov.uk/Topics/Planning>

Enforcement is one of the most complex parts of the planning system. We hope you will find this Charter useful and will let us know if you think we could improve the service further.

Further copies of this Charter are available on the Council's website, at all local libraries and from the Council's offices at Fairfield House, 8 Lothian Road, Dalkeith.

<p>This Charter sets out the current powers available to planning authorities. The Planning etc (Scotland) Act 2006 introduces a number of changes. The guidance contained in this Charter will be revised as necessary as these changes are introduced to keep it up to date.</p>
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Part One

General overview of planning enforcement

1 KEY POINTS ON PLANNING ENFORCEMENT

A breach of planning control is not normally a criminal offence. The main purpose of planning enforcement is to resolve the problem rather than to punish the mistake. In addition, any action taken has to be appropriate to the scale of the breach. (Note however that once enforcement notices have been served non-compliance can lead to a criminal prosecution. Also, unauthorised alterations to a Listed Building or the demolition of a building in a Conservation Area without the relevant consents are likely to be a criminal offence).

Possible breaches of planning control can include:

- development works being carried out without the required planning permission or consent;
- unauthorised changes of use of land or buildings;
- failure to comply with conditions attached to a planning permission or consent;
- departures from approved plans or consent.

The Council has statutory powers to investigate breaches of planning control and the conditions attached to planning consents, and to take formal action where a satisfactory outcome cannot be achieved by negotiation. However, enforcement is also a *discretionary* power. That 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. It is not required to take any particular action on a specific breach of planning control, and indeed can decide that no action is necessary.

Planning enforcement work also covers:

- dealing with cases of neglect of land or buildings, which are considered to have a detrimental effect on the amenity of any part of the Council's area.
- the display of advertisements such as billboards and advertisement hoardings without the benefit of advertisement consent.

The Council recognises that delays can be a source of considerable frustration to those reporting a suspected breach of planning control, particularly if they consider their amenity is affected.

The length of time required to resolve a case or take action can be affected by a number of factors. Progress can be delayed for the gathering of further evidence, to allow negotiations to take place or for formal procedures to be concluded. Similarly, an application to regularise the breach of control or an appeal against a decision of the planning authority can also delay resolution of the case.

Either of the Council's Planning Enforcement Officers will be pleased to offer advice on planning enforcement matters (tel. 0131 271 3313 or 0131 271 3319).

SERVICE STANDARD

By publishing our standards and targets, we aim to improve our enforcement service and make it responsive to the needs of our customers. We intend to review this charter bi-annually to ensure it remains relevant and up to date.

2 THE COUNCIL'S EXISTING PLANNING ENFORCEMENT POWERS

The powers available to the Council are set out in Part VI of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006 (<http://www.legislation.gov.uk/ukpga/1997/8/contents>) and (http://www.opsi.gov.uk/legislation/scotland/acts2006/asp_20060017_en_1) and in Part 1 Chapter IV of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (<http://www.legislation.gov.uk/ukpga/1997/9/contents>).

TYPES OF NOTICE

Breach of Condition Notice – this is used to enforce the conditions applied to any planning permission. It is effective from the date it is served. It may be used as an alternative to an enforcement notice (see below), and is served on any person carrying out the development and/or any person having control of the land. There is no right of appeal. Contravening a breach of condition notice can result in the Council deciding to prosecute, with a fine of up to £1,000. As an alternative to prosecution, the Council can decide to serve a **Fixed Penalty Notice** (see below) on the relevant person(s) who have not complied with the requirements of a breach of condition notice.

Enforcement Notice – this is generally used to deal with unauthorised development, but can also apply to breach of planning conditions. There are similar notices and powers to deal with listed buildings and advertisements (opposite and overleaf). An enforcement notice will specify a time period to take effect (a minimum of 28 days – but see the section overleaf on advertisements); the steps that must be taken to remedy the breach and the time for this to be completed. There is a **right of appeal** and the terms of the notice are suspended until a decision is reached. Failure to comply with an enforcement notice within the time specified is an **offence**, and may lead to a fine of up to £20,000 in the Sheriff Court. As an alternative to prosecution, the Council can decide to serve a **Fixed Penalty Notice** on the relevant person(s) who have not complied with the requirements of an enforcement notice. Failure to comply with an enforcement notice may also result in the Council taking **Direct Action** to correct the breach.

