



# **Perth and Kinross Council**

## **Planning Enforcement Charter**

**Revised November 2018**

## **Foreword**

*Development within Perth and Kinross contributes towards the Council's objectives and priorities for the area, as expressed through our [Corporate Plan 2018-2022](#). Planning Enforcement plays an important role to uphold this contribution and to maintain public confidence in the planning system, by ensuring that the intended benefits of development are realised and our natural and built assets are protected.*

*This Charter sets out the Council's approach to planning enforcement and places the public and all stakeholders in the planning system at the core of what we do. We therefore set out what we can and cannot do, explain the processes involved and make a commitment on the level of service we aim to provide. We value public input in this process and, as such, we endeavour to make the reporting of possible breaches of, and engagement within the planning system, by the public accessible to all.*

*You can report a suspected breach of planning control using the form on our website or by submitting an email to us:*

<http://www.pkc.gov.uk/article/15035/Planning-Enforcement>

[PlanningEnforcement@pkc.gov.uk](mailto:PlanningEnforcement@pkc.gov.uk)

*If you are unsure about whether the development or work carried out is a breach of planning control, you can check what constitutes a breach and check what does and does not need permission on these webpages:*

<http://www.pkc.gov.uk/article/15035/Planning-Enforcement>

<http://www.pkc.gov.uk/article/14991/What-needs-planning-permission->

*You can check to see if a development has a valid planning permission or other required consents by using our Online Planning System:*

<https://planningapps.pkc.gov.uk/online-applications/search.do?action=simple&searchType=Application>

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## **The Planning Enforcement Service**

Planning permission is required for most forms of development unless it is classed as 'permitted development'. When development or work is undertaken without permission, or not in accordance with a previously approved permission or consent, Councils have as the Planning Authority, discretionary powers to investigate and take enforcement action, as deemed appropriate, when it is in the public interest to do so. It is the role of the Planning Enforcement team to carry out these duties. A comprehensive guide to Planning Enforcement can be found in the [Scottish Government's Circular 10/2009](#).

This Charter outlines how the planning enforcement system operates and what can be expected of the service provided by Perth & Kinross Council. Planning Enforcement Charters are, as defined in Section 158A of the Town and Country Planning (Scotland) Act 1997 (as amended), a statutory requirement for Planning Authorities.

This Charter explains the role of the Council and how enforcement process works and sets out:

- The Council's role and policy on taking Planning Enforcement Action, including our priorities and the service standards you as a customer (both those who report breaches or who are developers) can expect;
- How customers can bring any breach of planning control to the attention of the Council;
- Explains what happens at each stage of what can sometimes be a lengthy process; and
- How any complaint about the Council taking enforcement action can be submitted and how it will be dealt with.

We continually monitor the implementation of the Charter to ensure that standards are being met and priorities are being addressed. As part of this review process, we publish an [Annual Planning Enforcement Report](#) on our performance. This Charter reflects this review process since our last charter was published in October 2016.

## **Our Approach to Planning Enforcement**

Perth & Kinross Council's aim for planning enforcement is, where possible, 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 not taking action is justified. We will explain Closing Report our reasoning for all enforcement cases that are closed.

Scottish Government guidance on the use of enforcement powers is provided in [Circular 10/2009 'Planning Enforcement'](#). This guidance explains, among other matters, that Council's should not take enforcement action just to address a breach of planning control if the development is otherwise acceptable in planning terms, and is 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.

Our Planning Enforcement team undertake regular monitoring of developments to ensure compliance with conditions and legal agreements associated with planning permissions. We also carry out investigations of development where permission does not exist.

Ultimately, we seek to ensure that effective action is taken against breaches of planning control, particularly where these have significant adverse impacts on the environment or on communities. Accordingly, we set out our **Priorities for Planning Enforcement** below.

