



ABERDEEN  
CITY COUNCIL

# Planning Enforcement Charter

a guide to enforcing  
planning controls

July 2018

[www.aberdeencity.gov.uk](http://www.aberdeencity.gov.uk)

### Introduction

In Scotland, you need planning permission for most development, with the exception of some minor works (known as permitted development). Sometimes however, someone may carry out work without planning permission, or they don't keep to the permission they have been given. The credibility of the planning system depends on effective enforcement action.

Like all Councils in Scotland, Aberdeen City Council has legal powers to enforce planning controls. We do this where we believe that it is in the public interest to do so. We also monitor development that has been given permission, to make sure that it is in line with the approved plans and any conditions that may have been issued with them.

Enforcement is one of the most complex parts of the planning system, but it is something that concerns many people. We therefore encourage you to play a role by letting us know if you think planning controls may have been broken.

The aim of this Charter is to make sure that our procedures are fair and reasonable, and that everyone involved is kept informed when enforcement action has to be taken.

It explains:

- how the enforcement process works;
- the role of Aberdeen City Council;
- the service standards we have set; and
- what happens at each stage of what can be a lengthy process.

THIS CHARTER SETS OUT THE PLANNING ENFORCEMENT POWERS CURRENTLY AVAILABLE TO THE COUNCIL AND EXPLAINS HOW WE INTEND TO USE THEM.

We hope you will find this Charter useful. Please let us know if you think we could improve our service, using the contact details on page 11.

Our Development Management Charter sets out our general targets. These are summarised out at the end of this document.

### Planning enforcement: the key points

A breach of planning control is not necessarily a criminal offence. The purpose of planning enforcement is to deal with a problem rather than to punish a mistake. Any action that we take will be appropriate to the scale of the problem. In certain instances (e.g. in relation to unauthorised works to listed buildings, and failure to comply with the requirements of an enforcement notice) a criminal offence may be committed and may result in court action.

The Council has legal powers to investigate breaches of planning control and the conditions attached to planning consents. If we cannot negotiate a satisfactory outcome, we may take formal action. It is important to remember however, that enforcement is a discretionary power. This means that we will decide if it is in the public interest to take enforcement action where planning control has been broken. We are not obliged to take any action, and in some cases we may decide that no action is necessary.

### 3 a guide to enforcing planning controls

You can read further information on the use of enforcement powers on the Scottish Government web-site at:

[www.scotland.gov.uk/Topics/Built-Environment/planning/National-Planning-Policy/themes/enforce](http://www.scotland.gov.uk/Topics/Built-Environment/planning/National-Planning-Policy/themes/enforce)

Planning enforcement also covers the display of advertisements such as signs, billboards and advertisement hoardings, although slightly different procedures will apply (these are set out on section 8 of this Charter – ‘enforcement and advertising’).

#### SERVICE STANDARD

BY PUBLISHING OUR STANDARDS AND TARGETS, WE AIM TO IMPROVE OUR ENFORCEMENT SERVICE SO THAT WE CAN RESPOND TO THE NEEDS OF THE PUBLIC. WE WILL MONITOR THE CONTENTS OF THIS CHARTER TO ENSURE THAT WE ARE MEETING OUR STANDARDS AND TARGETS.

YOU CAN GET FURTHER COPIES OF THIS CHARTER ON OUR WEBSITE AND BY VISITING OUR OFFICE ON THE GROUND FLOOR OF MARISCHAL COLLEGE, BROAD STREET, ABERDEEN.

## Identifying possible breaches of planning control

As a member of the public you have a vital role to play in the enforcement system by reporting breaches of planning control to us. If you are concerned that someone is carrying out work without permission, or that the works are not in line with the related planning permission, please contact the Enforcement Section of our Development Management Team within Planning and Sustainable Development. You can phone or email us, or call in to the office to see one of our officers in person. It is helpful if you follow up any phone call or visit in writing or by e-mail. All contact details can be found on page 11.

Possible breaches of planning control can include:

- work being carried out without planning permission or other consent (this includes conservation area consent, listed building consent or advertisement consent);
- an unauthorised change of use of land or buildings;
- carrying out work which is not in line with the approved plans or consent;
- carrying out work which is not in line with conditions attached to a permission or consent; or
- carrying out work to trees that are protected by a planning condition, a Tree Preservation Order, or by virtue of being located in a Conservation Area.

## 4 a guide to enforcing planning controls

The following information is important and helpful to us when you report a suspected breach in planning control.

- the address or location of the property or land concerned;
- details of the suspected breach of planning control (for example, the nature of the building work or activities being carried out and information on who may be responsible for it); and
- dates and times of when the activity is carried out, where appropriate.