Fixed Penalty Notice – this new enforcement provision came into effect on 3 August 2009. Service of a Fixed Penalty Notice requires payment of a fine to be made directly to the planning authority within 30 days of service, which will be retained by them. The level of payment has been set at £2,000 for non-compliance with an enforcement notice, and £300 for non-compliance with a breach of condition notice. If payment is made within the first 15 days following service of a Fixed Penalty Notice the amount to be paid is reduced by 25%. It should be noted however that this type of notice cannot be served where a person has already been prosecuted for non-compliance with the same enforcement or breach of condition notice.

Listed Building Enforcement Notice – this must be served on the current owner, occupier and anyone else with an interest in the property. The procedures are similar to those outlined above. The notice must specify the steps to be taken to remedy the breach and a final date for compliance. Failure to meet the terms of the notice by the date specified is an offence.

There is the right of appeal to Scottish Ministers against the notice. Breaches of listed building control are a serious matter. It is a criminal offence to undertake unauthorised works to demolish, significantly alter, or extend a listed building. In certain circumstances, this can lead either to an unlimited fine or imprisonment.

Stop Notice – this is used in urgent or serious cases where unauthorised activity must be stopped, usually on grounds of public safety. When a stop notice is served, the planning authority must also issue an enforcement notice. There is no right of appeal against a stop notice and failure to comply is an offence. An appeal can be made against the accompanying enforcement notice. If a stop notice is served without due cause, i.e. the works or use of land are found to be lawful, the Council may face claims for compensation. The use of stop notices therefore needs to be carefully assessed by the Council.

Temporary Stop Notice – another new enforcement provision which came into effect on 3 August 2009. Service of a temporary stop notice is designed to strengthen existing stop notice procedures by giving provision for stopping a breach of planning control *immediately* (i.e. from the moment the notice is displayed on site) - in cases where it is considered expedient to do so. There is no Right of Appeal against service of a temporary stop notice to the Scottish Ministers. It can have effect for a maximum period of 28 days, and unlike a stop notice it does not have to be served with an enforcement notice. The same comments about claims for compensation applicable to the service of stop notices (above) apply to the service of temporary stop notices.

Notice under Section 33A – provision that similarly came into effect on 3 August 2009. This gives planning authorities the power to serve a notice that **requires** a retrospective planning application to be submitted to the planning authority for unauthorised development that has been already carried out. Under the terms of S.33A (2) of the Planning etc. (Scotland) Act 2006, service of this type of notice also constitutes “taking enforcement action.” Prior to the above date submission of a retrospective planning application could only be requested by the planning authority, and - in the event of non-submission - the Council had to assess whether it was expedient to take further enforcement action.

Planning Contravention Notice – this is used to obtain information about activities on land where a breach of planning control is suspected. It is served on the owner or occupier, on a person with any other interest in the land or who is carrying out operations on the land. They are required to provide information about operations being carried out on the land and any conditions or limitations applying to any planning permission already granted. Failure to comply with the notice within 21 days of it being served is an offence and can lead to a fine in the Courts.

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.

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 is also known as an ‘**Amenity Notice**’ and sets out the action that needs to be taken to resolve the problem within a specified period. There is a right of

appeal and the terms of the notice are suspended until a decision is reached. Failure to comply may also result in the Council taking **Direct Action**.

Other Powers

Advertisement Powers The Council's powers are set out in the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984.

The Council have powers to serve advertisement enforcement notices in relation to advertisements that are unauthorised in terms of the above regulations. A notice of this type can specify a time period (normally 28 days) for compliance with its terms. However, this period can be reduced to seven days if the Council believes there is an urgent need for the advertisement to be removed or altered in the interests of public safety. Displaying an advertisement in contravention of the regulations is an offence and, if convicted in court, an offender can be fined. The Council also has powers to remove or destroy placards and posters that do not have planning permission or deemed consent. If the person who put up the poster can be identified, they have to be given at least two days' notice that the Council intends to take the poster down. If they cannot be readily identified, then the advert can be removed immediately. The content of an advertisement is not covered by planning control. Any complaints about advertisement content should be made to the Advertisement Standards Authority.

