



REPORT – July 2016

SCRUTINY REVIEW

PLANNING ENFORCEMENT

2016

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Membership of the Scrutiny Committee

- Councillor A Stewart (Convener)
- Councillor B Vaughan (Vice Convener)
- Councillor D Cuthbert
- Councillor D Doogan
- Councillor J Flynn
- Councillor A Munro
- Councillor A Younger

Officers providing support

- Keith McNamara, Head of Strategic Commissioning and Organisational Development, (previously Paul Graham)
- Christopher Jolly, Team Leader (previously Michelle Cochlan)
- Ryan Laurenson, Project Officer
- David Littlejohn, Head of Planning and Development
- Nick Brian, Development Quality Manager
- Brian Stanford, Team Leader (Householder Applications, Enforcement & Technical Support)
- Paul Kettles, Planning Enforcement Officer
- Geoff Fogg, Legal manager
- Kim Brown, Performance & Risk Officer

FOREWORD BY THE CONVENER

As convener of the Scrutiny Committee, I would like to introduce this report on the sixth Scrutiny Committee Review, which is of Planning Enforcement, and to acknowledge the time given by the Scrutiny Committee members in carrying out this review. I wish to thank the elected members, Council officers, developers and community representatives who participated in the review. I acknowledge the support which has been provided by officers from our Corporate and Democratic Service and The Environment Service for which I am again grateful.

Scrutiny reviews are an important element of the overall approach to governance and improvement at Perth and Kinross Council. The Scrutiny Committee carries out these reviews to support improvement, stimulate change and improve performance across the Council. We select topics based on the potential for the review to result in recommendations for change that will deliver measurable improvements.

Topics for review may be identified by considering the following: audit reports; performance management reports; information gathered via surveys and feedback mechanisms; issues raised by representative groups e.g. community councils, resident groups and community groups; issues raised by partner organisations; complaints; and issues raised directly by the public.

In 2015 the Development Quality Manager attended a meeting with planning consultants who regularly act for developers in Perth and Kinross. He told them that if their clients only ever undertook development after planning consent had been granted and always complied with the planning conditions imposed he would not need an enforcement officer. The reality is that there are three planning enforcement officers employed by the Council, each of whom has a full caseload. Having said this, the Review Group recognise that the vast majority of developers comply with the planning process.

This year we have welcomed the opportunity to conduct a review of the Council's planning enforcement work. In doing so, we have made some recommendations which we believe will improve the effectiveness of the work.

Councillor Alexander Stewart
Convener, Scrutiny Committee

1.1 Statutory Framework and Government Guidance

The enforcement of planning is a statutory process and the current legislation is contained in Part VI of the Town & Country Planning (Scotland) Act 1997. These powers have been amended over the years, most recently in the extensive reforms enacted by the Planning Etc (Scotland) Act 2006.

When carrying out enforcement work, planning authorities must have regard to the Scottish Government's guidance relating to planning enforcement which is contained in [Circular 10/2009](#)

The following provisions from the 1997 Act and the planning circular are worth highlighting:

In relation to enforcement notices, section 127(1) provides that the planning authority may issue such a notice where it appears to them –

That it is expedient to issue the notice, having regard to the provisions of the Development Plan and to any other material considerations.

In relation to the 'general approach to enforcement', the circular provides the following guidance:

“Nothing in this guidance should be taken as condoning any breach of planning law. Planning authorities have a general discretion to take enforcement action against any breach of planning control if they consider such action to be expedient, having regard to the provisions of the Development Plan and any other material considerations. When they are considering whether any particular formal enforcement action is an expedient remedy for unauthorised development, planning authorities should be guided by the following considerations:

- Planning authorities, under the provisions of the 1997 Act, have primary responsibility for taking whatever enforcement action may be necessary in the public interest, in their administrative area.
- Decisions in such cases, and any resulting action, should be taken without undue delay. Failure to do so could constitute grounds for a finding of maladministration by the Scottish Public Services Ombudsman.
- In considering any enforcement action, the planning authority, with regard to the Development Plan, should consider whether the breach of control would affect unacceptably either public amenity or the use of land and buildings meriting protection in the public interest.
- Enforcement action should always be commensurate with the breach of planning control to which it relates.”

Accordingly both the Act and the circular make it clear that planning enforcement is a discretionary activity in which regard must be given to the impact of the breach and the proportionality of any enforcement undertaken.

1.2 The Planning Charter

The most significant reform affecting planning enforcement introduced by the Planning Etc (Scotland) Act 2006 was the establishment of planning enforcement charters. It is now a requirement that planning authorities prepare an enforcement charter in which the following are set out:

- (a) A statement of the authority's policies as regards their taking enforcement action for the purposes of the 1997 Act,
- (b) An account of how members of the public are to bring any ostensible breach of planning control to the attention of the authority, and
- (c) An account –
 - (i) of how any complaint to the authority as regards the taking by them of enforcement action is to be made, and
 - (ii) of their procedures for dealing with any such complaint.

The planning authority must keep its enforcement charter under review and it must update and republish it whenever they think it appropriate to do so but, in any event, within two years after last publishing (or republishing) it. Perth and Kinross Council's present charter was approved for the second time in June 2014. A review of the charter is currently underway and will incorporate the outcomes of this Scrutiny Review.

The Scottish Government provided a template for enforcement charters and the [Perth and Kinross charter](#) largely follows this template.

1.3 Planning Enforcement Powers

The planning enforcement circular has 14 annexes, 11 of which explain the different forms of enforcement procedures contained in the 1997 Act, namely:

- Annex C – Notice requiring application for planning permission for development already carried out.
- Annex D – Planning Contravention Notices.
- Annex E – Rights of Entry (to ascertain, amongst other matters, whether there is or has been any breach of planning control and whether enforcement powers should be exercised).
- Annex F – Certificates of Lawful Use or Development.
- Annex G – Enforcement Notices.
- Annex H – Stop Notices.
- Annex I – Temporary Stop Notices.
- Annex J – Breach of Condition Notices.
- Annex K – Fixed Penalty Notices.
- Annex L – Interdicts to restrain breaches of planning control.
- Annex M – Land adversely affecting amenity of neighbourhood.

Two additional types of enforcement which are not evident from the above list but which are worth mentioning are:

- (i) The ability of the planning authority to take direct action to remedy a breach of planning control (the cost of which may be recovered from the responsible party);
- (ii) The right to report certain breaches to the Procurator Fiscal for prosecution.

These various forms of planning enforcement collectively comprise the statutory powers available for planning authorities. Scrutiny of any of the specific types of enforcement was not undertaken during this review as this was not considered necessary or practicable.

Special areas of responsibility normally undertaken by the planning authority's Planning Enforcement Officers under the same, or related legislation, are:

- (i) enforcement for listed buildings and conservation areas;
- (ii) the protection of trees;
- (iii) discharging local authority powers and obligations in relation to the High Hedges (Scotland) Act 2013.

1.4 Limitations of Planning Enforcement in Scotland

Planning enforcement is a highly regulated area. The Review Group recognises that the statutory powers available to officers may not always be sufficient to hold those responsible for breaches to account. Addressing issues with the legislation is outwith the remit of the Review Group, and the Group recognises that it is inappropriate to criticise officers, if the reason for enforcement action not being taken is the limitations of the statutory system.

For example, the maximum fixed penalty level which can be imposed is £2,000. This means that the cost of removing or reinstating unauthorised work, or of complying with the conditions of a planning consent, can be significantly greater than any penalty which the Council can impose. As such, some developers may conclude that there is little financial incentive to fulfil their planning obligations.

