

Planning Committee

10.00am, Monday, 11 December 2017

Planning Enforcement Charter – Statutory Review

Item number	6.1
Report number	
Executive/routine	Executive
Wards	All
Council Commitments	13

Executive Summary

The purpose of this report is to seek the Committee's approval for the revised Planning Enforcement Charter. The Charter sets out how the City of Edinburgh Council will deliver the statutory planning enforcement service in the City.

The Town and Country Planning (Scotland) Act 1997 requires local authorities to review planning enforcement charters every two years and it is now time to update and revise it.

Planning Enforcement Charter – Statutory Review

1. Recommendations

- 1.1 It is recommended that the Committee:
 - 1.1.1 Notes the resource issues affecting the ability to meet enforcement service standards; and
 - 1.1.2 Approves the revised Planning Enforcement Charter.

2. Background

- 2.1 Planning permission is required for all development that takes place in Scotland, with the exception of more minor works. Sometimes developers or householders undertake work without planning permission or fail to keep to the permission they have been given. Councils have powers to enforce planning controls in such cases. However, enforcement action is discretionary and it is not illegal to carry out development without planning permission. Action should only be taken if it is in the public interest to do so. [Circular 10/2009 on Planning Enforcement](#) sets out Government policy on the use of enforcement powers.
- 2.2 Section 158A of the Town and Country Planning (Scotland) Act 1997 (The Planning Act) requires planning authorities to produce and review planning enforcement charters every two years. The current 2015 charter is now due for review. The Planning Enforcement Charter sets out how the enforcement process works, the role of the Council and the service standards that customers of the service can expect. Planning enforcement can be a long and complex process and resources are limited so it is important that the Charter indicates clearly when action will be taken.
- 2.3 There have been no changes to enforcement legislation over the last two years but [Council Commitment No.13](#) states - *Improve planning enforcement to ensure that all developers, large or small, conform to Edinburgh's policies and developer's commitments*. This Charter review will consider how this can be achieved.

3. Main report

Drivers for Change

- 3.1 The 2015 Planning Enforcement Charter has been reviewed, and overall the document remains a robust framework within which enforcement investigations are

carried out. The proposed amendments do not seek to alter the general approach to planning enforcement which aligns with Government guidance.

- 3.2 The service standards have also been considered in view of commitment 13 of the Councils business plan which commits to *“Improve planning enforcement to ensure that all developers, large or small, conform to Edinburgh’s policies and developer’s commitments”*. This is a challenging commitment as available resources have to be used selectively on the most serious cases where formal action is required.

The Culture of Enforcement

- 3.3 One of the most common complaints of community councils and the general public is that too many people are not sanctioned for doing unauthorised work. However, as the Government circular states - *Enforcement action should always be commensurate with the breach of planning control to which it relates. For example, it is usually inappropriate to take formal enforcement action against a trivial or technical breach of planning control which has no material adverse planning implications*. In Edinburgh, very few investigations lead to formal action such as enforcement notices. The majority either require no further action or the breach is rectified without a need for formal action. This is commensurate with other planning authorities in Scotland.
- 3.4 There are other ways of regularising breaches without taking formal action and one of these is to serve a notice under section 33A of the Planning Act 1997. This requires that the owner of the land makes an application for planning permission for the works already carried out. More use of this power could help to improve public confidence in the enforcement system.
- 3.5 It is important that more time is allowed for more complex investigations such as short stay commercial visitor accommodation (SSCVA) investigations which often involve numerous evening visits to establish a breach has occurred. Service standards cannot often be met in these circumstances and a longer period is required to assess whether formal action is required in the case of SSCVA investigations.

Current Performance

- 3.6 The enforcement service continues to see high demand for its services and, in 2016/17, 695 cases were recorded for investigation. This is an increase in the 584 cases in 2015/16. As stated above, not all cases lead to formal action but there has also been an increase in action from 39 cases in 2015/16 to 55 cases in 2016/17. The target period for taking enforcement action was changed from 80% in 4 months to 80% in 3 months in May 2016 but this target is not being met with around 40% of cases meeting the 3 month target. The expected efficiencies arising from a procedural review did not materialise due to resource pressures.
- 3.7 Enforcement investigations are carried out by two area based teams, one for the east side of the City and one for the west. Case officers deal with both householder applications and enforcement investigations. Due to the high volume of applications and investigations and the sometimes onerous nature of the work, there is a high staff turnover and resources are currently stretched in the teams dealing with

enforcement. As such, the service is not currently meeting service standards. Sampling shows that the 20 day standard for giving the customer a case update is only being met in around 48% of cases.