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 Councils normally only seek interdicts in serious cases or where enforcement notices have been ignored in the past. However a Council can seek an interdict in relation to any breach without having to use other powers first. Breaching an interdict is treated as a contempt of court and carries heavy penalties.

Direct Action – failure to comply with the terms of an enforcement notice within the time specified can result in the Council carrying out the specified work. The Council may recover any costs it incurs from the landowner.

Other Enforcement Related Requirements

The Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006, has introduced new requirements for developers. They are required to send prior notice to the planning authority of the date that work is expected to commence. This information needs to be submitted in advance of any work actually commencing on any development for which planning permission has been granted. They are further required to notify the planning authority when the work has been completed. These requirements apply to developments where planning permission has been granted on or after 3 August 2009. In addition (and for planning permissions granted on or after the same date) developers are required - for certain prescribed types of development – to display information regarding the development that is taking place on the site. Failure to submit a notice of Initiation of Development to the planning authority or to display a site notice (for certain types of development) constitutes a breach of planning control.

1 PROCEDURE FOR IDENTIFYING AND REPORTING ALLEGED BREACHES OF PLANNING CONTROL

Members of the public have a vital role in reporting suspected breaches of control. Any concerns should be raised with the Council. You can make preliminary enquiries by telephone, or in person at the Council offices, but these must be followed up in writing or by e-mail.

Information from The Public

The following information should be provided when reporting a suspected breach:

- the address of the property concerned;
- details of the suspected breach of planning control. Relevant dates should be provided, including dates when the works, use, or activity started, finished (if relevant), or whether it is still ongoing;
- your name, telephone number and address;
- an e-mail address if the complaint is submitted electronically;
- information on how the suspected breach harms you or why it is of concern to you; and
- whether you wish your enquiry to be treated confidentially*

**While the Council will do its best to honour requests for confidentiality, it is subject to the requirements of the Freedom of Information (Scotland) Act 2002 (FOI). In this regard the most recent rulings from the Commissioner indicate that information received in confidence in respect to enforcement is exempt from the requirements of the FOI. Requests for total confidentiality however may limit the ability of the authority to take formal action and cannot be guaranteed if the case leads to court proceedings.*

To report a suspected breach of planning control please write to:
Midlothian Council, Planning, Fairfield House, 8 Lothian Road, Dalkeith,
EH22 3ZN **OR** alternatively, you can email
planning.enforcement@midlothian.gov.uk (You should provide all of the
abovementioned information about the suspected breach when doing so)

Anonymous enquiries will normally only be investigated in cases where the information received by the planning authority relates to allegations of unauthorised works taking place or having taken place to a Listed Building, or the unauthorised felling of trees within a conservation area. In both instances unauthorised works of this nature - without the benefit of the required consents - constitutes a criminal offence.

Monitoring conditions

Members of the public also have an important role in monitoring the conditions that are placed on certain planning consents. Details of the conditions are included within the decision notice attached to the permission. (For more recent planning permissions the relevant decision notice - including

the details of any planning conditions that accompany it (if applicable) - can be found at our online planning application facility (<https://planning-applications.midlothian.gov.uk/OnlinePlanning>). Alternatively, or for details of any planning conditions relating to older planning permissions, you can contact the Council's Duty Planning Officer (tel: 0131 271 3302). Planning condition monitoring is undertaken by the Council's Planning service. However, there are a large number of permissions granted each year and it is not practical, nor is it expected, that the Council will monitor all conditions at all times.

Your involvement is therefore invaluable in providing information where it is believed that conditions attached to the consent are not being complied with or have

not been discharged in a satisfactory way. Breaches of conditions are investigated in the same way as any other breach of planning control.

Registering complaints

Information received by the Council's Planning service is checked to ensure that it involves a possible breach of control and includes all the detail required for a possible investigation. After preliminary checking and compliance with the requirements for investigation, the complaint will be registered. Once registered, a written or e-mail acknowledgement will be sent to the person who made the complaint.

SERVICE STANDARD

If preliminary checking of a complaint suggests a breach of planning control, the complaint will be registered. Once registered, a written or e-mail acknowledgement will be sent to the person who made the complaint within (5) working days. This will include a reference number and contact details for the investigating officer.

