



Perth and Kinross Council

Planning Enforcement Charter

Revised June 2014

Enforcement: An Overview

Planning permission is required for most forms of development. When work is done without permission, or not in accordance with a previously granted consent, Councils have powers to investigate and take appropriate enforcement action. An important aspect of our enforcement function is the regular monitoring of compliance with conditions and legal agreements associated with planning consents.

The aim of enforcement is normally to resolve the problem through negotiation, if that is possible, rather than punishing the person who breached planning controls. Failing this, formal action may then be necessary to remedy the breach. Enforcement is however a discretionary power and the Council needs to consider in each case if enforcement action is justified and in the wider public interest. The Council is not required to take any particular action and may decide in some cases that no action is justified. Guidance to Councils from the Scottish Government on the use of enforcement powers has been provided in Circular 10/2009 'Planning Enforcement' (viewable online at <http://www.scotland.gov.uk/Publications>).

Perth & Kinross Council has a planning enforcement team who ensure that effective action is taken against breaches of planning control, particularly where these have significant adverse impacts on the environment and on communities.

The Enforcement Charter

Under the Planning etc. (Scotland) Act 2006, Section 27, Councils must have a Planning Enforcement Charter to explain how they will use their enforcement powers.

The layout and contents of this Charter reflect the statutory requirements for an Enforcement Charter, which are:

- a) The Council's Policy on taking Planning Enforcement Action, including the Council's priorities and the service standards you can expect.
- b) How members of the public can bring any breach of planning control to the attention of the Council.

- c) How any complaint about the Council taking enforcement action can be submitted and how it will be dealt with.

The appendix to the Charter entitled “A Summary of the Law on Planning Enforcement” explains in more detail the law on enforcement and the options open to the Council to formally pursue breaches of planning control.

We will monitor the implementation of the charter to ensure that standards are being met and priorities are being addressed.

1. OUR APPROACH TO ENFORCEMENT

We will normally seek to quickly resolve an enforcement issue, if possible through negotiation. In deciding whether or not to then proceed to formal action, we will take account of guidance provided by the Scottish Government in Circular 10/2009 ‘Planning Enforcement’ and the priorities set out below. The Government’s guidance explains, among other matters, that Councils should not take enforcement action just to address a breach of planning control if the development is otherwise acceptable in planning terms and that Councils should be particularly sensitive to the impact of enforcement action on small businesses. The primary aim for seeking retrospective planning consent is normally to secure ongoing controls through the imposition of planning conditions.

2. PRIORITIES FOR ENFORCEMENT

Whilst all complaints will be investigated and compliance with planning conditions and obligations will be proactively monitored, our priorities for enforcement will be linked to significant breaches of planning control including:

- significant detrimental impacts on **matters of environmental importance**, especially on sensitive or protected environments.
- significant detrimental impacts on **residential amenity**, particularly where a number of residential properties are affected.
- significant detrimental effects on **public visual amenity**.
- breaches of condition or the terms of a legal agreement in respect of a **major development** or development where there is a **significant level of community interest**.
- damage to **Listed Buildings**.
- breaches of planning control within designated **Conservation Areas**, particularly where improvement schemes have been promoted by the Council.
- unauthorised felling of trees and matters affecting trees protected by **Tree Preservation Orders**.
- breaches of planning control which undermine a **Council policy or programme**.

3. HOW TO REPORT A BREACH OF PLANNING CONTROL

Possible breaches of planning control can include:

- work being carried out without planning permission or a related consent.
- an unauthorised change of use.
- failure to comply with conditions attached to a permission or consent
- departures from approved plans or consents.

Planning and related consents, any conditions applied thereto and the approved plans may be viewed at Pullar House or on-line at <http://www.pkc.gov.uk> . All customers have a vital role in reporting breaches of control as it is not possible for the Council to monitor every development. Preliminary enquiries by telephone or in person at Pullar House but these should be followed up in writing or by email. This allows us to have a clear record of the complaint and to keep customers informed about any action we take. Full contact details are provided at the end of this Charter.

The following information should always be included when reporting a suspected breach:

- the address of the property concerned.
- details of the suspected breach of planning control, with times and dates if relevant.
- your name, telephone number and address (and email address if you wish us to correspond with you electronically).
- information on how the breach affects you.
- whether or not the enquiry is to be treated confidentially.