### **Priorities for Planning Enforcement**

Whilst we will consider all observations of suspected breaches of planning control, including non-compliance with planning conditions and obligations, our priorities will be to direct resources to significant or harmful breaches of planning control including:

Significant detrimental impacts on <b>matters of environmental importance</b> , especially on sensitive or protected environments.
Matters of <b>pedestrian and traffic safety</b> .
Significant detrimental impacts on <b>residential amenity</b> .
Significant detrimental effects on <b>public visual amenity</b> .
Breaches of condition or the terms of a legal agreement in respect of a <b>major development</b> or development where there is a <b>significant level of community interest</b> .
Damage to <b>Listed Buildings</b> and works which adversely affect their character.
Breaches of planning control within designated <b>Conservation Areas</b> , particularly where improvement schemes have been promoted by the Council.
Unauthorised felling of or works adversely affecting all trees protected by ( <b>Tree Preservation Orders, trees in Conservation Areas and where planning conditions apply</b> ).
Breaches of planning control which undermine a <b>Council policy or programme</b> .

## Reporting a Breach of Planning Control

*When a breach of planning control is received or identified, there are two decisions for the Planning Enforcement team:*

- *Whether a breach of planning control has taken place; and*
- *If a breach has occurred, whether it is expedient to take any enforcement action.*

As advised previously, the decision of whether or not to take action is at the discretion by the Council and is a matter of judgement, having regard to planning facts and circumstances of the case. Any action taken must be in the public interest and be proportionate to the breach.

*If you believe work or development is being carried out constitutes a breach of planning control you can submit this to us through our [Report a Breach of Planning Control Form](#), which provides us with all of the necessary information to begin an investigation. This form, or the information requested therein, can also be submitted by email to:*

[PlanningEnforcement@pkc.gov.uk](mailto:PlanningEnforcement@pkc.gov.uk).

## Breaches of Planning Control

- 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; and
- Departures from drawings or documents approved as part of a planning permission or other consent.

We do undertake proactive monitoring of approved developments; however, it is not possible, to monitor every development. Consequently the public play an extremely important role in alerting the Council to, and providing information on, any possible breaches they are aware of, whether or not that development has planning permission.

*Possible or known breaches of planning control are often identified by the public when purchasing a property. There is an opportunity through the conveyancing process for the public to establish any such breaches through [Property Enquiry Certificates](#) – which will provide information on any enforcement notices or other notices that affect the property or land. The sales process is often a good opportunity to remedy existing breaches between the seller, buyer and the Council.*

You can check to see [what needs planning permission](#) on our website. You can also see if the developer already has planning permission and/or other consents in place, as well as and conditions that are attached to these, by using our [Online Planning System](#).

## Other Enforcement Controls

Other types of work or possible offences can be reported to us, using our [Breach of Planning Control Form](#), so we can investigate whether a breach or offence has taken place. These include:

### Listed Buildings and Conservation Areas

*The enforcement rules that apply to **Listed Buildings**, demolitions and works in a **Conservation Areas** are set out in the [Planning \(Listed Buildings and Conservation Areas\) \(Scotland\) Act 1997](#) and associated regulations.*

*Unauthorised works can lead to a Listed Building Enforcement Notice being served and such unauthorised work can constitute a criminal offence, which could result in a £50,000 fine and/or a custodial sentence of up to 6 months.*

### Advertisements

*Different procedures again apply compared to development. Adverts are regulated through the [Town and Country Planning \(Control of Advertisements\) \(Scotland\) Regulations 1984](#). These controls relate to the form and siting of adverts only and we have the ability to serve Advertisement Enforcement Notices. 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  
Mid City Place  
71 High Holborn  
London  
WC1V 6QT

Or by visiting: <http://www.asa.org.uk>

### Trees

*Under S171 of the Town and Country Planning (Scotland) Act 1997, it is an offence to carry out works to trees subject to statutory protection, that results in their uprooting, felling, lopping or wilful destruction, without the prior consent of the planning authority,*

*Formal action can be taken against persons who have carried out unauthorised works to trees that are subject to statutory protection by virtue of either a Tree Preservation Order (TPO) or being within a Conservation Area. Where protected trees have been removed or destroyed formal action can take the form of service of a Tree Replacement Notice requiring tree replacements. In certain cases, reports for offences in respect of trees may be submitted to the Procurator Fiscal and, if successful, can result in fines up to £20,000.*

### High Hedges

A relatively recent addition to the Council's enforcement function, which is separate to other aspects of planning enforcement, is 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 remove or reduce the adverse impact of the high hedge.

