

PERTH AND KINROSS COUNCIL
ENVIRONMENT AND INFRASTRUCTURE COMMITTEE

23 January 2019

REVIEW OF PLANNING ENFORCEMENT CHARTER

Report by Executive Director (Housing & Environment) (Report No. 19/17)

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

1. BACKGROUND / MAIN ISSUES

- 1.1 The Planning Etc. (Scotland) Act 2006 (which amended the Town and Country Planning (Scotland) Act 1997) introduced a statutory requirement for Planning Authorities to prepare and publish a Planning Enforcement Charter. The Act specifically requires these 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; and
 - 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 every two years. The Council, through the Enterprise and Infrastructure Committee, approved and adopted the existing Planning Enforcement Charter on 11 January 2017 ([Report Number 17/12](#) refers). This 2016 review informed the objectives and customer standards within the Charter through a stakeholder survey. The final published Charter approved by Committee is available to view on the [Council's website](#).
- 1.3 The Planning Enforcement Charter plays a useful role in clarifying the Council's approach to planning enforcement, both to customers who bring suspected breaches of planning control to our attention and to those who have an interest in the site subject of the possible breaches. Throughout the last two years, officers have gained 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 its effectiveness and identify areas for improvement. Selective benchmarking and reviewing of other authorities' charters was also undertaken as part of this process.
- 1.4 The Scrutiny Review of Planning Enforcement has now been completed ([Report Number 18/290](#) refers). However, the recommendations contained in The Scrutiny Review Report on Planning Enforcement, which helped shape

the 2016 Charter, continue to provide focus for the objectives and approach to enforcement ([Report Number 16/397](#) refers) as set out in the proposals below.

2. PROPOSALS

- 2.1 As advised above, the 2016 review 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 approach to, planning enforcement expressed through the existing Charter remain fundamentally sound and fit for purpose, as well as reflecting Council objectives.
- 2.2 Accordingly, the proposed 'Priorities for Planning Enforcement' for the 2018 Charter remain the same; the only change being proposed is to widen the category for unauthorised felling or works to trees to also include those within conservation areas. However, scope for further refinement to our approach to planning enforcement, how this is communicated to stakeholders and how they are involved in the whole process have been identified. The proposed updated 2018 Charter is provided in Appendix 1..
- 2.3 The main changes proposed in the updated charter are highlighted with the use of italics. The changed text seeks to explain more clearly to stakeholders the context in which planning enforcement operates within the Council's wider objectives, how Development Plan policy objectives are considered and how Scottish Government guidance is put in to practice. To achieve this, the content from the 2016 Charter has been reconfigured to better set out these statutory contexts.
- 2.4 The proposed Foreword provides an overarching message to support this. It also provides the key details on how we can be contacted 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 our play and how they are engaged in the process – are then explained. Having established this overall context, our 'Priorities for Planning Enforcement', as referred to above, are then set out.
- 2.5 The Charter seeks to guide the stakeholder through the planning enforcement process, as far as possible doing this chronologically through the keys stages of the enforcement process. This is to provide 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, if appropriate.

- 2.6 The proposed Charter seeks to integrate and broaden the accessibility for customers within the planning enforcement process. Accessibility is being enhanced in a number of ways, such as further directing the customer to our online services, reporting breaches through our [Breach of Planning Control Form](#) and using our [Online Planning System](#) to monitor progress of related planning applications. This allows suspected breaches to be reported more easily, with immediate confirmation that it has been received. Further improvements in the reporting process are also being explored, and the opportunity to utilise an eForm on our website in the future is being taken, as is adding the reporting of possible breaches through the [Council's MyPKC](#) customer portal. It is anticipated that these improvements will occur during 2019. It is also intended to make planning enforcement cases accessible on the Online Planning System in 2019.
- 2.7 Effective communication is 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. The 2016 Charter set out four broad customer standards for enforcement. Following on from the theme of the 'customer journey' set out in Para 2.5 above, the revised Charter proposes seven 'Service Standards', each covering a key stage of the process, to underpin the level of service that the customer can expect. Each service standard will ensure that the customer knows what they can expect at each stage, by defining timescales where it involves communication with them or by setting targets for the Planning Authority when action would be taken or a decision will be made.
- 2.8 The proposed Service Standards are as follows:

Commitment to initiating and maintaining communication with customers:
<i>Service Standard - 1:</i> After preliminary checks, we will register your enforcement observation and you will receive either an email or written confirmation of this within 5 working days from receipt. This acknowledgement will include the reference number for the case as well as the contact details of the investigating Enforcement Officer.
<i>Service Standard - 2:</i> Where a site visit is required we will undertake this within 15 working days from receipt of the observation.
<i>Service Standard - 3:</i> You will receive a follow-up response to your observation within 20 working days of receipt. This will advise of any provisional findings and, where relevant, detail the proposed course of action for the case, which could mean enforcement action being taken. Communication will also be made at this stage with the Developer on our findings and possible action. <i>You may also be advised at this stage if the observation does not constitute a breach</i>