If the breach in planning control directly affects you, or you simply wish to know the outcome of our investigation, please also provide us with contact details for yourself including your name, telephone number, address and e-mail address (if submitted online).

You can request that your correspondence be treated as confidential. However, whilst we will do our best to honour such requests, this is subject to the requirements of the Freedom of Information (Scotland) Act 2002. Any requests for total confidentiality may limit our ability to take formal action and we cannot guarantee this if the case leads to court proceedings.

### Monitoring planning conditions

In a large number of cases, conditions will be included within the decision notice attached to the granting of permission. These conditions are part of the approval, and must be met in order for the development to be considered lawful.

Monitoring these conditions is undertaken by the Enforcement Section of our Development Management Team. However, as we grant such a large number of permissions each year, it is not possible for the Council to monitor all conditions at all times.

As a result of this, members of the public play an important role in monitoring conditions that are placed on certain planning consents. Your involvement is highly valued and we are grateful to you for providing any information relating to a breach of planning conditions. Breaches of conditions are investigated in the same way as breaches of planning control.

### Planning enforcement: our processes

Any information that we receive is checked to ensure that the matter raised involves a possible breach of control and includes all the detail we need for a possible investigation. After these preliminary checks, the complaint will be registered. We will then send a written or e-mail acknowledgement to the person who made the complaint.

When a complaint is registered, it is recorded and delegated to the appropriate officer. Complaints relating to previous/ongoing applications will generally be dealt with by the officer responsible for that application. The Councils' Tree Officer will deal with complaints relating to tree works.

Our Planning Inspector or Tree Officer will then visit the site in order to establish if a breach has occurred, and if so, to what extent. The main concern when investigating any breach is whether the unauthorised development or activity has a harmful effect on the area. Where this is the case, we must then decide if action is needed. In some cases, additional investigation or consultation with external bodies (such as Historic Environment Scotland) may be needed.

## 5 a guide to enforcing planning controls

If it is decided that an unacceptable breach has occurred, there are three main courses that we may take:

**1. Negotiate a Solution:** rather than pursue legal action we will encourage the person responsible for the breach to solve the problem through discussion and negotiation. They may either choose to stop the activity and carry out work to correct the problem, or they may wish to submit a retrospective application. The time given to either of these actions will depend on the severity of the breach and its impact.

**2. Retrospective Application:** a retrospective application is an application for development that is submitted after the work has actually started or has been completed. In cases where we feel that the unauthorised development is likely to gain approval as it stands or through the use and control of conditions, we will encourage the submission of a retrospective application. It should be noted that an owner or developer should never carry out work with the expectation of getting retrospective permission for the work. To do so is taking a considerable risk, and may lead to formal enforcement action.

**3. Formal Enforcement Action:** where a breach in planning control is considered to have caused unacceptable harm to the area, and where negotiations have failed to deal with the problem successfully, we will normally take formal enforcement action. This may also occur if we have received a retrospective application that is considered to be unacceptable, even through the use of conditions, based on its planning merits.

When considering taking formal enforcement action, we will take the following into account:

- The local plan, enforcement policies and relevant circulars;
- the severity of the breach and its impact on the surrounding area, including:
  - ◆ the visual impact,
  - ◆ the environmental impact
  - ◆ the effect on residential amenity; and
  - ◆ the effect on road safety.

### SERVICE STANDARD

THE MOST SIGNIFICANT BREACHES OF PLANNING CONTROL WILL BE GIVEN TOP PRIORITY. SUCH CASES INCLUDE:

- SIGNIFICANT NEGATIVE EFFECTS ON AMENITY;
- BREACHES OF CONDITION FOR MAJOR DEVELOPMENT;
- DAMAGE TO LISTED BUILDINGS; AND
- UNAUTHORISED FELLING OF, OR DAMAGE TO, TREES PROTECTED BY TREE PRESERVATION ORDERS.

There are some issues that will arise that the Planning Service has no control over, such as neighbour disputes over the ownership of land.

## Keeping you informed

Throughout the process, both the individual who has made the complaint and the person who is responsible for the breach of planning control will be informed of the progress of our investigation and what action, if any, is proposed.

### SERVICE STANDARD

IF YOU PROVIDE US WITH INFORMATION, YOU WILL RECEIVE A FORMAL RESPONSE WITHIN THE TIMESCALES SET OUT IN THE CUSTOMER CHARTER.

(see table at end of section 10 of this leaflet)

FOLLOWING OUR INVESTIGATION, YOU WILL ALSO BE ADVISED OF ANY PROPOSED ACTION TO BE TAKEN. THIS MAY INCLUDE THE NEED FOR ADDITIONAL INVESTIGATION PRIOR TO DECIDING ON A COURSE OF ACTION.