The period of the Committee's review has coincided with the Independent Review of Planning commissioned by the Scottish Government in September 2015. The Panel's findings were published on 31 May 2016 and the Scottish Government's initial response was published on 11 July 2016. It is interesting that a number of those who submitted responses in that review, including several from the development industry, criticised the enforcement powers and the limited sanctions available, and called for these to be strengthened. We are pleased to note that the Panel's report included the following recommendations:

"The Scottish Government should work with local authority enforcement officers to identify and/or remove any barriers to the use of enforcement powers."

“Innovative mechanisms to penalise negative behaviours and incentivise productive relationships..... should be explored. Examples include higher fees for retrospective applications.....”

2 TERMS OF REFERENCE

2.1 The following objectives and scope were discussed at the initial Review Group meetings held in September and October and they were approved by the Scrutiny Committee on 2 December 2015.

2.2 Objectives

- Examine public perception and consistency of the planning enforcement service;
- Explore and understand the intended outcomes of planning enforcement and effectiveness of the planning enforcement team in delivering these outcomes;
- Work with elected members and Council Officers to examine the effectiveness of internal communication around planning enforcement;
- Investigate other Councils’ experiences and practices with planning enforcement to identify best practice and opportunities for improvement;
- Ensure Councillors feel equipped to support members of the public.

2.3 The Scope of the Review

The review considered the nature and scale of planning enforcement activity. Wider aspects of the planning system were not considered unless they had a bearing on enforcement.

2.4 Methodology

The Scrutiny Committee followed the Scrutiny Review methodology set out in the Guide to Scrutiny at Perth and Kinross Council, 2014.

As part of our investigation we gathered evidence in a number of ways:

- (i) We conducted two surveys. The first survey was of Councillors of this Council. The aim was to gauge their level of knowledge, confidence and satisfaction in relation to planning enforcement. The second survey was a “stakeholder” survey. This sought opinions on planning enforcement within Perth & Kinross from diverse, and potentially opposing sources, namely developers, planning consultants, community councils and two civic trusts.
- (ii) The members of the Review Group questioned officers about their knowledge of and reasons for the planning enforcement practices, both within this Planning Service and practices which operate elsewhere. These questions were asked throughout the course of our meetings of a Planning Enforcement Officer, the Head of Planning and Development and other senior members of the Development Management Team.

- (iii) One Committee member attended a meeting of the Planning Users forum.
- (iv) Two of the officers supporting the Review, (but not involved in the Planning function) undertook an assessment of planning enforcement work by examining a cross-section of completed enforcement cases. These Officers determined the cases which would be looked at together with two additional cases suggested for consideration by one member of our Committee. Neither the Planning Enforcement Officers nor any other member of The Environment Service had any input to the cases which were selected.
- (v) Benchmarking information relating to the performance of all Scottish planning authorities was ingathered and the findings were assessed.

An account of these various sources of evidence is provided in the next section of this report.

2.5 The complete terms of reference are provided in Appendix 1 to this report; the full results of our benchmarking assessment are provided in Appendix 2; the survey of elected members is Appendix 3.

Did you know?

Complaints or enquiries about breaches of planning control are received at the approximate rate of one every working day. Every case has to be investigated and the Council's planning enforcement officers cover in excess of 10,000 miles each year while undertaking their duties.

3.1 STRUCTURE

The Scottish Government, through the Planning Performance Framework, now places great emphasis upon the speed of determining planning applications. The Scottish Government has delayed, but not removed, their right to impose financial penalties upon those authorities which fail to meet the national performance targets for determining planning applications. In contrast, no financial penalty applies to enforcement work. In these circumstances, the Review Group consider it is inevitable that planning officers would feel pressured to prioritise planning application work and would regard enforcement work as secondary.

There are three dedicated planning enforcement officers who work in the Development Management (DM) section. The number was increased from two to three in April 2009. This was in recognition of the greater amount of enforcement work expected of planning authorities and the realisation that this could not be covered by the two existing officers. The enforcement officers are managed by the Team Leader (Householder Applications, Enforcement & Technical Support) who is a member of the Development Management management team. He reports to the Development Quality Manager. The Development Management section is part of the remit of the Head of Planning and Development. The majority of planning authorities in Scotland employ dedicated Planning Enforcement Officers. An alternative is for planning enforcement work to be the responsibility of the Planning Officers in the Development Management team.

The Review Group is satisfied that the employment of dedicated Planning Enforcement Officers is the best way to ensure that appropriate emphasis is given to undertaking this important area of planning activity.

The work of the three Planning Enforcement Officers is split. One officer has responsibility for monitoring developers' compliance with the conditions of their planning consents. The other two officers deal with alleged unauthorised activity. In relation to unauthorised activity, the Council's area is divided. One of the officers is responsible for covering the north of Perth and Kinross and the other covers the south. The team applies flexibility to cater for periods of annual leave, sick leave or occasional planned or unanticipated events. A decision to commence enforcement action is authorised by either the Team Leader or the Development Quality Manager.

3.2 PLANNING ENFORCEMENT WITHIN PERTH AND KINROSS

The Review Group was provided with an overview of the nature and the quantity of enforcement work which is undertaken by the planning enforcement officers. The team receives in excess of 300 cases annually, however approximately 40% of those do not warrant formal action following assessment and investigation.

The Review Group recognise that although many of the cases received do not warrant formal enforcement action, all cases need to be investigated. Furthermore, the emphasis in planning enforcement is not always to seek formal action, rather the emphasis is on seeking an appropriate resolution. In many instances a satisfactory resolution can be achieved by Planning Enforcement Officers through providing assistance, guidance and advice, rather than formal enforcement action. In a significant number of other cases no action is taken because the development or operation is not a breach of planning control. It may also be because the level of breach is assessed as sufficiently minor that enforcement action is unwarranted and disproportionate. The Review Group recognises that the cases where no further action is warranted still require a professional judgement and therefore that they still have to be resourced.

The latest annual figures available are for the calendar year to December 2015. As the figures for the last year appear to be generally consistent with the preceding years, they provide a fair reflection of the nature and the extent of the work.

Of the 309 cases for which enforcement action was taken, approximately one sixth or 16% of these relate to breaches of or non-compliance with the conditions of planning consents. The remainder relate to unauthorised development.

During the year to December 2015 the breakdown of the enforcement work was as follows:

Adverts 28;
trees 7;
amenity 13;
listed buildings 18;
breach of planning conditions 51;
general 91;
householder 101.

Did you know?

A person who believes their development or operation does not require planning consent can apply to the planning authority for a Certificate of Lawful Use and Development. This Council issued the first refusal in Scotland to be appealed to the Scottish Government. The Reporter upheld the Council's decision and dismissed the appeal.

During this year 29 formal Notices were served and for 15 of these the recipients had a right of appeal to the Scottish Ministers. Of those Notices, 8 were appealed to the Scottish Government's Department of Planning and Environmental Appeals. Only 2 of these appeals were partially successful and resulted in the terms of the Notices being varied.

There were no cases reported to the Procurator Fiscal by this council in the financial year 2014/15 but in the year 2013/14 two cases were reported. It is helpful to assess this in the national context. In 2014/15 only two authorities in Scotland referred cases to the Procurator Fiscal and, in the year before, seven authorities in Scotland submitted reports. It is accordingly evident that, for whatever reason, cases are rarely referred to the Procurator Fiscal for prosecution across Scotland.

