

**PERTH AND KINROSS COUNCIL**

**SPECIAL COUNCIL**

**27 January 2021**

**REVIEW OF PLANNING ENFORCEMENT CHARTER**

**Report by Head of Planning and Development (Report No. 21/10)**

**PURPOSE OF REPORT**

This report seeks approval of an updated version of the Council's Planning Enforcement Charter, following a regular review, as required by legislation.

**1. BACKGROUND / MAIN ISSUES**

- 1.1 The Town and Country Planning (Scotland) Act 1997 (as amended) places a statutory requirement for Planning Authorities to prepare and publish a Planning Enforcement Charter. The Act specifically requires charters to set out:
- a statement of the Authority's policies as regards their taking of enforcement action.
  - an account of how members of the public can bring any ostensible breach of planning control to the attention of the Authority.
  - how any complaint about how the Authority takes enforcement action can be made.
  - the Authority's procedures for dealing with any such complaint.
- 1.2 There is a requirement for Planning Authorities to review, update and publish a new Charter whenever they think it is appropriate to do so but no later than two years after last being published. The Council, through the Enterprise and Infrastructure Committee, approved and adopted the existing Planning Enforcement Charter on 23 January 2019 ([Report Number 19/17](#) refers). The final published Charter approved by Committee is available to view on the [Council's website](#).
- 1.3 The Planning Enforcement Charter is key to clarifying the Council's role within, and approach to, planning enforcement; both to stakeholders who report suspected breaches of planning control and to those who have an interest in the site subject of the possible breaches. Throughout the last two years, officers have gained further experience of applying the objectives of the Charter. This, together with feedback from stakeholders during the consideration of enforcement cases, has been used to examine the effectiveness of the Charter and identify areas for improvement. Selective benchmarking and reviewing of other authorities' charters was also undertaken as part of this process.

- 1.4 The Council's approach to planning enforcement was also informed by the Scrutiny Review of Planning Enforcement, completed in September 2018 ([Report Number 18/290](#) refers). The recommendations contained in the Scrutiny Review Report on Planning Enforcement ([Report Number 16/397](#) refers) helped shape the 2016 and 2019 charters, and continues to provide focus for the objectives and approach to enforcement, as set out in the proposals below.

## **2. PROPOSALS AND REVIEW**

### **Charter Review**

- 2.1 As advised above, the previous charter reviews identified the priority areas for planning enforcement within Perth and Kinross, informed through the Scrutiny Review and a stakeholder engagement process. It is considered that the key priorities for, and our approach to, planning enforcement expressed through the existing Charter remain sound and fit for purpose, as well as reflecting Council objectives.
- 2.2 Accordingly, the proposed 'Priorities for Planning Enforcement' for the 2021 Charter review remain fundamentally the same. However, the impacts on the economy, businesses and individuals as a result of the Coronavirus pandemic have been recognised, through the addition of a new priority to underline the proportionate use of action and to act sensitively to such exceptional circumstances. This approach extends this general principle set out in the Scottish Government's Circular 10/2009: Planning Enforcement, to act sensitively to account for impacts on small businesses when taking enforcement action, as already highlighted in the existing Charter. This approach is also consistent with the support given to businesses as set out in [Re-Opening after Coronavirus: guidance for businesses](#). The support provided by Planning within this guidance demonstrates our use of discretion to allow businesses to operate more flexibly than regulations normally otherwise allow.
- 2.3 The proposed 2021 Charter is provided in Appendix 1. The main changes proposed in the updated charter are highlighted with the use of italics. The changes seek to:
- explain more clearly to stakeholders what the role of planning enforcement is
  - how it operates within the Council's wider objectives
  - how the objectives of Development Plan policies are considered
  - how Scottish Government guidance is put in to practice
  - how and when proportionate enforcement action will be taken – in instances only where the identified planning harm warrants this.