- 3.8 Even with a full complement of case officers, the current 20 day standard is challenging. There could be a case for relaxing this standard but provided staff resource issues are resolved, 20 days remains a realistic target for letting the customer know the status of the case. In addition, the change from the 4 month period for taking enforcement action to 3 months is realistic if resource issues are resolved. It is recommended that the 20 days standard remains and that the standard for taking formal action is changed to 3 months. To support this, a review of resources will be carried out to align enforcement strategy with council commitments.

Enforcement Charter 2017

- 3.9 As there has been no major changes to the legislative context for enforcement, the changes since the 2015 Charter are minor. The Planning Enforcement Charter 2017 can be viewed in Appendix 1. The main changes include:
- reference to the Council's commitment on enforcement;
 - a new service standard has been added that a section 33A notice may be served requiring an application for planning permission for development already carried out;
 - the service standard for formal enforcement action has changed from 4 months to 3 months;
 - a reference to the longer service standard for serving a notice on Short Stay Commercial Visitor Accommodation due to the complexity in investigating these cases;
 - a service standard to make the report of handling available online for every case explaining why we have come to a decision; and
 - Other minor amendments to the text.

Next Steps

- 3.10 Once approved by the Committee, copies of the Planning Enforcement Charter will be submitted to the Scottish Government, made available in all public libraries within the City of Edinburgh Council area and online. The Charter will next be reviewed in December 2019.

4. Measures of success

- 4.1 Customers are aware of the enforcement process and what levels of service they can expect from the Council.
- 4.2 The Planning Performance Framework indicator for the enforcement charter remains up to date.

5. Financial impact

- 5.1 There are no direct financial impacts arising from this report. A review of resource implications will be carried out over the coming year to align enforcement strategy with council commitments.

6. Risk, policy, compliance and governance impact

- 6.1 There is a risk that the service standards in the Charter will not be achieved if resources for enforcement activity cannot be realigned.

7. Equalities impact

- 7.1 The impacts of this report in relation to the Public Sector Equalities Duty and the 10 key areas of rights have been considered. The report has no significant direct impact on the Council's three equalities duties.

8. Sustainability impact

- 8.1 The impacts of this report in relation to the three elements of the Climate Change (Scotland) Act 2009 Public Bodies Duties have been considered. Relevant Council sustainable development policies have been taken into account. This Enforcement Charter will have no adverse impacts on carbon emissions, the city's resilience to climate change impacts, achieving a sustainable Edinburgh in respect of social justice, economic wellbeing or good environmental stewardship.

9. Consultation and engagement

- 9.1 There has been no formal period of consultation regarding updating the Enforcement Charter.

10. Background reading/external references

- 10.1 [Planning Enforcement Charter 2015](#)
10.2 [Planning Performance Framework 2016/17](#)

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11. Appendices

Appendix 1: Planning Enforcement Charter 2017

Planning Enforcement Charter

December 2017



Foreword

The government places a strong emphasis on the role of planning enforcement in delivering key policy objectives and maintaining public confidence in the planning system. The Planning etc. (Scotland) Act 2006 sets out a requirement for councils to produce enforcement charters as a means of raising the profile of planning enforcement and to update it every two years.

The Council, as part of its Council Business Plan 2017-22, has pledged a commitment to “Improve planning enforcement to ensure that all developers, large or small, conform to Edinburgh’s policies and developer’s commitments”. This commitment demonstrates the importance the Council places on providing an effective enforcement service.

This charter sets out the role the Council plays in enforcement, the service we aim to provide and what happens at different stages of the process. The public also play a vital role in informing the Council when they suspect there has been work undertaken without planning permission or listed building consent. If you are unsure if work is a breach of planning control you can check this online at www.edinburgh.gov.uk/planninganddevelopmentonline.

If you believe a breach of planning control has occurred and the work being undertaken should be investigated by an enforcement officer, you can report this using the online form at www.edinburgh.gov.uk/planningenforcement.

We know enforcement is an issue that concerns many members of the public and hope that the charter provides reassurance of the commitment of the Council to investigating and resolving planning breaches and providing a robust planning service.



Councillor Lewis Ritchie
Convener of
Planning Committee

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Save time. Do it online:

The Planning Enforcement Service

This charter outlines how the planning enforcement system operates, and the standards of service that we seek to achieve when enquiries are made. Enforcement can be one of the most complex parts of the planning system, and can have long and unpredictable timescales. The aim of this charter is to ensure that our enforcement procedures are fair and reasonable and that interested parties are kept informed.