3.3 BENCHMARKING

A benchmarking exercise was undertaken using information published by the Scottish Government. The results of three indicators of national performance are included as Appendix 2. In the interests of brevity, comment is made on the second of these indicators only but the performance of Perth & Kinross is generally consistent for all three indicators.

The second indicator examines the number of enforcement cases taken up as a proportion of all local applications in the three year period from 2012 to 2015. The Planning Service deals with approximately 1,800 applications per annum, of which approximately 12 are major applications. This means that an assessment based on local applications only is not affected to any material extent by the exclusion of this small number of major applications. The data shows that the average number of cases taken up as a proportion of applications in Scotland is 16% and that the figure within Perth and Kinross is 26%. The figure shown for Perth and Kinross indicates a level of enforcement notice activity which is above this national average.

Although the Review Group appreciate the indicators may not be directly comparable across all Scottish Planning Authority areas, the Group's view was that it is commendable that the level of enforcement activity of Planning Enforcement in Perth and Kinross, is above the Scottish average.

There are several reasons for limiting the weight placed upon any one of the indicators as a measure of the Planning Enforcement Team's efficiency or productivity. Firstly, it is unlikely that the number of applications across Scottish authorities provides a reliable indication of the level of planning infringements in each area. Secondly, planning authorities differ substantially in terms of the size of their areas, population levels and the number of applications. Perth and Kinross Council is the fifth largest local authority land area. It received the 7th largest number of local applications over the last three years; it has the 13th highest Council population and 14th highest number of households. It has a higher number of conservation areas, listed buildings and applications affected by the Habitats Directive or the Environmental Impact Assessment Regulations than many other authorities in Scotland. These are all factors likely to affect the demands and the complexity of the work of the Planning Enforcement Officers but in ways which are difficult to quantify. Nonetheless, it is a significant achievement to equal or exceed national enforcement performance figures, when the local context and these local characteristics are taken in to account.

3.4 ENFORCEMENT CHARTER

As stated, the Council is required to have a Planning Enforcement Charter, to review this when there is a change of circumstances and, in any event, no later than every two years. As also stated, the current version largely follows the format provided in the Scottish Government's Guide. The contents of the charter have been referred to in paragraph 1.2 above but they have to include the authority's policies for enforcement; how the public report an ostensible breach; how to complain to the authority about enforcement action taken and how such a complaint will be dealt with

The Review Group noted that the charter sets out the priorities for enforcement. It begins with the statement that priority will be given to significant breaches of planning control, examples of which are then listed. The Review Group does not take issue with this priority or with the examples given. However the stakeholder survey which we undertook invited respondents to suggest priorities for enforcement. A wide range of suggestions were submitted from which no clear priorities were evident, but it would be appropriate that these are further considered in the current review of the charter.

Although the current Charter follows the Scottish Government's guide, it could be made a more visually appealing document and more accessible. Consideration should be given to the use of photographic examples and other visualisations when the reviewed charter is republished. In addition, it is likely that increasing use will be made of electronic copies of the charter. Consideration should be given to the form and content which is best suited for on-screen access. It is likely that the knowledge and expertise of the Council's Design Team would be useful.

3.5 CASE STUDIES

It was decided to undertake a review of enforcement cases as part of the Review. As previously stated, the Officers who undertook the review are not members of the Development Management Team and neither the Planning Enforcement Officers nor any other planning officers were given a say in the cases which were selected.

The purpose was to see the type of information held and to assess whether these provided complete and accurate records. Had a pattern of unsatisfactory work been identified from this limited sample of 12 cases it would have been extended but this was not the case. The exercise did not involve re-visiting the professional judgements which had been made.

The cases looked at were selected in two ways. Firstly, the most recently concluded cases in each of the 5 categories shown below were considered. Secondly, the members of the Review Group were invited to suggest particular cases for consideration which led to two further cases being identified:-

1. Two cases dealt with by each Enforcement Officer	6
2. Listed Building case	1
3. Case where direct action was undertaken	1
4. Case where an Enforcement Notice was appealed to the Scottish Government	1
5. Case referred to the Procurator Fiscal	1
Sub total	10
6. Cases suggested by members of the Review Group	2
Total	12

1. Six Cases Dealt with by the Enforcement Officers

- (i) In two of these cases, the officer had visited sites in response either to complaints or enquiries and they had been satisfied that no breach of planning control existed.
- (ii) In two cases the officers visited in response to complaints or enquiries and had established that breaches of planning control were evident. The owners were therefore advised that they needed to apply for and obtain planning permission. Each of the developers submitted an application shortly thereafter and the planning consent was duly granted.
- (iii) In two of the cases the enforcement officers had visited the sites, identified breaches and the owners were asked to cease the activity. In the first case this required the removal of an unauthorised sign which was being used to advertise a business. In the other case an unauthorised, occupied caravan had been sited within the grounds of a public house. In both cases the breaches were resolved without formal enforcement action. The sign and the caravan were both removed within short and satisfactory timescales.

Did you know?

A breach of planning control, if unchallenged within statutory timescales, is immune from enforcement. In Welwyn & Hatfield Council v Secretary of State, the Supreme Court held the 4 year limitation is not available to a person who deliberately conceals the breach. A recent high profile case concerned a developer who constructed a mock tudor castle/house. He then hid this behind straw bales. After a nine year battle and facing the prospect of jail, the home was demolished.

In all six cases the files which were examined provided a clear and accurate record of the investigation. In some cases it was not clear whether the resolution of the case was subsequently reported to the complainer (in cases where the breach was not reported by another Council employee). In certain cases, for example, where the complainer lived adjacent to the site, the resolution may have been immediately evident. In other cases it may have been considered inappropriate to update a complainer on the progress of enforcement action. If so, it would be appropriate that this was made this known to a complainer at the outset and to manage expectations.

2. Listed Building

This case concerned internal works which had commenced at a hotel which had listed building status but which did not have listed building consent for the work. When the matter was made known to the enforcement officer the premises were visited within 7 days and the owner was informed of the need for listed building consent. An application was submitted within 14 days and listed building consent was granted the following month.

3. The Appealed Enforcement Notice

The case concerned an Enforcement Notice which had been served to halt the processing of wood for bio-mass purposes on a site in close proximity to residential properties. The competency of the Notice was challenged by an appeal to the Department of Planning and Environmental Appeals, which is a department of the Scottish Government. The Queens Counsel acting for the developer claimed that the activity was permitted development as it was part of forestry activity which does not require planning permission. The appeal was dismissed by the reporter and the enforcement notice was upheld. The reporter concluded that the activity was an industrial process and not a forestry activity because the timber was being transported on to the site for processing. No further enforcement action was required thereafter because the developer then complied with the terms of the Enforcement Notice.

It was pleasing to note that the planning enforcement officer's interpretation of planning legislation and the validity of the enforcement notice was supported by the Scottish Government's Reporter.

It is also noted that the enforcement officers have the knowledge and experience needed to deal directly with enforcement appeals themselves, with guidance available from their Team Leader if required.

4. The Direct Action Case

The officers undertaking the case studies were unable to examine this case as thoroughly as they would have wished because the original paper files could not be traced. Only limited information was available in electronic form. The failure to locate the files was unsatisfactory but it was not suggested that this was other than an isolated occurrence. Based on the information available, it was evident that the case concerned an unauthorised caravan and steel container which had been reported to the service in 2006. Informal measures to resolve the situation appear to have been tried over the next two years without success. An Enforcement Notice was then served in 2008 requiring both structures to be removed. A planning application was submitted as a response but this was subsequently withdrawn. A fresh application was submitted, this was determined and consent was refused. All of these processes took place in 2008. The record shows that a further planning application was then lodged in 2011, it was again refused and then challenged by the developer through a review application to the Council's Local Review Body (LRB). This was dismissed by the LRB in May 2012. The enforcement officer then engaged a contractor to remove the caravan from the site and this work/direct action was undertaken in June 2012.