- 2.4 At the outset of the proposed Charter, the Foreword provides a summary and overarching message on our approach. It also provides the key details on how to report a suspected breach of planning control and where further, more detailed, guidance on planning enforcement can be found. The role of the Planning Enforcement Service, our approach to enforcement and the aims of Charter – specifically highlighting the key role our customers play and how they are engaged in the process – are summarised. Having established this overall context, our ‘Priorities for Planning Enforcement’, as referred to above, are then set out.
- 2.5 The Charter guides the stakeholder through the planning enforcement process, as far as possible chronologically through the key stages of the process – assisted through a flow chart of these key stages. This provides information about what to expect as a customer (the ‘customer journey’):
- identifying what constitutes a breach of planning control;
  - how to report suspected breaches to us;
  - explaining possible informal and formal action that could be taken by the Planning Authority;
  - our process for investigating reported breaches; and
  - how we will act on breaches to secure compliance or a conclusion to the case, where appropriate.
- 2.6 The proposed Charter seeks to integrate and broaden the accessibility for customers within the planning enforcement process. Accessibility has been further enhanced through the introduction of a new [‘Breach of Planning Control – Report’](#) form on the Council’s MyPKC service in March 2019. This interactive form replaced the previous manual form and allows suspected breaches to be reported more easily, with immediate confirmation that it has been received. Since launching, over 300 cases have been reported through this portal.
- 2.7 Effective communication remains an essential part of the process. The feedback received from stakeholders within planning enforcement again highlights an opportunity to improve how we keep customers informed throughout the process. To Support the ‘customer journey’, as set out in paragraph 2.5 above, the revised Charter proposes to retain the seven ‘Service Standards’ introduced in the 2019 Charter; each covering a key stage of the process, to underpin the level of service that the customer can expect and defining timescales for communication or setting targets for the Planning Authority to take action or make decisions.
- 2.8 These service standards have also been useful in setting out a process map for officers and stakeholders alike to follow. The service standards could also be used to assess performance and identify areas for improvement (which could be reported in the Annual Planning Performance Report).

## **Service Improvements**

- 2.9 Introduced as part of the 2019 review, Service Standard 5 referred to an 'Enforcement Case Closure Report' being developed as a priority for improved engagement with customers. The reports would demonstrate if there was a breach of planning control, what action was taken and why an enforcement case was closed and add further transparency to this process. This report was launched in January 2019 and, to date, over 500 enforcement cases has been concluded by a Closing Report being prepared.
- 2.10 The 2019 review of the Charter also committed to making these reports accessible to the public, including their publication on the [Online Planning System](#). A copy of each Closing Report is provided to both the complainant and person subject of the enforcement investigation. It is also intended to make planning enforcement cases accessible on the Online Planning System, accompanied with the publication of Closing Reports. This implementation was further delayed; however, the facility will be launched in the coming weeks.
- 2.11 As with the previous version of the Charter, upon Committee approval, it is again proposed to request the Council's Design Team to produce the final document for publication to make it more visually appealing and accessible. The publication will be in booklet form, being available in electronic format from the [Planning Service's website](#) and will be distributed in electronic format in the first instance, wherever possible. A small provision of hard copies will also be printed.

## **Future Review Process**

- 2.12 As noted above, the Planning Authority is required to review, update and publish a new Charter when necessary but no later than every two years. Previous practice has been to undertake a biennial review, seeking formal approval from Committee prior to adoption and publication.
- 2.13 However, it is recognised that this process has not allowed for adaptation to changing circumstances or priorities in the interim; such as embedding our approach during the Coronavirus pandemic. While the Planning Enforcement team contributed to the policy introduced by the Council, and have fully implemented the support and flexibility advocated in this, it would have been opportune to convey this support in a reviewed Charter – to echo the principles of Council guidance. It may also be necessary, on occasion, to make minor changes linked to organisational, process or compulsory legislative requirements.
- 2.14 To enable these changes to be made quickly, approval is sought from Committee to delegate this responsibility to officers. It is still intended to report to Committee no later than a biennial basis to highlight any such cumulative minor changes and/or to seek any fundamental changes to the Planning Enforcement Charter.

### 3. CONCLUSION AND RECOMMENDATIONS

3.1 The revised Planning Enforcement Charter builds on the principles of our approach to, and our priorities for, planning enforcement as established through earlier customer engagement and the Scrutiny Review on Planning Enforcement. Several refinements and clarifications have been made to the revised Charter to make the process clearer for all stakeholders. It is also intended to provide more effective communication and accountability within the planning enforcement process. The publication of the revised Charter will set out these updated principles and represent a material consideration for officers in the handling for all planning enforcement matters.