Further information on our approach and remit for [High Hedges](#) can be found on our website.

**NOTE:** *High Hedges applications will be determined in accordance with their own statutory process and timescales, and, as such the **Service Standards** set out within this Charter do not apply.*

*The Council will always treat information about the identity of people who report breaches to us in confidence and will only disclose it when required to do so by law.*

*We do encourage you to provide your name and contact details, as we may require further information from you as the investigation progresses or to understand the impacts of the breach and how it affects you. This also allows us to keep you informed of progress and the outcome of our investigations.*

*Where an anonymous observation is received, we reserve the right to choose not to investigate. Where it relates to one of our priority areas, or it is judged to be in the public interest, we are more likely to investigate breaches that have been reported anonymously.*

## **Investigating Possible Breaches of Planning Control**

### Registration of Your Observation

When we receive an observation, firstly we check that it includes all of the information we need for an enforcement case to be investigated. Where an enquiry relates to non-planning matters, such as neighbour disputes or other civil issues, these cannot be investigated by the Council. If your enquiry relates to another function of the Council, we will direct this to the appropriate department.

**Service Standard - 1:** *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.*

*Following registration, an Enforcement Officer may visit the site to investigate the possible breach of planning control. The timescales for this will depend on factors such as the type and significance of the breach. The Council has legal powers to enter land or property in order to identify if a breach of planning control has taken place. The same powers are available throughout the process for the purposes of investigation or assessing compliance with any enforcement notices served (see '[Resolving Cases](#)' below).*

**Service Standard - 2:** *Where a site visit is required we will undertake this within 15 working days from receipt of the observation.*

*In some cases, we may require further information from you about the suspected breach, such as photographs or evidence of development or activity, before or instead of visiting the site. Additional investigation at this stage may also be required for some cases to establish if a breach has occurred, such as utilising our legal powers to seek information from the developer(s) about the use of land and/or parties that have an interest in the land. This can include us serving a Planning Contravention Notice (PCN). The serving of notices for this purpose may lengthen the process and, if this is required, this will be explained to you where possible.*

**Service Standard - 3:** *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.*

*You may also be advised at this stage if the observation does not constitute a breach 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.*

*Where a breach of planning control is identified and we provide an undertaking to resolve it, be that through informal or formal means, we will do this as quickly as possible. It is advised however that progress on the case can be delayed for a number of reasons; such as the collection and verification of which could be over a period of time, so negotiations could take place or where formal procedures are instigated.*

*The resolution to a breach may be through a planning application or other consents (such as Listed Building Consent) being submitted to regularise the breach. Where the development is likely to be acceptable the Council may seek the submission of an application in retrospect as a valid means of assessing the development and a formal decision will be made through the planning application process. This will increase the timescales for the enforcement case. You will, however, have the right to make representation on the application.*

**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.*

*Where we previously advised that a conclusion to a case has not been reached we will keep you informed of the progress with the case or notify you its conclusion. If at any point we decide that further action is not justified we will inform you of this and the reasons for that decision. In some cases it may be inappropriate to regularly provide an update on the progress of enforcement action, particularly when the matter proves difficult to resolve quickly. You will be advised accordingly in such circumstances.*

***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.***

*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.*

## **Acting on Breaches of Planning Control**

### Informal Action and Discretion

It should be noted that, even though planning controls have been breached, in some cases formal action may not be appropriate. Furthermore, most breaches of planning control are resolved through informal action. *The Council is obliged to use its discretion when considering action and be proportionate with formal powers. Each case must be considered on its own merits and the best solution in the circumstances must be decided.* Only a relatively small number of cases require formal enforcement action where we will serve a formal notice.

### Formal Action

If we are unable to resolve a breach through informal measures, or through a planning application, we may take formal enforcement action through the serving of a notice, where such action is justified. 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. Notices will clearly explain what is required, the timescales involved and the available options to resolve the issue.