The history of this case shows the unauthorised activity was finally brought to an end by the Council's direct action. It also shows the value of this particular statutory power in the planning enforcement. However, it is evident that it took a considerable time to end this unauthorised activity. It is accepted that enforcement action should normally be deferred when a planning application and any subsequent appeal is being considered. In this case, there was a period of almost 3 years where no planning application was being considered and the total of six years which it took to end the breach seems to have been particularly long.

5. The Case Reported to the Procurator Fiscal

This case concerned the non-compliance with a Breach of Condition Notice. The ability to issue such notices was introduced to bolster the planning enforcement in Scotland. An owner, occupier or person having control of land upon whom such a Notice is served must reply to the planning authority, giving their full name and address and state their interest in the affected land. The procedure prevents future enforcement proceedings being thwarted by a developer on the grounds that the planning authority has not identified the correct party. Many authorities had experience of developers operating through a number of different companies, partnerships or family members which made it difficult to know who to proceed against. It is an extremely useful planning enforcement power. It is a statutory offence to fail to respond to such a Notice regardless of the lawfulness of the activity which the Planning Enforcement Officer is investigating.

The record held showed that the Procurator Fiscal did not proceed because he concluded that there was an insufficiency of evidence that an offence had been committed. It was not obvious to the officers undertaking the case review why this should have been the case: the offence is simply failing to respond to the Notice. It was subsequently clarified with the Enforcement Officer that, while the regulations allow a Breach of Condition Notice to be served by recorded delivery post, the Procurator Fiscal did not consider that this was sufficient proof that the accused himself had received the Notice as opposed to another member of his household.

While this finding is unsatisfactory, it highlights a weakness of the enforcement regime. It is not a failing which can be attributed to the planning enforcement officer's actions.

6. The Cases identified by Review Group Member

Three cases were suggested by one of the Review Group members. As one of these was the subject of ongoing enforcement action, it was not considered appropriate to investigate it in this review. The two further cases which were suggested were considered:

- (i) The first case concerned the change of use of a building to form a stable block. One of the conditions of the consent was that a vehicular passing place be provided to a specification agreed with this Council and Fife Council. It was suggested that this condition had not been complied with properly. The file recorded a letter from the planning officer to the developer's agent confirming that the condition had been complied with and was discharged. This reflected the planning officer's recollection.

The Review officers considered that a file note from the planning officer or, alternatively, evidence from the developer's agent such as a photograph could have given greater confirmation that the condition had been complied with.

- (ii) The second case concerned a 2009 application to modify an existing consent which had been granted in retrospect for a steel storage container at a farm. One condition of the modification consent had imposed a requirement for a landscape management plan and maintenance scheme. This required to be submitted within 12 months of the consent. It was suggested to the review officers that the information had been submitted out with this timescale. When the matter was investigated, there was no record of such a breach having previously been raised with the service but also no record to show whether this condition has yet been complied with. Enforcement action is not yet time barred and the service informed the review officers that they would investigate what landscaping had been undertaken and take such further action to secure compliance with this condition.

The Review officers noted that from the record available the condition did not appear to have been complied with and that steps were now being taken to address this.

3.6 THE COUNCILLOR SURVEY

1 Introduction and Response

The survey was distributed by email to group leaders via Democratic Services on 18 January with a deadline of 22 February 2016.

A total of **15** Elected Members completed the Survey, giving a response rate of 38%. Responses were received from Members from all but three wards. Counted responses to closed questions are provided in Appendix 3.1.

2 Involvement and Knowledge

Over half of respondents (9) were involved with planning enforcement 3 to 4 times per year or more often. With the exception of one, all of the respondents stated that they had sufficient knowledge of the planning enforcement function to undertake their role as an Elected Member.

3 Planning Enforcement Charter

The majority of respondents (11) stated that they had either some awareness or that they were very aware of the Planning Enforcement Charter.

The majority of respondents (11) advised that they had not referred a constituent to the current edition of the Planning Enforcement Charter. Those who had referred a constituent to this Charter had only done so once or a few times.

Only a small number of Elected Members who responded (4) would know where to find the Planning Enforcement Charter.

4 Planning Control

The Planning Enforcement Charter states that all complaints will be investigated and compliance with planning conditions and obligations will be proactively monitored. Eleven respondents provided their opinions on what they felt should be a priority for enforcement (respondents were allowed up to three priorities)

- (general) breach of planning consent (8)
- environmental impact (4)
- major failure to comply (1)
- infrastructure conditions (1)
- conditions affecting neighbouring properties (1)
- building materials (1)
- failure to comply with drainage conditions (1)
- failure to comply with noise conditions (1)
- use of domestic homes for business use (1)
- tidying up premises and gardens (1)
- planting/removal of trees/shrubs (1)
- enforcing landscaping/maintenance conditions (1)
- development without planning permission (6)
- unauthorised demolition of a building (1)

If contacted by a constituent regarding a breach of planning control Elected Members stated that they:-

Know the Planning Enforcement Officers and would contact one of them directly.	9
Do not know the Planning Enforcement Officers but would contact the Head of Planning & Development; or the Development Quality Manager and expect them to direct them to the appropriate person.	6
Would speak to the Depute Chief Executive, Environment, or Executive Director (Environment).	2

One respondent advised that they would contact the Planning Enforcement Officers directly or the Depute Chief Executive or Director (Environment) depending on the issue. Another elected member advised that they would contact the Head of Planning & Development/ Development Quality Manager and the Depute Chief Executive/ Executive Director (Environment).

5 Planning Enforcement Team

Respondents were asked to rate how satisfied they were with the Planning Enforcement Team, with regard to their queries about breaches of planning control and planning enforcement. The results are shown in the table below.

	Very Satisfied/ Satisfied	Neither/ nor	Dissatisfied/ Very Dissatisfied
Delivery - the service delivers the outcome it promised and deals with any problems that may arise	73% (11)	7% (1)	13% (2)
Timeliness - the service responds swiftly to initial contact and deals with the issue at the heart of it quickly	53% (8)	27% (4)	20% (3)
Professionalism - staff are competent and fair	93% (14)	-	7% (1)
Information - the information given is accurate and comprehensive. Progress updates are provided	73% (11)	7% (1)	20% (3)
Staff Attitude - staff are helpful, friendly, polite and sympathetic	93% (14)	-	7% (1)

Almost half of respondents (7) felt that the planning enforcement staff were **always** helpful with their enquiries and able to communicate effectively the enforcement process, and provide meaningful responses and updates to matters raised. The remainder felt this was **usually** (5) or **sometimes** (3).

6 Planning Enforcement Service

Effective, professional and consistent standard of service was how the majority of respondents (9) felt the current planning enforcement service performed.

Six examples were given where, in the opinion of the respondents, planning enforcement did not meet expectations.

7 Additional Training or Information

All elected members, with the exception of one, felt that they would benefit from additional training or information in relation to planning enforcement. A number of elected members suggested that a general overview would be helpful. Other suggestions included the law relating to enforcement and information provided to back up the Planning Enforcement Charter.

8 Additional Comments

Only 2 further comments were received – one suggested making the Planning Enforcement Charter easier to find. The other stated that the Council is too accommodating of retrospective planning applications which, it was further stated, puts enforcement on the back foot from the outset.