2 PROCEDURES FOR INVESTIGATING AND ACTING ON POSSIBLE BREACHES OF PLANNING CONTROL

Investigation Procedures

A priority system is used for *investigating* registered complaints. The breaches of planning control that the Council considers to be of major significance will be given priority. This is based on matters such as the environmental effects and consequences of the breach, the significance of the site, and whether the works or activity subject of the complaint are actively ongoing or not.

Complaints relating to householder breaches of planning control that have been completed when first complained about will generally be given a lower priority for investigation than other more serious cases. (Examples here could be developments such as unauthorised gates, walls, fences, porches and garages that were already completed or substantially completed when first reported to the Council). Other cases that will generally be given a lower priority for investigation include householder or other developments, which, although unauthorised, are not considered on assessment of initial details provided to the Council to raise significant planning issues. In general, the cases described in this paragraph will be investigated in chronological order of receipt.

SERVICE STANDARD

In the investigation of breaches of planning control greater priority will be given to investigating the most significant breaches of planning control. These cases include:

- major breaches of planning control which may be causing serious and significant irreversible damage or harm to the environment, including to the built environment e.g. irreversible damage to listed buildings;
- breaches of planning control relating to major developments, particularly housing;
- breaches of planning control which have a significant detrimental impact on amenity or which cause significant harm;
- the unauthorised felling of trees, and related matters affecting trees protected by Tree Preservation Orders;
- breaches of householder planning control relating to ongoing unauthorised works which raise significant planning issues.

This priority system for the Council's investigation of registered breaches of planning control highlights the need, for anyone reporting a suspected breach of planning control to us, to provide the information outlined on the previous page.

The Council investigates around 300 cases of breaches of planning control each year. Giving priority to the investigation of registered complaints in this manner helps the Council to direct its enforcement resources to what it considers are the most important enforcement cases first.

Action Procedures

In some cases formal enforcement action may not be appropriate, even though planning controls have been breached. As stated previously, the purpose of planning enforcement is to resolve problems, not punish mistakes. The planning authority has to consider each case on its merits and decide on the best solution. The Council is unlikely to take enforcement action, for example, over developments which in planning terms are seen as acceptable. It may be more appropriate, in such cases, to seek or require the submission of a retrospective planning application. In many other instances negotiated solutions will be sought and achieved, and if successful, formal enforcement action may not be required.

The Council's detailed policies for taking enforcement action are described in PART THREE of this Charter. They also outline a range of possible options for remedying each breach of planning control. Only a relatively small number of cases require formal enforcement action. This normally involves either an enforcement or breach of condition notice being served on those involved in the development. Both types of notice include the following information:

- a description of the breach of control that has taken place;
- the steps that should be taken to remedy the breach;
- the timescale for taking these steps;
- the consequences of failure to comply with the notice; and
- where appropriate, any rights of appeal the recipient has and how to lodge an appeal.

SERVICE STANDARD

Where a planning breach cannot be resolved and action is justified, a formal notice will be served. This will normally be either an enforcement notice or a breach of condition notice. The Council will write to the recipient of the notice to explain what is required, the timescales involved and the available options to resolve the issue.

An Officer duly authorised by the Council has powers to enter any land to:

- establish if there has been a breach of planning control;
- check if there has been compliance with a formal notice;
- check if a breach has been satisfactorily resolved.

Where the terms of any enforcement notice are not complied with, every effort will be made to resolve the case to the satisfaction of the Council. Options include:

- direct action by the Council and/or
- the matter being referred to the Procurator Fiscal for possible prosecution.

Details of enforcement notices, breach of condition notices, notices under section 33A, stop notices and temporary stop notices are entered into an **Enforcement Register**. You can inspect these documents at Fairfield House, 8 Lothian Road, Dalkeith, during standard office hours.

Enforcement action has to be taken within **strict time limits**.

- 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 change of use to a single dwellinghouse. After four years following the breach of planning control, the development becomes lawful if no enforcement action has begun, and no enforcement action can be taken.
- A **ten year** limit – this applies to all other development including change of use (other than to a single dwellinghouse) and breaches of condition. After ten years, the development becomes lawful if no enforcement action has begun.

As noted in PART ONE of the Charter the persons served with an enforcement notice can **appeal** against it to the Scottish Ministers. In these cases, with the one or two exceptions explained in Part One, the notice will have no effect until, and unless, the appeal is dismissed by the Ministers.