The Council has statutory powers to investigate breaches of planning control and breaches of condition. Formal action can be taken where a satisfactory outcome cannot be achieved by negotiation. A planning authority is not required to take action on a breach of planning control but any action taken must be reasonable and proportionate to the breach. A planning authority may issue an enforcement notice where it appears to them to be expedient to do so, having regard to the development plan and to any other material planning considerations. It is important to remember that a breach of planning control is not a criminal offence and the aim is to resolve breaches rather than punish those who carried out the work.

The Council's Business Plan 2017-22 sets out 52 commitments the administration pledge to deliver over the next 5 years. Commitment 13 relates to our enforcement service and commits the Council to:

"Improve planning enforcement to ensure that all developers, large or small, conform to Edinburgh's policies and developer's commitments".

This charter sets out our service standards to deliver this commitment.

Reporting a Breach of Planning Control

Planning enforcement involves two decisions – whether a breach of planning control has taken place, and whether it is expedient to take enforcement action. The latter decision is at the discretion of the planning authority and is a matter of judgement

A breach of planning control can include:

- Work being carried out without planning permission or other consent;
- An unauthorised change of use;
- Failure to comply with conditions attached to a permission or consent; and
- Departures from plans and drawings approved as part of planning permission or other consent.

The Council does not actively monitor the implementation of consents or search for breaches of planning control and relies on members of the public to report information to the planning service if they think that a breach of planning permission has taken place. You can check if works have consent [online](#). If you believe works are being carried out without the appropriate consents enforcement enquiries can be made using the Council's [online form](#).

In accordance with the Environmental Information (Scotland) Regulations 2004 we will treat the identity of complainants in confidence. We will only release information regarding the identity of a complainant where it is in the public interest to do so, as a result of a ruling by the Scottish Information Commissioner or directed to do so by a court of law.

Investigating a Breach of Planning Control



Registration of Your Enquiry

When information is received by the planning service on a possible breach of planning control, we firstly check it to ensure that it includes all the detail required for a possible enforcement case to be investigated

Service Standard: After preliminary checking, your enforcement enquiry will be registered within five working days of receipt. Once registered, an email or written acknowledgement will be sent to the person who made the enquiry.

Some enforcement enquiries relate to matters over which the planning service has no control, for example, neighbour disputes relating to land ownership. These matters cannot be investigated by the planning service.

Initial Investigations

Following registration of a possible breach of planning control, an enforcement officer will visit the site. The timescales for the site visit will be based on the nature and urgency of the possible breach. In some cases, an additional investigation is required to establish if a breach has occurred, and this may lengthen the process involved in taking action.

Unauthorised work on protected trees will be investigated as a matter of urgency. Following the initial site visit, a course of action will be decided as soon as practicable.

Service Standard: You will receive a follow-up response within 20 working days of receipt of your enforcement enquiry. If your information does not concern a planning matter, you will be advised accordingly and the case will be closed.

Resolving Cases

It is not always possible to anticipate the length of time required for a decision or for action on a case, nor for a case to be resolved. Progress can be delayed for a number of reasons, for example where evidence must be collected and verified over a period of time, where negotiations take place, or where formal procedures have to be used.

A planning application can be submitted to regularise the breach of control, or an appeal can be made to Scottish Ministers if an enforcement notice is served. If this happens, it will affect the timescale to resolve the case. It is important to note that there is no right for the enquirer to make any comments on the appeal.

The Council recognises that delays can be a source of considerable frustration to those affected by potential breaches particularly if they consider that their amenity is affected. We will try to keep you informed of significant stages in the progress of a case, for example when an application is received for the site.

Where the development is likely to be acceptable, it may be more appropriate to seek the submission of a planning application. There are provisions in the Planning Acts for the planning authority to require applications to be made in retrospect. In these cases any action proposed is suspended until a decision is made on the application.

Service Standard: Where the development is likely to be acceptable, the planning authority may request a retrospective planning application including, if necessary, serving a Section 33A Notice for works carried out without planning permission.

Formal Action

If the case is unable to be resolved and there is a breach of planning control, formal enforcement action will be required.

Service Standard: The planning authority will aim to serve the enforcement notice within 3 months of the date of the original complaint. (This may take up to 6 months for Short Stay Commercial Visitor Accommodation cases)

With only a few exceptions, the Chief Planning Officer has delegated authority to proceed with such action without referral to the Development Management Sub-Committee.