*It should also be noted that an enforcement notice will be associated with the building or land to which it relates until its provisions have been fully discharged. This will be highlighted in any Property Enquiry Certificate issued when a property is being sold.*

The type of notices we can serve and when they can be served is fully explained in the [Scottish Government's Circular 10/2009](#). In summary, the Council's powers include the ability to issue a **Temporary Stop Notice** to stop 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 necessary, require to be served.

In most cases where a breach merits formal action, an **Enforcement Notice**, or a similar notice such as a **Listed Building Enforcement Notice, Breach of Condition Notice or Amenity 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.

Where a Notice is not complied with there may be further consequences and the Council will usually take further formal steps, which can include:

- The issue of a fixed penalty notice;
- Seeking interdicts or referral of the case to the Procurator Fiscal for prosecution; or
- Direct action by the Council, to undertake the action specified in a notice, which will include seeking recovery of our costs.

*In taking such action, the Council will consider the most effective means of ensuring compliance with the notice(s). The authority to proceed with taking formal action or legal proceedings has been delegated to the Head of Planning and Development.*

**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.*

## Appeals

Where a notice is served the Developer can, in most cases, submit an appeal to the Scottish Ministers. Most enforcement appeals are delegated to Reporters within the [Scottish Government's Planning and Environmental Appeals Division \(DPEA\)](#) to determine. *If this happens timescales will be affected. The Council will defend notices served and you will also have the opportunity to make representation to the Scottish Ministers during the appeal process.*

**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.*

## Enforcement Register

We maintain an Enforcement Register, which details all notices served by the Council. Our list of current [Enforcement Notices is available on our website](#).

Alternatively, our statutory **Enforcement Register** can be inspected in person, during normal office hours, by visiting:

[Perth and Kinross Council](#)  
[Pullar House](#)  
[35 Kinnoull Street](#)  
[Perth,](#)  
[PH1 5GD.](#)

#### Time Limits for Enforcement

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.

#### **Customer Care and Complaints Process**

*The Perth and Kinross Council's [Customer Service Standards](#) explain the level of service you can expect when contacting Planning Enforcement in writing, by telephone or in person. We are committed to providing high quality customer care and we welcome suggestions on how we can improve our service.*

*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. We will communicate with you on any changes we implement.*

Any formal complaint will be dealt with in accordance with the Council's [Complaints Handling Procedure](#). We will always tell you who is dealing with your complaint and how it will be handled and what timescales apply. Our complaints process has two steps:

- **Stage One: Frontline Resolution** – we will give you our decision within **5 working days** or less.

If you are not satisfied with the response at Stage One it will progress to:

- **Stage Two: Investigation** – we will acknowledge your complaint within **3 working days** and provide you a full response within **20 working days**.

Lastly, if you are dissatisfied with the Council's response to your complaint or the way it has been handled, you can ask the [Scottish Public Services Ombudsman](#) (SPSO) to look at it. The contact details for the SPSO are:

SPSO  
FREEPOST EH641  
Edinburgh  
EH3 0BR

Telephone: 0800 377 7330  
Website/Online Contact: [www.spsso.org.uk/contact-us](http://www.spsso.org.uk/contact-us)

### Our Contact Details:

#### **Planning Enforcement – Housing and Environment Service**

[Perth Kinross Council](#)  
[35 Kinnoull Street](#)  
[Perth](#)  
[PH1 5GD](#)

Email: [PlanningEnforcement@pkc.gov.uk](mailto:PlanningEnforcement@pkc.gov.uk)  
Telephone: 01738 475300

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 Customer Service Centre on: 01738 475000.

#### **HOW WE USE YOUR PERSONAL INFORMATION**

*The information provided by you will be used by Perth & Kinross Council to enable us to investigate the complaint or observation that you have made. The information may be shared with other services within the Council if considered necessary. The information will not be disclosed to third parties.*

*The Council may check information provided by you, or information about you provided by a third party, with other information held by us. We may also get information from certain third parties or share your information with them in order to verify its accuracy, prevent or detect crime, protect public funds or where required by law.*

*For further information, please look at our website [www.pkc.gov.uk/dataprotection](http://www.pkc.gov.uk/dataprotection); email [dataprotection@pkc.gov.uk](mailto:dataprotection@pkc.gov.uk) or phone 01738 477933.*