3 PROCEDURE FOR MAKING A SUGGESTION OR COMPLAINT

The Council hopes the public will be satisfied with the 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 failures.

We will consider all complaints made about the way an enforcement enquiry was dealt with. Some people may disagree with the outcome of an investigation but, of itself, that is not grounds for complaint. (*Part One of this Charter outlines details of the separate appeals' procedure for a recipient of an enforcement notice and Part Three explains the Council's policy when an appeal is made.*)

In the first instance, complaints should be discussed with the member of staff involved. If you are still dissatisfied, talk to the Lead Officer Major Developments and Enforcement tel. 0131 271 3311. If he/she is unable to help, you should be referred to the Planning Manager.

Complaints/suggestions/compliments can be received over the phone (tel 0131 561 5444), by e-mail (feedback@midlothian.gov.uk), by letter or completion of a Feedback form. Complaints will be acknowledged and resolved within 10 working days. However, if the issue is complex or there is a reason that a response cannot be made within that timescale, then someone will be in touch to agree a new response date. The complainant will be given a written response explaining the outcome of the investigation and any action that the Council proposes to take. If no action is proposed, the reasons will be explained.

SERVICE STANDARD

We will get in touch with you within 10 working days of receiving a complaint to let you know what is happening. We will monitor all complaints and suggestions made and use them to review and improve the service we provide.

If the complainant is not happy with the response, they can ask for the matter to be reviewed by the Chief Executive. He will acknowledge the complaint and arrange for the issue to be investigated and responded to within 10 days or within a timescale agreed with the complainant.

If having followed Midlothian Council's complaints procedure the complainant is still unhappy then they can take their complaint to an adjudicator and ask for the matter to be investigated. This will normally be the Scottish Public Sector Ombudsman and they do not usually accept complaints that have not been the subject of the Council's own complaints process first. They can be contacted at:

SPSO
FREEPOST EH641
Edinburgh EH3 0BR
Telephone: 0800 377 7339, or e-mail: ask@spsos.org.uk

Generally, you must contact the Ombudsman within 12 months.

1 THE ROLE OF PLANNING ENFORCEMENT

The planning system operates to regulate development and the use of land in the public interest. Planning enforcement has a key role to play in this respect. The purpose of planning enforcement is to control unauthorised activity and to remedy the effect of unauthorised development.

2 ENQUIRIES AND COMPLAINTS POLICY

A large volume of enquiries and complaints are received each year relating to the way in which land and buildings are being developed and used. This forms the main focus for planning enforcement work. All are recorded and subsequently investigated - apart from those that are either anonymous (with limited exceptions outlined in part Two of this Charter) or those that do not contain all of the written details outlined in [the](#) same section.

It is not the function of the planning authority to become involved in private neighbour disputes where no planning issue is evident. In addition, it is not the Council's role to mediate in private legal disputes relating, for example, to the ownership of land. Such cases will not be investigated by planning staff. However, where such enquiries and complaints relate to another statutory function of the Council, they will be passed to the relevant department for further investigation. In any event, the complainant will be advised accordingly.

Every recorded planning enquiry or complaint will be investigated and assessed on its own individual merits. In certain circumstances no further action will be required. This will include cases where:

- investigation reveals that no breach of a planning permission or consent is apparent;
- the activity or development under investigation is not development or is permitted development under the terms of the appropriate statutory legislation; and
- the use of land or buildings does not constitute a material change of use for which planning permission would be required.

The Council's procedures for *investigating* registered complaints about breaches of planning control are separately outlined in PART TWO of this Charter. Thereafter, priorities for further *action* will be determined by such factors as:

- the seriousness of the environmental impact of the breach of control, including the extent of the area over which such impact will be felt;
- the need to prevent irremediable damage to the environment or irreversible changes which will have a harmful impact;
- consideration of whether early action will prevent the development of a more serious situation in the future;
- the length of time over which the activity complained of has taken place.

3 ENFORCEMENT ACTION POLICY

The Council's procedures relating to taking enforcement action are separately described in PART TWO of this Charter. The following paragraphs describe the Council's detailed policies for taking enforcement action.