The Council will, as far as possible, treat such letters as confidential, even if this is not requested in the letter. Although letters will be subject to the requirements of the Freedom of Information (Scotland) Act 2002, in practice such letters are not normally released under this Act. Letters of complaint about a breach of planning control would only be released after all information on names, addresses, email addresses and signatures had been removed and, even then, only if the content was so general that the identity or address of the writer could not be identified.

4. CUSTOMER STANDARDS FOR ENFORCEMENT

a) Acknowledging enquiries

Enforcement enquiries will receive an initial written or email acknowledgement within 5 working days. The acknowledgement will include a reference number and contact details for the investigating enforcement officer.

b) Replying to enquiries

If you make an enforcement enquiry, you will receive a written response within 15 working days of receipt of the letter or email. This will advise you of the proposed action to be taken. In some cases there may be a need for additional investigation prior to deciding on a course of action and this will be explained. You will also be notified if the matter does not involve a breach of planning control. If there has been a breach of control but no action is proposed, you will also be informed of this and the reasons for that decision.

c) Keeping you informed

Where our initial letter explains that we have not been able to resolve the issue by the date of that communication, we will advise you when the issue has been resolved. If at any point we decide that further action is not justified we will write to inform you of this and the reasons for that decision.

d) Formal enforcement notices

Where a planning breach cannot be resolved and action is justified, a formal notice will be served. This will normally be either an Enforcement Notice or a Breach of Condition Notice. In some cases a Stop Notice or a Temporary Stop Notice might also be appropriate. We will write to the recipient of the notice to explain what is required, the timescales involved and the available options to resolve the issue. Where such a Notice is not complied with, the Council will usually take further formal steps which can include:

- the issue of a fixed penalty notice; or
- referral to the Procurator Fiscal seeking prosecution; or
- direct action by the Council, including the recovery of costs

5. HOW TO COMPLAIN OR TO MAKE SUGGESTIONS ABOUT IMPROVING PLANNING ENFORCEMENT

We will respond within 15 working days of receiving a suggestion about our Planning Enforcement service. We will consider all suggestions made and use them to review and improve the service we provide. Any formal complaints will be dealt with in accordance with the Council's Complaints Procedure. A copy of this can be viewed on the Council's website at <http://www.pkc.gov.uk> or obtained from Council offices.

If you are not satisfied with the initial response to a formal complaint, you can take the complaint further, i.e. to the Council's Stage 2 process, as explained in our guidance on complaints. Lastly, if you are unsatisfied with the Council's response to your complaint after the Stage 2 process is complete, you have then the right to take your complaint to the Scottish Public Services Ombudsman (SPSO), at:

SPSO
FREEPOST EH641
Edinburgh EH3 0BR

Telephone: 0800 377 7339, or [e-mail:](mailto:mask@spsso.org.uk)

mask@spsso.org.uk ***Our Contact Details***

Development Management The Environment Service Perth & Kinross Council 35 Kinnoull Street Perth PH1 5GD
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Telephone (01738)

475300 Email

DevelopmentManagement@pkc.gov.uk
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APPENDIX TO THE PLANNING ENFORCEMENT CHARTER

A Summary of the Law on Planning Enforcement

This appendix explains in more detail the law relating to enforcement and the options consequently available to the Council. Comprehensive guidance to Councils from the Scottish Government on the use of enforcement powers has been given in Circular 10/2009 'Planning Enforcement' (viewable on-line at <http://www.scotland.gov.uk/Publications>).

Planning permission, if necessary, should always be obtained before starting any works, although not doing so may not in itself be a criminal offence. However, it becomes a criminal offence to fail to comply with any subsequent Enforcement Notice and it is automatically an offence if Listed Building Consent or Advertisement Consent is required, or permission has not been obtained to carry out works which affect trees covered by a Tree Preservation Order.

The purpose of planning enforcement is normally to resolve any breach of planning control through negotiation, or through formal enforcement action, rather than punishing the person who has carried out the breach. Any formal action taken has to be appropriate to the scale and nature of the breach, and the person who is the subject of enforcement action has a right of appeal to the Scottish Ministers in most cases.