The counted responses to this survey are shown in Appendix 3.

3.7 THE STAKEHOLDER STUDY

- A total of 42 community councils and 588 other organisations (contact details held by planning) were invited to take part over the month of April 2016.
- 142 responses in total, of which 59 were fully complete in terms of reaching the end of the survey. Others have a range of completeness that would be expected. 2 Responses were accompanied by additional submitted material.

Q1. *Nature of Organisation:*

All responses (partial and complete)

Community Council	35
Planning-related Business	71
Developer	9
Other	25

Q2. *Approximately what percentage of your activities relate to Perth and Kinross Council area?*

Proportion of all responses

0-19%	30%
20-89%	32%
90-100%	38%

Q3. *In general, how often is your organisation involved with Perth and Kinross Council over planning enforcement issues (irrespective of location)?*

Proportion of all responses

A) Never	26%
B) Every 2 or 3 years	25%
C) Approximately once a year	20%
D) More than once per year	29%

Q4. *Do you have any comments on Perth and Kinross Council's Planning Enforcement Charter or other guidance information, particularly when compared to other Planning Authorities of which you have experience?*

There were several instances of a lack of awareness of the charter (particularly some community councils), others stated they were generic and similar to other authorities, or that they have no experience of other LAs. Other comments were around perceptions of the enforcement function rather than the charter.

Specific points to note around the charter and awareness of it:

- The charter explains how a member of the public can report a breach of planning but not an organisation like Civic Trusts. (Civic Trust)
- No experience of this Charter. Not aware previously of its existence. (Community Council)

- Q5. *The Planning Enforcement Charter sets out that all complaints will be investigated and compliance with planning conditions and obligations will be proactively monitored. In your view, what types of planning breaches should be the priority for enforcement activity? (3 separate answers can be provided)*

A wide range of responses were submitted but it is difficult to draw any clear conclusion from them. In terms of the responses, 'Planning Conditions' were the most commonly cited area for enforcement, followed by 'Unauthorised Development', 'Environmental' and then Residential Amenity but a total of 21 different types of breaches were referred to. The current Charter explains that priority is given to those breaches causing the highest level of planning harm. The responses do not contradict this and there is an inevitability that opinions would vary over how this is constituted.

- Q6. *The Planning Authority refers to key documents when considering enforcement action: The Perth and Kinross Council Planning Enforcement Charter and the Scottish Government Circular 10/2009. The latter states that Councils should be particularly sensitive to the impact of enforcement action on small businesses. Are you aware of specific case examples where you consider this guidance may not have been adhered to? If so, please state.*

- Q7. *Generally speaking across the following themes, how satisfied are you with the Planning Enforcement Team, with regard to queries about breaches of planning control and planning enforcement?*

Generally, net satisfaction for most themes is positive, although lower for delivery (which is often linked to actual decisions made) and information. The latter may be a specific area of interest for raising service satisfaction. Few developers answered this question, but those that did were neutral or positive.

Theme:	Very Dissatisfied	Dissatisfied	Neither /nor	Satisfied	Very Satisfied
Delivery - the service delivers the outcome it promised and deals with any problems that may arise	20%	14%	31%	31%	4%
Net satisfaction¹: Overall: +2% Community Councils: -15% Planning-related businesses: +17%					
Timeliness - the service responds swiftly to initial contact and deals with the issue at the heart of it quickly	18%	6%	39%	29%	8%
Net satisfaction: Overall: +14% Community Councils: +14% Planning-related businesses: +17%					
Professionalism – staff are competent and fair	10%	10%	31%	39%	10%
Net satisfaction: Overall: +29% Community Councils: +29% Planning-related businesses: +26%					
Information - the information given is accurate and comprehensive. Progress updates are provided. Advice is given in plain language.	14%	12%	41%	27%	6%
Net satisfaction: Overall: +8% Community Councils: 0% Planning-related businesses: +9%					
Staff attitude - staff are helpful, friendly, polite and sympathetic	6%	10%	33%	33%	18%
Net satisfaction: Overall: +35% Community Councils: +24% Planning-related businesses: +39%					

- Q8. Considering these same themes again, how would you compare Perth and Kinross Council planning enforcement function with other Planning Authorities of which you have experience? Please ignore this question if you have only experienced Perth and Kinross.
- Overall responses to these questions are fairly well balanced. When the responses of just planning-related business, developers and others are considered, PKC is perceived in generally similar ways to other planning authorities.

All satisfied responses net of all dissatisfied responses, as proportion of total. Neutral responses not included

	Much Worse	Worse	Similar	Better	Much better
Delivery	11%	19%	44%	22%	4%
<i>All responses except Community Councils</i>	14%	14%	50%	23%	0%
Timeliness	19%	8%	50%	23%	0%
<i>All responses except Community Councils</i>	14%	5%	52%	29%	0%
Professionalism	12%	19%	46%	19%	4%
<i>All responses except Community Councils</i>	10%	19%	43%	24%	5%
Information	15%	23%	38%	19%	4%
<i>All responses except Community Councils</i>	14%	14%	43%	24%	5%
Staff attitude	12%	15%	58%	12%	4%
<i>All responses except Community Councils</i>	10%	14%	57%	14%	5%

Responses: 26

Q9. *Do you have specific examples of where you consider the planning enforcement service did not meet your expectations? If so, please describe.*

A broad range of comments were received, and it is challenging to draw out any common themes. Community council responses are focused chiefly on specific issues cases identified within these areas, mostly where it is felt that enforcement activity has been lacking. Responses from planning-related businesses are also mixed but occasionally focus on more procedural / service issues such as provision of information. Some comments in the section are again around planning decisions more generally and not necessarily enforcement.

As the Respondents were invited to provide specific developments which had not met their expectations and duly did so these responses were duly shared with the Development Quality Manager was invited to comment on the cases. It has not been considered appropriate to include the responses in this report but the comments received from the Development Quality Manager were satisfactory.

Q10. *Please provide any further comments on planning enforcement in Perth and Kinross.*

Again comments here are very mixed and no consistent themes emerge, which is a common problem when consulting on an emotive topic such as planning where agreement with decisions is rarely universal. In general, community councils (who do respond here) are of the view that enforcement is insufficient. Planning related businesses are more content generally and focus on procedural issues or quality of communication (as was indicated in previous question).

Points of note:

- There were several comments indicating that more resources could be helpfully applied to planning enforcement
- A greater (or preferential) focus on enforcement of larger developments was raised by more than one respondent
- Several commented on the professionalism and good levels of service from enforcement officers, balanced by some more negative views.

