

Planning Committee

2.00pm, Wednesday, 15 November 2023

Planning Customer Service Charter and Planning Enforcement Charter

Executive/routine
Wards

All

1. Recommendations

- 1.1 It is recommended that the proposed updates to the Planning Customer Service Charter and Planning Enforcement Charter are approved.

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Executive Director of Place

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Planning Customer Service Charter and Planning Enforcement Charter

2. Executive Summary

- 2.1 The Planning Enforcement Charter requires to be updated every two years. This report sets out some minor changes to it. It also proposes that the Planning Customer Service Charter is updated to enable the service to better respond to applications.

3. Background

- 3.1 The Planning Enforcement Charter was last reviewed by Committee in December 2021 when some minor changes were made. Under Section 158A of the Town and Country Planning (Scotland) Act 1997 it is required to be reviewed and re-published at least every two years. It is therefore due for review now.
- 3.2 There is no statutory requirement to review the Planning Customer Service Charter, however changes in numbers and types of applications mean that some minor changes to working practices are proposed which will help the Planning service process those applications in a timely manner.

4. Main report

- 4.1 It is proposed to update the Planning Enforcement Charter as follows:
- 4.1.1 Providing a clearer explanation of the role of enquirers (those who report possible breaches of planning control) in the enforcement investigation process;
 - 4.1.2 Providing greater clarity on rights of appeal, and to emphasise that the enforcement process cannot overturn other planning decisions;
 - 4.1.3 Updates to better explain proportionate responses to minor, unharmed breaches;

- 4.1.4 Introduction of an additional service strand relating to compliance with enforcement notices; and
- 4.1.5 Introduction of an enforcement quick guide to provide a simple overview of how the enforcement process works and its remit.
- 4.2 It is not proposed that the Enforcement Charter is changed such that the Council takes a more pro-active approach to enforcement for situations where members of the public have not raised an enquiry regarding an alleged breach of planning control. Reports of possible breach of planning control provide a good barometer in determining the public interest in taking enforcement action. Additional officers would be required if this approach were to change.
- 4.3 It is proposed to update the Planning Service Customer Charter as follows:
 - 4.3.1 Revised policy framework section to include National Planning Framework 4 and status of City Plan 2030;
 - 4.3.2 Minor updates to text, including hyperlinks for further information, in relation to pre-application consultation guidance, making an application for planning permission and non-material variations;
 - 4.3.3 Revised text to explain commenting on a certificate of lawfulness applications; and
 - 4.3.4 Removal of references to COVID-19 working practices.

5. Next Steps

- 5.1 If Committee approves the recommendations of this report, both the revised Planning Customer Service Charter and the Planning Enforcement Charter will be published on the Council's website. A copy of the Planning Enforcement Charter will be sent to each public library in the Council area and two copies of it will be sent to Scottish Ministers.

6. Financial impact

- 6.1 There is no financial impact arising from this report. If the changes to the Planning Customer Service Charter are made, this will better enable the service to process applications in a timely manner.

7. Equality and Poverty Impact

- 7.1 There are no changes proposed that impact on equality, human rights, including the rights of children, socio-economic disadvantage. There are no impacts in relation to the public service equality duty.

8. Climate and Nature Emergency Implications

- 8.1 There are no impacts in relation to climate change or the nature emergency arising from this report. So far as these matters relate to Planning, they are considered through the application of policy and guidance when considering individual development proposals. The effect of the charters is to set out how applications and enforcement cases will be processed, rather than the considerations that will be taken into account when decisions are reached upon them.

9. Risk, policy, compliance, governance and community impact

- 9.1 There has been no engagement with the community regarding the changes proposed.
- 9.2 In relation to risk, if the enforcement charter is not approved for publication the Council would not meet the requirements of Section 158A of the Town and Country Planning (Scotland) Act 1997.
- 9.3 There are no health and safety or governance implications arising from this report.

10. Background reading/external references

- 10.1 [Section 158A](#) of the Town and Country Planning (Scotland) Act 1997.

11. Appendices

- 11.1 Appendix 1 - Proposed Planning Enforcement Charter 2023.
- 11.2 Appendix 2 - Proposed Planning Customer Service Charter November 2023.