Formal action is instigated by the service of a notice (see Types of Notice). All of these include the following information:

- A description of the breach of control which has taken place;
- The steps which should be taken to remedy the breach;
- The timescales for taking these steps;
- The consequences of failure to comply with the notice; and
- Rights of appeal where appropriate.

The planning authority has additional powers, including the use of interdicts, which complement the serving of notices. For more detail, please see 'Enforcement Legislation' on page 5.

The Council may take action to ensure compliance with an Enforcement Notice. Such action may include:

- Prosecution through the Sheriff Court;
- Carrying out works in 'default' of an Enforcement Notice. In other words the Council may arrange for works to be carried out and then recover the cost of this work from the recipient of the notice.



The Council will consider the most effective way of ensuring that someone who is contravening an enforcement notice complies with its requirements. It may, for example, be appropriate to initiate prosecution proceedings and take 'direct' action, especially if the offence is blatant and causes environmental harm.

If an owner/occupier is found guilty, a maximum fine of £20,000 may be imposed by the Courts. If the Notice is still not complied with, a second prosecution may be sought with a recommendation that courts impose a 'continuance fine' which will apply every day the notice is in breach.

When a notice has been complied with, a closing report will be prepared and posted on the Planning portal. The enquirer will be notified when this has been completed.

Service Standard: There will be a Report of Handling for every case explaining why we have come to a decision.

The Council has powers to enter land to find out if there has been a breach of planning control, to check whether there has been compliance with a formal notice, or to check whether a breach has been satisfactorily resolved

Appeals

If an appeal is lodged against a notice, this appeal is submitted to and considered by Scottish ministers. In almost all cases appeals are dealt with by Reporters from the Scottish Government's Planning and Environmental Appeals Division (DPEA).

Service Standard: When an appeal is submitted on an enforcement notice served by the Council, we will inform the original complainant within 5 working days of receipt of the appeal.

Enforcement Register

Details of enforcement notices, breach of condition notices and stop notices are entered into an Enforcement Register, which forms part of the Planning Register. These are available at Waverley Court, 4 East Market Street, Edinburgh, EH8 8BG and on the Council's website.

Time-Limited Procedures

In some cases, the Council is time-barred from taking enforcement action. The time is limited to four years for enforcement action for "unauthorised operational development" (i.e. the carrying out of building, engineering, mining or other operations in, on, over or under land) and change of use to a single dwelling house. This could include development such as replacement windows extensions or satellite dishes. After four years following the breach of planning control, the development becomes lawful and no enforcement action can be taken.

A time limit of ten years for enforcement action applies to all other development including change of use (other than to a single dwelling house) and breaches of conditions, after which the development becomes lawful if no enforcement action is commenced.



Customer Care and Complaints

The Planning and Building Standards Customer Charter sets out the standards that customers should expect in their dealings with the service. The service is committed to providing high quality customer care and any suggestions to improve are welcomed.

We are committed to improving our service and dealing fairly, honestly and promptly with any concerns. However, if there has been a service failure, we want to hear from you.

We will consider all complaints made about the way in which your enquiry was dealt with. Disagreement with a decision of the Council will not, in itself, be a ground for complaint and in many situations there is a separate procedure for an applicant to appeal against such decisions.

The quickest way to sort things out is to talk to the officer concerned. However if you are still dissatisfied, you can use Council's online Complaints Form to receive a formal response.

If, after you have gone through our complaints process you still feel aggrieved, you have the right to take the complaint to the Scottish Public Services Ombudsman (SPSO). The power of the SPSO does not extend to the amendment of planning enforcement decisions – the function of the SPSO in planning cases is to judge whether Councils have fulfilled their duties reasonably.

Enforcement Legislation



Planning Enforcement powers are set out in Part VI of the Town and Country Planning (Scotland) Act 1997, in part VII, regulations 24 to 26A of the Town and Country Planning (Control of Advertisements)(Scotland) regulations 1984, and in Chapter IV of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

Government policy on planning enforcement is set out in Circular 10/2009: Planning Enforcement. The Planning Acts and this publication are available online.

Types of Notice

Breach of Condition Notice - makes provision for enforcing the conditions to which any planning permission is subject. It is effective on the date of service. It may be used as an alternative to an enforcement notice (see below), and is served on any person carrying out the development and/or any person having control of the land. There is no right of appeal against this notice. Those receiving the notice may make representations to the planning authority if they believe the notice to be unreasonable. Summary prosecution in Court is available for contravening a breach of condition notice.