Slightly different procedures apply to 'Advertisement Consents'. The actual content of an advertisement is not covered by planning control and any complaints about this should be made to the Advertising Standards Authority at Mid City Place, 71 High Holborn, London, WC1V 6QT, or at <http://www.asa.org.uk>.

Similar but separate enforcement rules apply to Listed Buildings, demolition in a Conservation Area and Tree Preservation Orders. It should be noted that some complaints received by the planning service, such as neighbour disputes over boundaries, relate to private legal matters over which the planning service has no control and these cannot therefore be investigated.

INVESTIGATING POSSIBLE BREACHES OF PLANNING CONTROL

An investigation begins with an enforcement officer visiting the site and then the individual who has made the complaint will be informed of what action, if any, is proposed. In some cases, additional investigation may be needed. The Council has powers under the Planning Acts to enter land to:

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

This power applies to any land including any adjacent to the site of the breach. Officials entering land for these purposes will carry photo-identification and authorisation from the Council.

ACTING ON BREACHES OF PLANNING CONTROL

It should be noted that in some cases action may not be appropriate, even though planning controls have been breached. The Council has to consider each case on its merits and decide on the best solution. Only a relatively small number of cases require formal enforcement action. The various options are set out below.

The Council's powers include the ability to issue a **Temporary Stop Notice** to stop unauthorised development. These Notices are valid for up to 28 days and are effective from the time they are served, without requiring that an Enforcement Notice be served first. This allows the Council 28 days before a formal Enforcement Notice and Stop Notice, if still necessary, require to be served. There is no right of appeal against a Temporary Stop Notice.

In most cases where a breach merits formal action, an **Enforcement Notice**, or a similar notice such as a **Listed Building Enforcement Notice**, or a **Breach of Condition Notice** is served on those involved in the development or who own or have an interest in the property. These 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.
- where appropriate, any rights of appeal the recipient has and how to lodge an appeal.

An Enforcement Notice can be accompanied by a **Stop Notice** if it is considered justified to prevent, for example, further work being carried out which is likely to have a significant detrimental impact on matters such as environmental quality

Appeals against enforcement notices and stop notices are referred to the Scottish Ministers who delegate the decision, in most cases, to Reporters from the Scottish Government's Directorate for Planning and Environmental Appeals (DPEA). Anyone who has submitted information on a breach of planning control is advised of the appeal. There is no right of appeal against a Breach of Condition Notice.

Planning Enforcement action has to be taken within strict **time limits**:

- **A four year limit** applies to unauthorised operational development (the carrying out of building, engineering, mining or other operations in, on, over or under land) and change of use to a single dwellinghouse.
- **A ten year limit** applies to all other development including change of use (other than to a single dwellinghouse) and breaches of condition.

There is no time-limit restricting the commencement of Listed Building Enforcement Action or action concerning a Tree Preservation Order.

Failure to comply with an enforcement notice may result in the Council taking **further action**. This could entail any of the following:

- serving a **Fixed Penalty Notice**.
- referring the case to the **Procurator Fiscal** to seek prosecution.
- the Council carrying out work ('**direct action**') and charging the person who is the subject of the enforcement action for the costs involved.
- seeking a Court **interdict** to stop or prevent a breach of planning controls.

Details of enforcement notices, breach of condition notices, stop notices and temporary stop notices are entered into an **Enforcement Register**. You can inspect these documents during normal office hours by visiting Pullar House, 35 Kinnoull Street, Perth, PH1 5GD. You can also view them online at <http://www.pkc.gov.uk>

A recent addition to the Council's enforcement function has been the power to serve a High Hedge Notice under the High Hedges (Scotland) Act 2013. This requires a resident whose amenity is severely affected by a high hedge to formally apply to the Council to have a notice served on the hedge owner to secure a reduction in its height.

Further copies of this Charter are available on the Council's website at www.pkc.gov.uk, and from the above address.

If you or someone you know would like a copy of this document in another language or format, (On occasion only, a summary of the document will be provided in translation), this can be arranged by contacting the Environment Service's Equalities Assistant
On 01738 476558 [or TESEqualities@pkc.gov.uk](mailto:TESEqualities@pkc.gov.uk)



Council Text Phone Number 01738 442573