- 4.1** This report began by acknowledging that the Scottish Government expects that the planning enforcement which is undertaken by authorities will be carried out in a proportionate way. This expectation is incorporated in the Council's enforcement charter. This means that discretion and professional judgement have to be applied to determine whether enforcement action is warranted. It is evident that this has not been understood by some community representatives. Considering that planning conditions can only be imposed if they are reasonable, precise and enforceable, it is understandable why some may believe that all planning conditions should always be enforced. It might be appropriate for the Scottish Government and this Council to consider if more could be done to explain to communities that a proportionate approach to enforcement is expected. This might remove some of the unrealistic expectations of the planning system.
- 4.2** The Review Group obtained evidence of the level of enforcement activity in this Council and it compared this to evidence of activity across Scotland. This has been examined in section 3.3 and we acknowledged that, because of the different characteristics of each planning authority, care is needed before drawing any conclusions. In general terms, the evidence available indicates that this Council undertakes at least as much planning enforcement work as the Scottish average and, in all probability, a higher level. The members of the Review Group had not realised how much enforcement activity is undertaken before the Review began and it was also clear that others were equally unaware of the position.
- 4.3** The Review Group acknowledges that planning enforcement is a complex, statutory process. It has taken time for the Group to appreciate both the range of enforcement powers and the scale of enforcement work which is undertaken across Perth and Kinross. Over 300 possible breaches are reported to the enforcement officers each year and are investigated. It was evident to the Review Group that the primary objective of planning enforcement is to secure a satisfactory resolution. This can mean that the developer obtains planning consent, that an unauthorised activity is halted or that the developer is persuaded to comply with the conditions of the planning consent. The primary objective is not sanctioning or penalising the developer but dealing with the planning breach. This may be contrary to some public expectations but the Review Group accepts that primacy should be given to ending environmental harm.
- 4.4** We hope that the publication of an annual report on the planning enforcement work which has been undertaken each year will improve the understanding of planning enforcement and the work which is carried out within Perth and Kinross.
- 4.5** We were pleased to note that in both our survey of councillors and our survey of stakeholders there was a clear recognition of the commitment and professionalism of the planning enforcement officers and the other officers who support them. There were clear and strikingly positive responses from our Councillor survey. In the Stakeholder survey, despite the diverse nature of our consultee interests, the net satisfaction responses for: Delivery; Timeliness; Professionalism; Information and Staff Attitude were generally all positive.

- 4.6** This has been one of the more involved reviews which we have undertaken. We are aware that the recommendations which we are making are limited but this is because we have not found a need for substantial change.

5 SUMMARY OF RECOMMENDATIONS

5.1 Planning Enforcement Charter

- (i) There should be improved awareness of the Council's Planning Enforcement Charter which could be achieved by the following measures:-
 - (a) The next review of the charter should follow a wider consultation process. It would be appropriate to use some of the information ingathered through this Scrutiny Committee review.
- (ii) The review of the charter should examine the scope for a document which is more accessible to all stakeholders. Although the current version adopts the content recommended in the Scottish Government's guide, it is probable that a document can be produced which is more engaging.

5.2 Public Information

The Council's web page relating to Planning Enforcement should be improved and information provided specifically to assist community councils.

5.3 Establish an Annual Planning Enforcement Report

There should be an annual report on the work of the Planning Enforcement Team.

This should be submitted to the Development Management Committee and Scrutiny Committee. The report should outline the work of the Planning Enforcement Officers over the preceding year. It could cover issues such as the current year's results compared with previous years; performance indicators and emerging trends. This report would have the dual benefits of showing the value of the work of the Planning Enforcement officers and publicising this work.

5.4 Organisation within the Planning Enforcement Team.

Consideration should be given as to whether to rotate periodically the roles allocated to the 3 planning enforcement officers as this could provide opportunities to improve the breadth of experience and sustainability of the team given the relatively small capacity.

Against this however, the Group recognises the benefits of officers who know thoroughly the work in their areas and the Review Group acknowledge that the responsibility to make such decisions, which are operational in nature, rests with service management. For this reason, the recommendation is simply that this issue is given consideration.

5.5 Organisation within Development Management Team

- (i) The Planning conditions used should be kept under review and updated where appropriate.

5.6 Training for Councillors in Planning Enforcement

- (i) The responses to the survey of councillors showed a wish for additional training for elected members on planning enforcement. The Head of Planning and Development is asked to consider how this training request should be met.
- (ii) The induction training provided to newly elected councillors should include a section on planning enforcement.

**COUNCILLOR ALEXANDER STEWART
CONVENER, SCRUTINY COMMITTEE**

Contact Officer:	G.D. Fogg
	01738 475130
Address of Service:	Blackfriars Development Centre
Date of report:	July 2016

Background and Rationale

Perth and Kinross Council is committed to providing a modern, effective and efficient planning system which operates in the interest of the local community and the environment. An important element of the planning system is the range of powers available to planning authorities to enforce planning control.

The Town and Country Planning (General Permitted Development) (Scotland) Order 1992 grants planning permission to certain specified classes of development, removing the need for a planning application to be made in those cases. Any other class of development is likely to require an application for planning permission.

Undertaking development without appropriate permission or failure to comply with a planning condition generally constitutes a breach of planning control and may result in enforcement action under planning legislation. Planning authorities have a general discretion to take enforcement action against any breach of planning control if they consider such action to be expedient, having regard to the provisions of the development plan and any other material considerations.

The Scrutiny Committee has selected planning enforcement as the topic of its sixth Scrutiny Review to consider how effectively the Council uses these powers.

Objectives of the Review

- Examine public perception and consistency of the planning enforcement service;
- Explore and understand the intended outcomes of planning enforcement and the effectiveness of the Planning Enforcement Team in delivering these outcomes;
- Work with elected members and Council officers to examine the effectiveness of internal communication around planning enforcement;
- Investigate other Council's experiences and practices with planning enforcement to identify best practice and opportunities for improvement; and
- Ensure Councillors feel equipped to support members of the public.

Scope of the Review:**What will be included?**

The review will include the nature and scale of all planning enforcement activity.

What will not be included?

Any aspect of planning, other than planning enforcement.

Who will be involved?

- Scrutiny Committee
- Elected members across Council Committees and MOGs
- Officers across Council Services
- Planning Enforcement
- Legal Services
- Democratic Services
- Planning User Forum
- Colleagues from best practice Councils
- Colleagues from external organisations where relevant

Methods that will be used to undertake the review?

The research methodology agreed is:

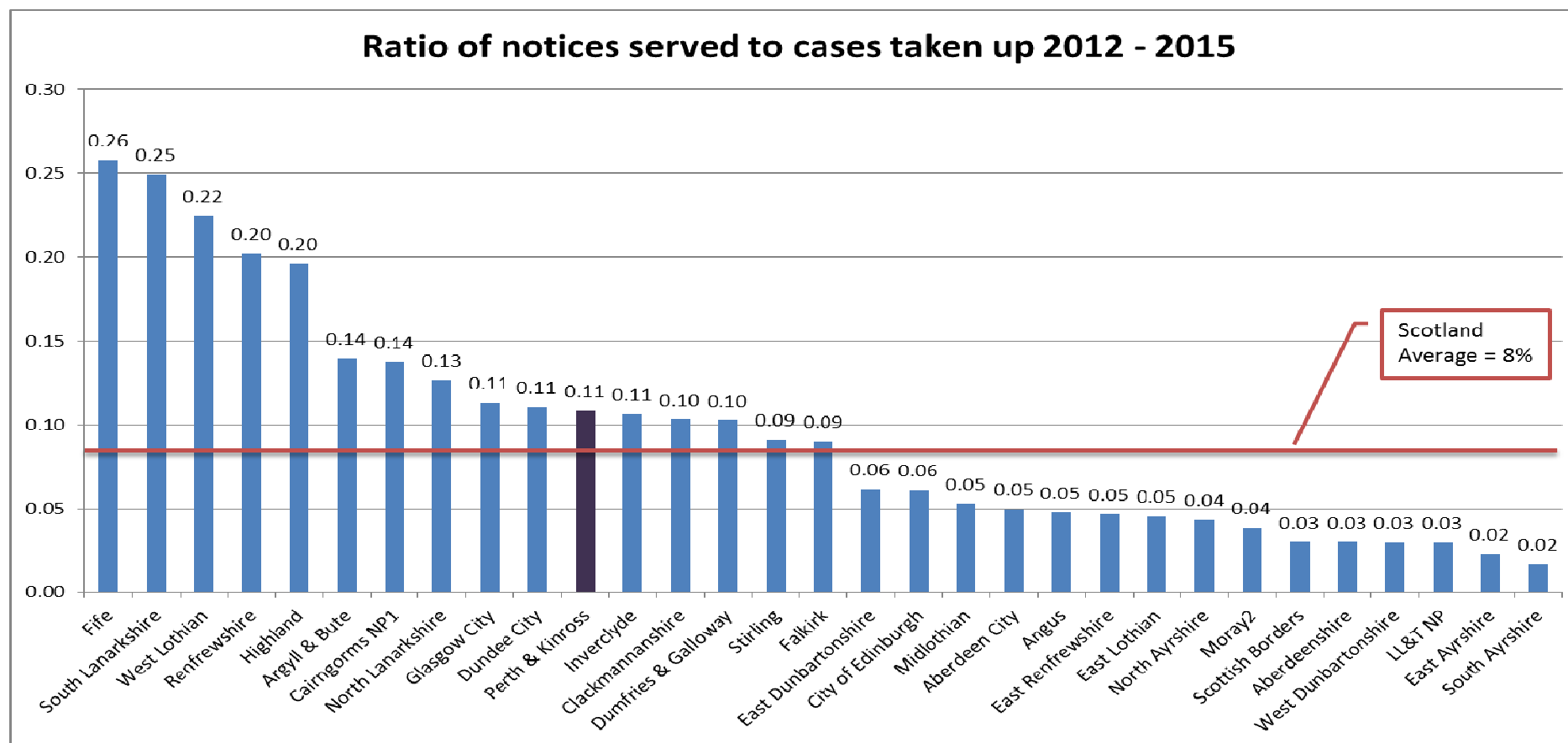
- Desk top analysis of existing information
- Presentation by the Development Quality Manager
- Evidence gathering visit from the Planning Enforcement Team
- Evidence gathering visit from external agencies including Homes for Scotland
- Engagement with the Scottish Planning Enforcement Group and Planning Lawyers Group
- Benchmarking visits
- Engagement with elected members, including the Planning Member Officer Group
- Discussions/ interviews with external representatives e.g. colleagues from other Councils and external organisations where relevant
- Presentations of information as required

Evidence Required

- Perth and Kinross Council Planning Enforcement Charter
- Planning Enforcement Circular 10/2009
- Planning Enforcement Frequently Asked Questions
- Analysis of Planning Enforcement Investigations
- Benchmarking data if available

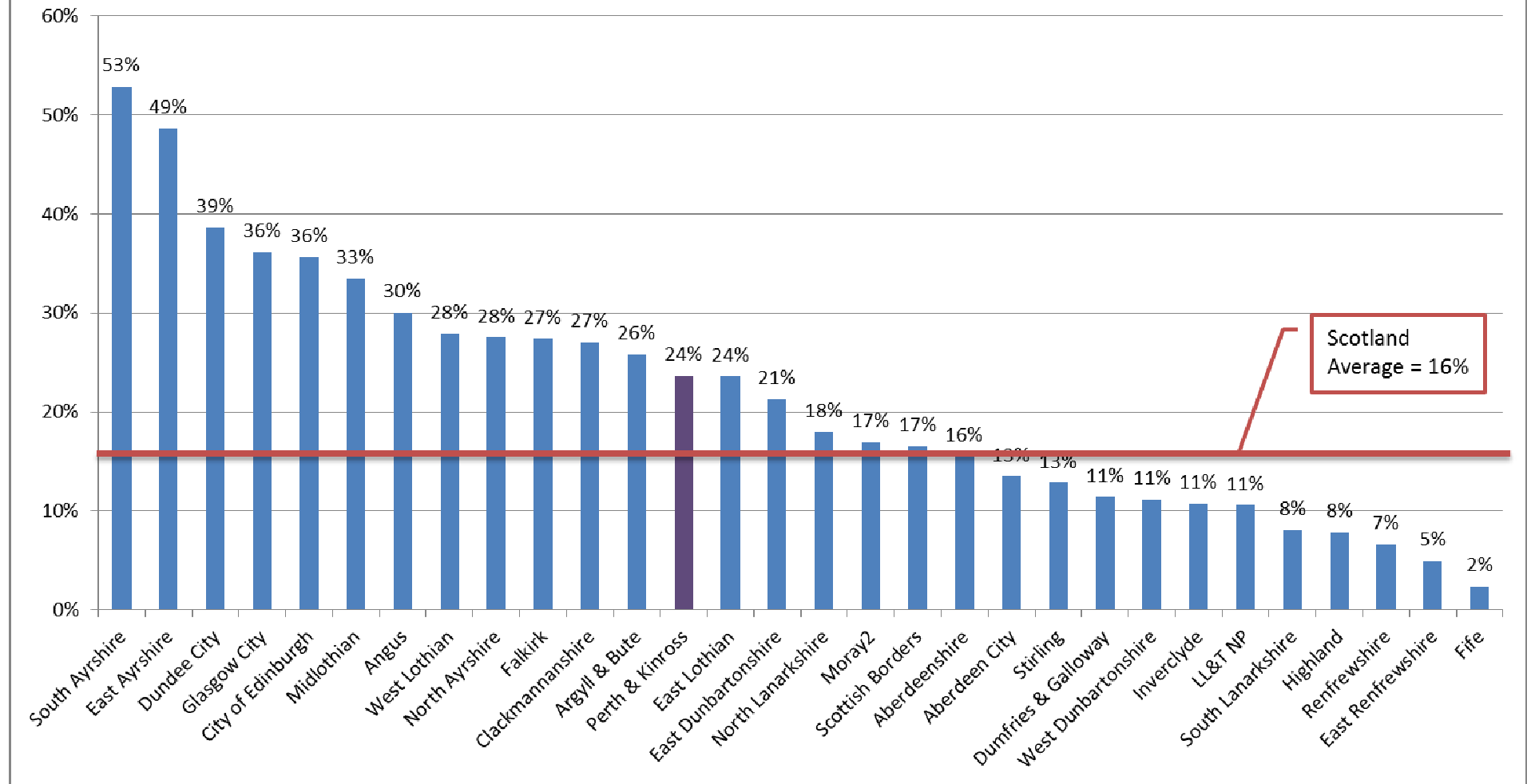
Resources Required

- Member time outwith Committee to attend review meetings and participate in research and consultation
- Officer time (The Environment Service, Education and Children's Services, Housing and Community Care and the Chief Executive's Service)