In cases where initial investigation indicates that there has been a possible breach of planning control, in terms of either the development or use of land and buildings, further research into the planning history of the site might be required. Certain operations and uses of land acquire immunity from planning enforcement action through the passage of time. It may therefore be necessary to determine when the development complained of commenced.

Where the Council is satisfied that a breach of planning control is involved, consideration will be given to the appropriate response to remedy the situation. The appropriate action to be taken will reflect the seriousness of the situation in terms of the environmental and amenity impact of the unauthorised development or use. Possible options, in ascending order of seriousness include:

- no further action to be taken, in view of the minor nature of the breach of control;
- an invitation to the owner or occupier of the land to submit an application for retrospective planning permission, if necessary, accompanied by the service of a Planning Contravention Notice and/or a Section 33A Notice;
- service of a Breach of Condition Notice, where conditions imposed on a planning permission are not being complied with;
- service of an Enforcement Notice;
- service of a Temporary Stop Notice;
- service of a Stop Notice, where it is essential that the unauthorised use or development be ceased in the short term, pending the outcome of any appeal against an Enforcement Notice; and
- an application to the courts for an interdict to restrain a breach of planning control.

In most cases, before any formal enforcement action is taken, the owner or occupier of the land will be given the opportunity to discuss the problem, and the Council will attempt to resolve matters through negotiation. The person in breach will be advised of the relevant enforcement action that will be taken if a satisfactory remedy cannot be achieved in this manner.

An exception to this approach will be necessary if urgent action is required to remedy a breach, which if allowed to continue could result in substantial environmental damage.

In any event, the Council will not allow protracted negotiations to hamper or delay the taking of formal enforcement action, if it is evident that the breach of planning control is unlikely to be resolved voluntarily.

The choice of appropriate formal enforcement action is at the discretion of the Council. Careful consideration will be given to the appropriate course of

action based on the circumstances of each case, and bearing in mind the concept of *Proportionality* referred to below.

The service of an Enforcement Notice carries with it a **right of appeal** to the Scottish Ministers. Pending the outcome of the appeal, the requirements of the notice are suspended. This can introduce a substantial delay in remedying breaches of planning control. Where it considers that circumstances warrant, the Council will serve a Stop Notice, require the unauthorised use or development to cease pending the outcome of the appeal.

Failure to comply with the requirements of a valid enforcement notice is a criminal offence, which may result in prosecution. Alternatively the Council may issue a Fixed Penalty Notice requiring the payment of a fine for non-compliance with a notice. In determining what further action to take in such circumstances, the Council will bear in mind that its primary objective is to ensure that the unauthorised use or development is ceased or otherwise brought under effective planning control, in order to remedy its undesirable effects on the environment. In certain circumstances, the Council has the statutory power to enter onto land and carry out the works required by the enforcement notice, and to recover the costs incurred from the owner of the land. The Council will use this power in cases where it is appropriate and practical.

4 PROPORTIONALITY

In the consideration of enforcement action, the Council will at all times seek to ensure that the action taken is commensurate with the breach of planning control to which it relates. The Council does not condone any breaches of planning control, and recognises that it is unsatisfactory that anyone should carry out development without submitting the necessary planning application and paying the appropriate fee. However, the taking of formal enforcement action solely to “regularise” an unauthorised development, which is otherwise wholly acceptable in planning terms, is not necessarily the most appropriate response, especially if it uses staff resources which could more effectively be occupied in pursuing more serious complaints. In addition, very trivial developments can occur which technically constitute breaches of planning control, but which have little or no planning significance. The Council will not generally pursue such matters by means of formal enforcement action.

In adopting this approach, the Council will bear in mind that individual householders, self-employed people, and even small businesses may not have ready access to relevant professional advice, and may have undertaken developments unwittingly without obtaining the appropriate planning permissions. In taking remedial action in such circumstances, it will be designed to be proportionate to the consequences and effects of the planning breach. Nevertheless, if a careful consideration of the planning circumstances warrants it, the Council may require the closure of unauthorised business premises, even if an alternative location is not readily available.

5 PUBLIC EXPECTATIONS POLICY

During the process of *investigating* a planning enquiry or complaint, based on information received from outwith the Planning Authority, the Council will do its best to honour requests for confidentiality of the informant. The complainant will also be kept informed either by telephone or in writing of any relevant subsequent findings or conclusions.