WE WILL LET YOU KNOW IF THE MATTER DOES NOT INVOLVE A BREACH OF PLANNING CONTROL.

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.

The Council recognises that delays can cause considerable frustration to those people who have submitted information, particularly if they consider their amenity is affected. Consequently, we will try to keep everyone informed of significant stages in the progress of a case.

You can also contact the case officer for more regular updates. If there has been no progress for a period of 4 weeks, we will write to you to explain the delay.

## Acting on breaches of planning control

In some cases 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 to punish mistakes. The planning authority has to consider each case on its merits and decide on the best solution. We are unlikely to take formal action, for example, over developments which we consider to be acceptable in planning terms. It may be more appropriate in such cases for us to ask for a retrospective planning application to be submitted.

Only a relatively small number of cases require formal enforcement action. This begins with either an enforcement notice or a breach of condition notice being served on those involved in the development. Both notices 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.

Appeals against enforcement notices are considered by Scottish Ministers and dealt with, in most cases, by Reporters from the Scottish Government Directorate of Planning and Environmental Appeals.

# 7 a guide to enforcing planning controls

Anyone who has submitted information on a breach of planning control will be advised of the appeal. There is no right of appeal against a breach of condition notice.

## SERVICE STANDARD

WHERE A PLANNING BREACH CANNOT BE RESOLVED AND ACTION IS JUSTIFIED, A FORMAL NOTICE WILL BE SERVED IN MOST CASES. THIS WILL 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.

If someone does not comply with a notice, we may take further action. This can include a range of possible options including:

- referring the case to the Procurator Fiscal for possible prosecution;
- carrying out work and charging the person for the costs involved;
- seeking a Court interdict to stop or prevent a breach of planning controls.

## SERVICE STANDARD

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. THESE 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, wasteland notices and stop notices are entered into an Enforcement Register. You can inspect these documents in our offices.

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; and
- check if a breach has been satisfactorily resolved.

This power may involve officials entering land beside the site where the breach has taken place.

Enforcement action has to be taken within strict time limits.

The **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 a change of use to a single dwellinghouse. After four years following this type of breach, the development becomes lawful, and no enforcement action can be taken.

The **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; and no enforcement action can be taken.

There is no time limit for breaches of Listed Building Control (works undertaken to a Listed Building).

### Enforcement and advertisements

The display of advertisements is covered by the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984. Many advertisements are displayed with what is called 'deemed consent' which means they do not require planning permission providing they meet the criteria and conditions set out in the regulations. One of these conditions is that the landowner has given permission for the advertisement to be displayed on their land.

Displaying an advertisement in contravention of the regulations is an offence and, if convicted in court, an offender can be fined. The court can impose further fines for each day the breach of the regulations continues.

The Council has the power to serve an enforcement notice for unauthorised advertisements. This specifies a time period (normally 28 days) for compliance with the notice. 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, or if the advertisement can be removed without any other work being required.

An enforcement notice can also require that a particular piece of land should not be used to display advertisements. This remains in force even if the original advertisement is removed. Any subsequent advertising on this site without permission would be considered as a breach of the notice.

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 will be given at least two days notice that the Council intends to take the poster down. If they cannot be readily identified, then the Council can remove the advert immediately.

Council officials can enter unoccupied land, if necessary, to remove an advertisement. However they have no powers to remove advertisements displayed within a building to which there is no public access.

As mentioned previously, planning control does not cover the actual content of an advertisement. Any complaints about this (for example the use of language or symbols which are perceived to be offensive) should be made to the Advertising Standards Authority. Their contact details are included in Section 10.

### Making a suggestion or complaint to us

Aberdeen City 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.

If you would like to make a complaint about how we have followed our procedures and/or failed to comply with the levels of service set out in this Charter, the following course of action is recommended:

Please contact the officer dealing with the enforcement to discuss your complaint in the first instance.

If you need to find out who to contact please telephone our general enquiries number below or email the address shown below and your complaint will be directed to the appropriate person.

If you are not satisfied with the response to the complaint please contact the officer's line manager.

# 9 a guide to enforcing planning controls

If you are still not satisfied your complaint will be dealt with in accordance with the Council's Corporate Complaints Procedure. This is also available on paper at Marischal College.

THIS CHARTER DOES NOT COMPROMISE AN AUTHORITATIVE INTERPRETATION OF THE PLANNING ACTS.

PLANNING LEGISLATION IS COMPLEX AND THEREFORE IF YOU ARE IN RECEIPT OF ANY FORMAL NOTICE FROM THE COUNCIL YOU ARE ADVISED TO SEEK LEGAL OR INDEPENDENT PROFESSIONAL PLANNING ADVICE.