<i>of planning control or is not a planning matter – either of which will result in your case being closed. We will set out in writing our reasoning for all cases closed in a Closing Report.</i>
Possible resolution for minor breaches:
<i>Service Standard - 4: Where works or development has been carried out without planning permission, but we consider that the development is likely to be acceptable in terms of Development Plan policy, we may invite an application or we may serve a notice under Section 33A of the Planning Act that requires the developer to submit a planning application retrospectively.</i>
Case conclusion or interim updates:
<p><i>Service Standard - 5: We will either conclude the case within, or provide an update to you, within 40 working days from receipt of your observation.</i></p> <p><i>When an enforcement case is being closed, a Closing Report will be prepared which will explain why we have come to a decision. This report will be made available to the public.</i></p>
Timescales for formal enforcement action:
<i>Service Standard - 6: We will, where it is considered expedient to do so, aim to serve any enforcement notice within 3 months from the date of the original observation and we will advise you when this is done.</i>
Informing and advising on appeals to any formal action taken:
<i>Service Standard - 7: Where an appeal is submitted against a notice, we will advise you that an appeal has been submitted and inform you on how you can monitor the outcome of this appeal. Following an appeal decision, we will advise of any further action we will take, as appropriate.</i>

- 2.9 These service standards support the customer journey, providing certainty for stakeholders and also setting out a process map for officers and stakeholders alike to follow. It is anticipated that the timescales set out in service standards could also be used in future as a means to assess performance (which could be reported in the Annual Planning Performance Report). This will, in turn, identify areas for improved communication and customer engagement.
- 2.10 As part of the process of reviewing the Charter, an opportunity was identified to better communicate our decision making to stakeholders. To facilitate this, an 'Enforcement Case Closure Report' (as referred to in the proposed Service Standard 5) is being developed as a priority for improved engagement with customers. This report will have a similar function to a 'Report of Handling' for planning applications. It will be prepared by officers at the end of the process when an enforcement case is closed. Unlike planning applications; however, reports are not a statutory requirement for enforcement cases. The Closure Reports will provide the key details of the case and will contain information on:

- what the reported breach of planning control was;
- what our investigation found, and;
- what action we took where a breach of planning control was identified and/or why the case is being closed.

2.11 These reports will be in place no later than January 2019 and each report will be accessible to the public via the [Online Planning System](#). The publication of these reports was not, until recently, possible prior to a recent system upgrade. This improvement will also increase transparency in planning enforcement by setting out clearly:

- our interpretation of applicable law and regulations;
- the completeness of our investigation; and
- why we have decided to use statutory enforcement powers or, indeed, exercised our discretion not to use such powers.

2.12 [The Planning \(Scotland\) Bill](#) was introduced to the Scottish Parliament on 4 December 2017. The Bill, as introduced, proposes a number of amendments to the Town and Country Planning (Scotland) Act 1997. With respect to planning enforcement, Section 22 and 23 are relevant; proposing increases to fines and liability for expenses under enforcement notices. The Bill completed Stage 1 (parliamentary committee) on 29 May 2018 and completed the Stage 2 (committee scrutiny) in November 2018. During the Stage 3 debate in Parliament the Bill is subject to possible modification. It is anticipated that the Bill will progress to Royal Assent during 2019.

2.13 The Bill could alter the legislative framework and therefore duties and operations of the Planning Enforcement team. This process will be monitored and changes will be considered by the Planning Member Officer Working Group and practice will be amended accordingly. Changes of significance will be reported in the 2019 Annual Planning Enforcement Report and reflected in subsequent Enforcement Charters, as required.

2.14 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 in booklet form, for hard copies and in electronic format, to make it more visually appealing and accessible. The Charter will be available on the [Planning Service's website](#) and will be distributed in electronic format in the first instance, wherever possible.

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. A number of 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 Committee:

- (i) approves the proposed Planning Enforcement Charter 2018 contained in Appendix 1.

Author

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Approved

Name	Designation	Date
Barbara Renton	Executive Director (Housing & Environment)	16 January 2019

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1. IMPLICATIONS, ASSESSMENTS, CONSULTATION AND COMMUNICATION

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

1. Strategic Implications

Community Plan / Single Outcome Agreement

- 1.1 This report supports the delivery of the strategic objectives within the Community Plan / Single Outcome Agreement 2013-23 in terms of the following principles:

- (ii) 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 has to 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 adberse 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

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

3. APPENDICES

- 3.1 Appendix 1: Proposed Planning Enforcement Charter (2018)