Enforcement Notice - this notice is generally used to deal with unauthorised development, but can also be used for a breach of planning conditions. There are similar notices and powers to deal with listed buildings (see below), and advertisements. An Enforcement Notice will specify a time period to take effect (usually a minimum of 28 days); and will specify what steps must be taken to remedy the breach and the period by which these steps must be completed. There is a right of appeal against an Enforcement Notice, and the terms of the notice are suspended until a decision is reached on the appeal to the Scottish Ministers. Failure to comply with the terms of an Enforcement Notice within the time specified is an offence, and may lead to

the imposition of a fine in the Sheriff Court.

Fixed Penalty Notices - where an Enforcement Notice (or Breach of Condition Notice) has been served and has not been complied with, the Council can serve a Fixed Penalty Notice (FPN) on the recipient of the notice. The fine is £2000 for an FPN relating to a planning Enforcement Notice and £300 in respect of failure to comply with a Breach of Condition Notice. There is no right of appeal against these notices, although timeous payment prevents the council from reporting the non-compliance with the original notice to the Procurator Fiscal.

Listed Building Enforcement Notice - this must be served on the current owner, lessee, occupier and on anyone else with an interest in the property, and the procedures involved are similar to those outlined above. The notice must specify the steps to be taken to remedy the breach, and specify a final date for compliance. If the current owner fails to meet the terms of the notice by the date specified, they are guilty of an offence. There is the right of appeal to Scottish Ministers against the notice. Breaches of listed building controls are a serious matter. It is a criminal offence to undertake unauthorised works to demolish, significantly alter or extend a listed building, and this could, in certain circumstances, lead to either an unlimited fine or imprisonment.

Stop Notice - this is only used in particularly urgent or serious cases where unauthorised activity must be stopped. This is usually where there are implications for public safety or a significant impact on public amenity.

A Stop Notice is served with an Enforcement Notice. A Stop Notice cannot prohibit the use of a building as a dwellinghouse or prohibit the carrying out of any activity if the activity has been carried out for a period of more than four years. If a Stop Notice is served without due cause, or a subsequent appeal



against a parallel Enforcement Notice is sustained, the Council may be open to claims for compensation. The use of Stop Notices therefore needs to be carefully assessed by the Council.

There is no right of appeal against a Stop Notice, and failure to comply with its terms is an offence

Temporary Stop Notices - In certain cases where a breach of planning control is considered to have a severe impact on amenity, a Temporary Stop Notice can be served. These do not require to be accompanied by an Enforcement Notice and last for a maximum of 28 days

Other Powers

Planning Contravention Notice - used to obtain information about activities on land where a breach of planning control is suspected. It is served on the owner or occupier of the land in question; on a person with any other interest in the land; or on a person who is using or carrying out operations on the land. Those who receive a Planning Contravention Notice are required to provide specified information about operations being carried out on the land, or relating to conditions or limitations which apply to any planning permission granted in respect of the land. Supplementary information or representations on the matters raised in the notice may also be requested. Failure to comply with the notice within 21 days of it being served is an offence, and can lead to a fine in the Courts.

Notice under Section 272 (of the Town and Country Planning (Scotland) Act 1997) - provides limited powers which enable information to be obtained regarding interests in the land, and the use of the land. Failure to provide the information required is an offence.



Notice under Section 179 (of the Town and Country Planning (Scotland) Act 1997) - provides planning authorities with the power to serve a notice on the owner, lessee or occupier of land, the condition of which is adversely affecting the amenity of the area. The notice, which is also known as an 'Amenity Notice' sets out the steps to be taken to decrease the adverse effect of the condition of the land within a specified period.

Interdict and Interim Interdict - this is used to stop or prevent a breach of planning control. Such applications are considered by the courts. Before initiating proceedings, the planning authority will need to assess the likely outcome and the risk of incurring wasted expenditure.

Contact Details

Planning Helpdesk (Monday - Friday 9am-1pm)

Waverley Court 4 East Market Street Edinburgh EH8 8BG

Telephone: 0131 529 3550

Email: planning@edinburgh.gov.uk

Report a possible breach of planning control at
www.edinburgh.gov.uk/planningenforcement



HAPPY TO TRANSLATE

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بمسعدنا توفير الترجمة

MOŻEMY PRZETŁUMACZYĆ

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