## Enforcement powers

This section provides further details of planning enforcement powers which the Council uses. These powers are set out in the Planning and Listed Building Act of 1997, as amended in 2006. Government policy on planning enforcement is set out in Circular 10/2009, "Planning Enforcement." Guidance on enforcement related to noise is contained in PAN 1/2011 "Planning and Noise". These documents are available from the Scottish Government and can be viewed at:

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

### Types of Notice

**1. 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.

**2. 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 (see below), and advertisements. An enforcement notice will specify a time period to take effect (a minimum of 28 days); the steps that must be taken to remedy the breach and the time for this to be completed. There is a right of appeal, during which the terms of the notice will be 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. Failure to comply may also result in the Council taking Direct Action to correct the breach (see other powers below).

**3. 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 to an unlimited fine or even imprisonment.

**4. 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, however, 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. The use of stop notices therefore needs to be carefully assessed by the Council.

## Other Powers

**5. Planning Contravention Notice** - under Section 272 (of the Town and Country Planning (Scotland) Act 1997), this is used to obtain information about activities on land where a breach of planning control is suspected. It is served on the owner or occupier, a person with any other interest in the land or someone 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.

**6. Amenity Notice** - under Section 179 (of the 1997 Planning Act) - 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. It sets out the action that needs to be taken to resolve the problem within a specified period.

**7. 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.

**8. Advert Removal Notice** - under Section 187 (of the 1997 Planning Act) - this allows planning authorities to remove or obliterate certain advertisements.

**9. 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.

**10.** Under Section 33A of the 2006 Act, the planning authority may require a planning application to be made for work already carried out.

The Planning Enforcement powers available to your local Council are set out in Part IV of the Town and Country Planning (Scotland) Act 1997 and in Chapter IV of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, as amended in 2006. The Planning Acts are available from HMSO, 71 Lothian Road, Edinburgh and at <http://www.opsi.gov.uk/acts>

## Performance Targets

The Development Management Customer Charter contains our performance targets:

Performance Indicator	Target
Telephone calls answered within 6 rings	85%
Telephone message returned by the end of the next working day	85%
Response to written correspondence received within 15 working days	90%
Response to formal e-mails within 10 working days	90%
Visitors to reception with an appointment seen by an officer within 5 minutes of their appointment time	90%
Visitors to reception without an appointment seen by an officer within 10 minutes	85%

## How to contact us

T: 01224 523470

E: [pi@aberdeencity.gov.uk](mailto:pi@aberdeencity.gov.uk)

W: [www.aberdeencity.gov.uk/planning](http://www.aberdeencity.gov.uk/planning)

Our address:

Development Management  
Strategic Place Planning  
Business Hub 4  
Ground Floor North  
Marischal College  
Aberdeen  
AB10 1AB

**Head of Service:** Gale Beattie

**Development Management Manager:** Daniel Lewis

Opening Hours: Monday to Friday 8.30 am – 5.00pm (except for public holidays)

## Useful Links

Aberdeen City Council planning information:

<https://www.aberdeencity.gov.uk/services/planning-and-building>

Aberdeen City Council Corporate Complaints procedure:

<https://www.aberdeencity.gov.uk/services/have-your-say/make-complaint>

Scottish Government Planning - for legislation:

<https://beta.gov.scot/policies/planning-architecture/>

**If you want this document translated into another language or format (including Braille, large print, audio disk or BSL DVD) please contact us via email or telephone number listed below.**

Jeżeli ten dokument jest wymagany w innej wersji językowej lub formacie (w dużym druku lub na dyskiecie audio) proszę się skontaktować z

إذا كنت تود الحصول على هذه الوثيقة مترجمة إلى لغة أخرى أو بشكل آخر (مثلا بالخط العريض أو القرص السمعي) فالرجاء الإتصال:

Если Вы хотите получить этот документ, переведенным на другой язык или в другом формате (крупным шрифтом или на звуковом диске), пожалуйста, свяжитесь по

Jei jūs norite susipažinti su šiuo dokumentu jūsų kalba ar gauti jį kitokiame formate (Didelėmis raidėmis ar audio disku), prašau susisiekite

Dacă doriți ca acest document să fie tradus într-o altă limbă sau într-un alt format (scris mare sau format audio), vă rugăm contactați

如果你需要把文件翻译成另一种语言或者把文件变成另一种格式（大号字体或声盘），请通过以下的邮件或电话方式联系我们。

Ma tha thu ag iarraidh eadar-theangachadh den sgrìobhainn seo ann an cànan neo cruth eile (clò mòr neo clàr clainneach) feuch an cuir thu fios gu

**If you are deaf or have a hearing impairment, you can still communicate with the Council via Text Relay by dialling 18001 + telephone number:**

03000 200 292