3.2 It is recommended that the Council:

- (i) approves the proposed Planning Enforcement Charter (2021), as set out in the Appendix to this report;
- (ii) agrees to delegate any subsequent minor amendments to the Head of Planning & Development; and
- (iii) requests that any such minor amendments are reported to the Strategic Policy & Resources Committee as part of the 2023 Charter Review.

#### Author

| Name        | Designation                                      | Contact Details  |
|-------------|--|--|
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#### Approved

| Name             | Designation                      | Date            |
|------------------|----------------------------------|-----------------|
| David Littlejohn | Head of Planning & Development   | 1 December 2020 |
| Barbara Renton   | Executive Director (Communities) | 6 January 2021  |

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## 1. IMPLICATIONS, ASSESSMENTS, CONSULTATION AND COMMUNICATION

| <b>Strategic Implications</b>                       | <b>Yes / None</b> |
|---|-------------------|
| Community Plan / Single Outcome Agreement           | <b>Yes</b>        |
| Corporate Plan                                      | <b>Yes</b>        |
| <b>Resource Implications</b>                        |                   |
| Financial   | <b>None</b>       |
| Workforce   | <b>None</b>       |
| Asset Management (land, property, IST)              | <b>None</b>       |
| <b>Assessments</b>                                  |                   |
| Equality Impact Assessment                          | <b>None</b>       |
| Strategic Environmental Assessment                  | <b>None</b>       |
| Sustainability (community, economic, environmental) | <b>Yes</b>        |
| Legal and Governance                                | <b>None</b>       |
| Risk  | <b>None</b>       |
| <b>Consultation</b>                                 |                   |
| Internal  | <b>None</b>       |
| External  | <b>None</b>       |
| <b>Communication</b>                                |                   |
| Communications Plan                                 | <b>None</b>       |

### 1. Strategic Implications

#### Community Plan

- 1.1 This report supports the delivery of the strategic objectives within the Perth and Kinross Community Plan in terms of the following principles:

- (iii) Promoting a prosperous, inclusive and sustainable economy; and
- (v) Creating a safe and sustainable place for future generations

#### Corporate Plan

- 1.2 This report contributes to the achievement of the following the Corporate Plan Priorities:

- (iii) Promoting a prosperous, inclusive and sustainable economy; and
- (v) Creating a safe and sustainable place for future generations.

### 2. Resource Implications

#### Financial

- 2.1 There are no direct financial implications arising from this report, other than costs from the publication of the finalised Charter.

### Workforce

- 2.2 There are no implications arising from this report.

### Asset Management (land, property, IT)

- 2.3 There are no implications arising from this report.

## **3. Assessments**

### Equality Impact Assessment

- 3.1 Following an assessment using the Integrated Appraisal Toolkit, it has been determined that the proposal is **not relevant** for the purposes of EqIA.

### Strategic Environmental Assessment

- 3.2 The Environmental Assessment (Scotland) Act 2005 places a duty on the Council to identify and assess the environmental consequences of its proposals. No further action is required as the subject of this report does not qualify as a plan, programme or strategy (PPS) as defined by the Act and is therefore exempt.

### Sustainability

- 3.3 Under the provisions of the Local Government in Scotland Act 2003 the Council must discharge its duties in a way which contributes to the achievement of sustainable development. Under the Climate Change (Scotland) Act 2009 the Council also has a duty relating to climate change and, in exercising its functions must act:
- in the way best calculated to delivery of the Act's emissions reduction targets;
  - in the way best calculated to deliver any statutory adaptation programmes; and
  - in a way that it considers most sustainable.

- 3.4 There are no adverse sustainability implications of the report under this legislation.

### Legal and Governance

- 3.5 There are no implications arising from the report.

### Risk

- 3.6 There are no risks associated with the report.

#### **4. Consultation**

##### Internal

4.1 None.

##### External

4.2 None.

#### **5. Communication**

5.1 The revised Charter will be widely publicised to raise awareness with stakeholders. It will be available in electronic format from our website and hard copies made available.

#### **2. BACKGROUND PAPERS**

- Perth and Kinross Planning Enforcement Charter (2018)
- The Sixth Scrutiny Review Report on Planning Enforcement considered by the Scrutiny Committee on 21 September 2016.

#### **3. APPENDICES**

- Appendix 1 - Proposed Planning Enforcement Charter (2021)