The owner and/or occupier(s) of the subject property or land will be contacted where possible during the initial stages of investigation. Any breach of planning control found, and the relevant planning issues, will be clearly explained to them.

The steps required to remedy any planning breach, and the options available to the Council for remedial action, will be outlined.

In deciding to take formal enforcement action, the Council cannot provide a guarantee of confidentiality for the original complainants. The Council may be required to justify any action that it takes, and to demonstrate that the development enforced against has a significant adverse effect on the locality. It will be in a better position to achieve this if it can provide the evidence of direct complaints from people adversely affected by the development, particularly if they are in writing. Nonetheless, the Council recognises that, in certain cases, the complainants have experienced fear, intimidation or harassment, and it will attempt to act with extreme sensitivity in such circumstances. However, its primary objective will be to take whatever action is necessary to remedy the breach of planning control, commensurate with the seriousness of the problem.

Throughout the whole process from initial investigation to taking statutory enforcement action (where necessary) great emphasis will be placed on a customer centred perspective. Enforcement staff will aim to provide a courteous and efficient service to all parties. Information and advice will be provided in plain language.

It must be recognised, however, that complaints may arise out of personal disputes which are long standing, and may be very heated. In such circumstances, staff will attempt to take a dispassionate stance, and, wherever possible, defuse the situation. The Council appreciates that there will be occasions when passions run high and tempers flare in the course of investigations of possible breaches of planning control. It will expect its staff to behave in a professional manner in such circumstances. Equally, it will not tolerate verbal abuse, or threats of physical violence to its staff, carrying out their legitimate tasks in the interests of the wider community. The Council will not hesitate to take whatever action is necessary to protect the health and safety of its staff.

It is inevitable that there will be cases which cannot be resolved to the satisfaction of the original complainants, and that they will therefore be disappointed in the outcome of the investigation. The Council will attempt to explain as fully as possible the reasons for its decision in such cases. It reserves the right, however, not to pursue further complaints which may arise over the same matter, where these might be interpreted as harassment of the person complained of.

6 SECTION 179 POLICY

The majority of complaints relate to positive actions on the part of the owner or occupier of land and buildings (for example, the carrying out of unauthorised building operations, or changing the use of premises without obtaining planning permission). However, a sizeable proportion are concerned with the neglect of land and buildings, resulting in their deteriorating to a condition where they are detrimental to the amenity of the surrounding area. Section 179 of the Town and Country Planning (Scotland) Act 1997 gives the planning authority the power to serve notices on the owners and occupiers of land which, as a result of its condition, is detrimental to the amenity of part of its district.

In most respects such notices are similar to enforcement notices served under other parts of the legislation, and the Council's planning enforcement policies will apply equally to them. The concept of proportionality is of particular relevance in that there may well be hundreds of small sites throughout Midlothian, the state of maintenance of which is less than desirable. To seek to treat all these sites by means of Section 179 notices would be out of all proportion to the problems which they cause. In general, the use of this power should be confined to the worst instances, where the condition of the land is particularly detrimental to amenity, by reason for example, of its size, prominent position, or location within an environmentally sensitive area.

Where such a notice is served, but is not complied with, the planning authority has the power to enter the land and carry out the outstanding work, thereafter seeking to recover the costs from the landowner. In such instances, the Council will generally utilise this power. However, it reinforces the need for careful consideration of the use of Section 179 notices, because of the practicality and resource implications of taking such action.

7 MONITORING AND REVIEW POLICY

Enforcement related work has traditionally been carried out in a reactive manner, by responding to enquiries and complaints from members of the public. A significant number of these relate to allegations of non-compliance with the terms of planning permissions. Subject to the availability of staff resources, the Council will therefore seek to monitor each year certain developments which are under construction or recently completed, to check compliance with approved plans and conditions. Priority will normally be given to major and more complex developments, which are often subject to a large number of conditions, on the basis that they will usually be prominently located and have a significant environmental impact.

Current Government guidance recognises that planning policies should be regularly reviewed and consistently applied. Enforcement policy will be reviewed periodically. Other factors which will assist in effective monitoring and review are:

- (a) liaison with other authorities;
- (b) co-ordination and co-operation between planning and legal staff;
- (c) close links with other Council Units which exercise related enforcement activities.