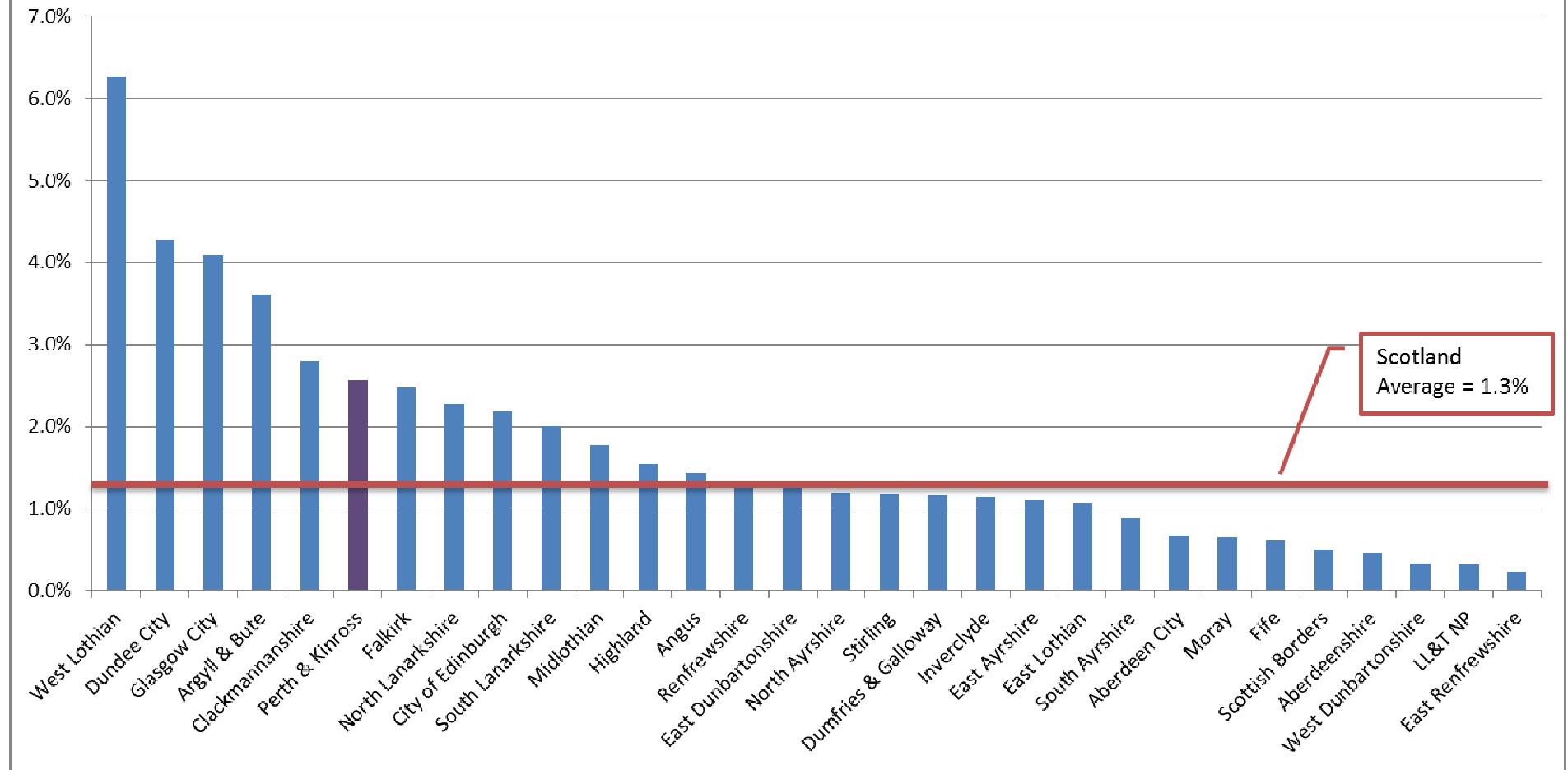
This indicator describes the ratio of enforcement notices served to cases taken up by all planning authorities across Scotland. The figures combine annual data for 2012/13, 2013/14 and 2014/15 to give an overall figure that is more robust. Figures will be influenced by the procedures and reporting arrangements within individual Councils. The figures indicate that enforcement notices as a proportion of total cases is slightly above the Scottish average in Perth and Kinross.

Cases taken up as proportion of all local applications 2012-2015



This indicator, which also combines data for 3 financial years, attempts to describe the incidence of planning enforcement cases, adjusted in line with the planning activity in an area. Despite Perth and Kinross' population size, it has one of the highest number of planning applications of Scotland's 32 local authorities. Local planning applications have been used as an indicator of planning authority activity, and when normalised in this way, it can be seen that enforcement cases are midpoint within Scotland's authorities and slightly above the Scottish average.

Notices served as proportion of All local applications 2012-2015



This indicator is prepared in the same way as the previous one, with cases replaced with notices. The incidence of serving enforcement notices is somewhat higher in Perth and Kinross (when adjusted for overall planning activity), with a figure that is around double the Scottish figure.

Appendix 3.1 – Counted Responses to Closed Questions

**SIXTH SCRUTINY GROUP
PLANNING ENFORCEMENT
ELECTED MEMBERS' SURVEY 2016**

1. Which response best reflects your involvement in planning enforcement issues?

Less than once a year	2
Approximately once a year	2
3 to 4 times per year	9
Once a month or more often	2

2. Do you consider you have sufficient knowledge of the planning enforcement function to undertake your role as an Elected Member?

Yes - fully	6
Yes - partly	8
No	1

The Council is required to have a Planning Enforcement Charter which explains how it will use its planning enforcement powers and to keep this under review every two years.

3. Were you aware that Perth and Kinross Council has a Planning Enforcement Charter?

Yes - very aware of Charter	8
Yes - some awareness of Charter	3
No	4

4. Have you ever referred a constituent to the current edition of the Planning Enforcement Charter approved in June 2014 (or any earlier version)?

Yes – many times	0
Yes – few times or once	4
No	11

5. Would you know where to find the Planning Enforcement Charter, either for yourself or to refer a constituent to it?

Yes	4	No	11
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6. The Planning Enforcement Charter sets out that all complaints will be investigated and compliance with planning conditions and obligations will be proactively

monitored. In your view, what planning breaches should be the priority for enforcement?

1	
2	
3	

7. The Planning Authority refers to key documents when considering enforcement action: Scottish Government Circular 10/2009 & the Perth and Kinross Council Planning Enforcement Charter. Are you aware of specific case examples where you consider this guidance may not have been adhered to? If so, please state. If not, proceed to next question.

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8. If you have been, or were to be contacted by a constituent regarding a breach of planning control, which of the following best describes your position?

I know the Planning Enforcement Officers and I would contact one of them directly. **9**

I do not know the Planning Enforcement Officers but I would contact David Littlejohn or Nick Brian and expect them to direct me to the appropriate person. **6**

I would speak to Jim Valentine or Barbara Renton. **2**

Other – please describe below **0**

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9. Generally speaking across the following themes, how satisfied are you with the Planning Enforcement Team, with regard to your queries about breaches of planning control and planning enforcement?

Theme:	Very Satisfied	Satisfied	Neither /nor	Dissatisfied	Very Dissatisfied
Delivery - the service delivers the outcome it promised and deals with any problems that may arise	1	10	1	1	2
Timeliness - the service responds swiftly to initial contact and deals with the issue at the heart of it quickly	1	7	4	2	1
Professionalism – staff are competent and fair	5	9	0	0	1

Information - the information given is accurate and comprehensive. **5** **6** **1** **2** **1**
 Progress updates are provided

Staff attitude - staff are helpful, friendly, polite and sympathetic **9** **5** **0** **0** **1**

10. Do you find the planning enforcement staff helpful with your enquiries and able to communicate effectively the enforcement process, and provide meaningful responses and updates to matters raised?

Always **7** Usually **5** Sometimes **3** Never **0** N/A **0**

11. Which of these 2 pairs of statements is closest to your perception of the current planning enforcement service?

effective, professional and consistent standard of service provided **9**

OR

ineffectual and inconsistent service provided **2**

proportionate use of enforcement powers being consistently used **12**

OR

overzealous and too quick to exercise formal action **0**

12. Do you have specific examples of where you consider the planning enforcement service did not meet your expectations? If so, please describe

13. Do you think you would benefit from additional training or information in relation to planning enforcement?

Yes **14** No **1**