Appendix 1

Planning Enforcement Charter

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.

As Convenor of the Planning Committee, I will continue to support the work of the Planning Enforcement team in their essential function in the delivery of key policy objectives and maintaining public confidence in the planning system.

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 plays 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 [City of Edinburgh Planning Portal](#).

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 JAMES DALGLEISH

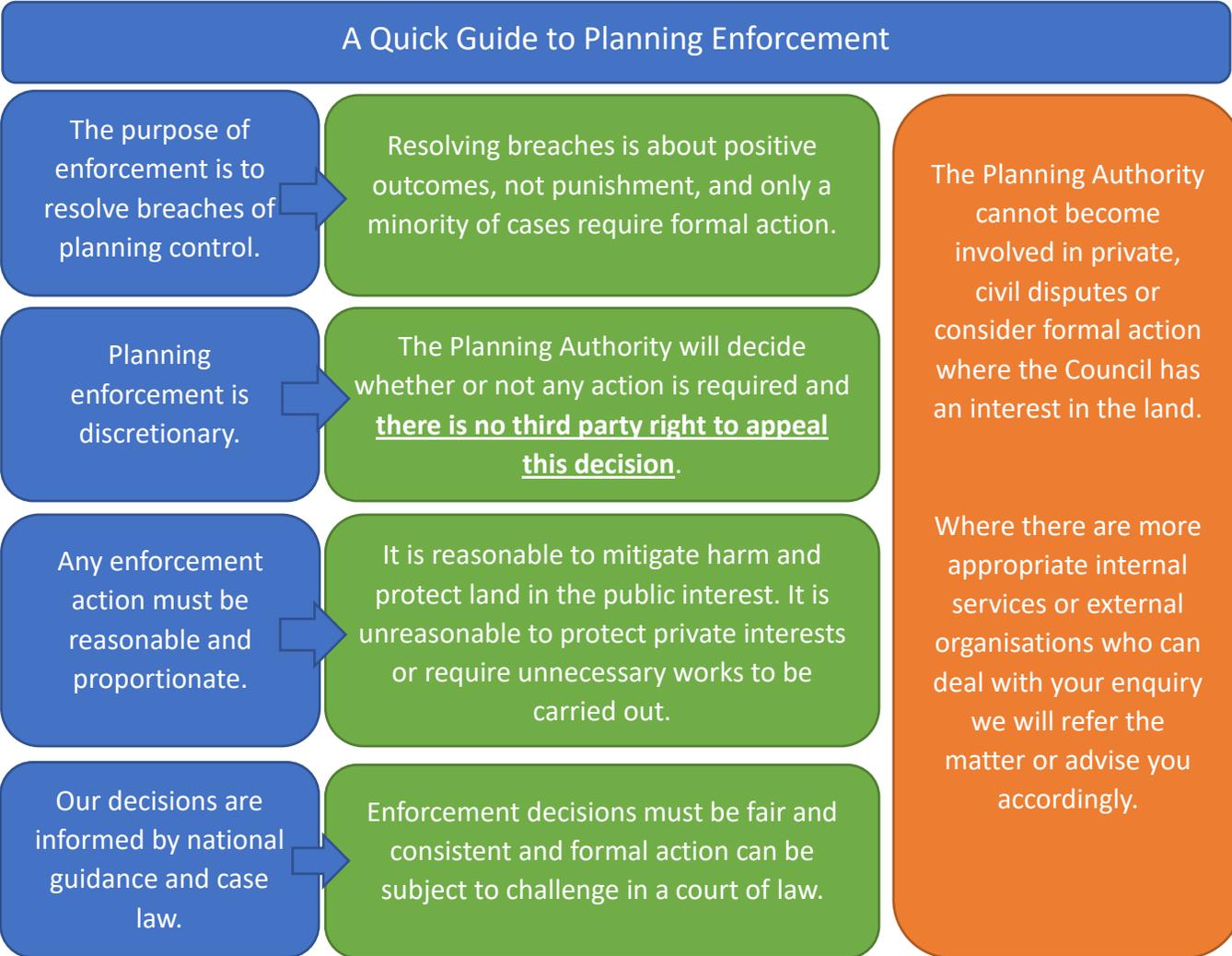
Convenor of Planning Committee

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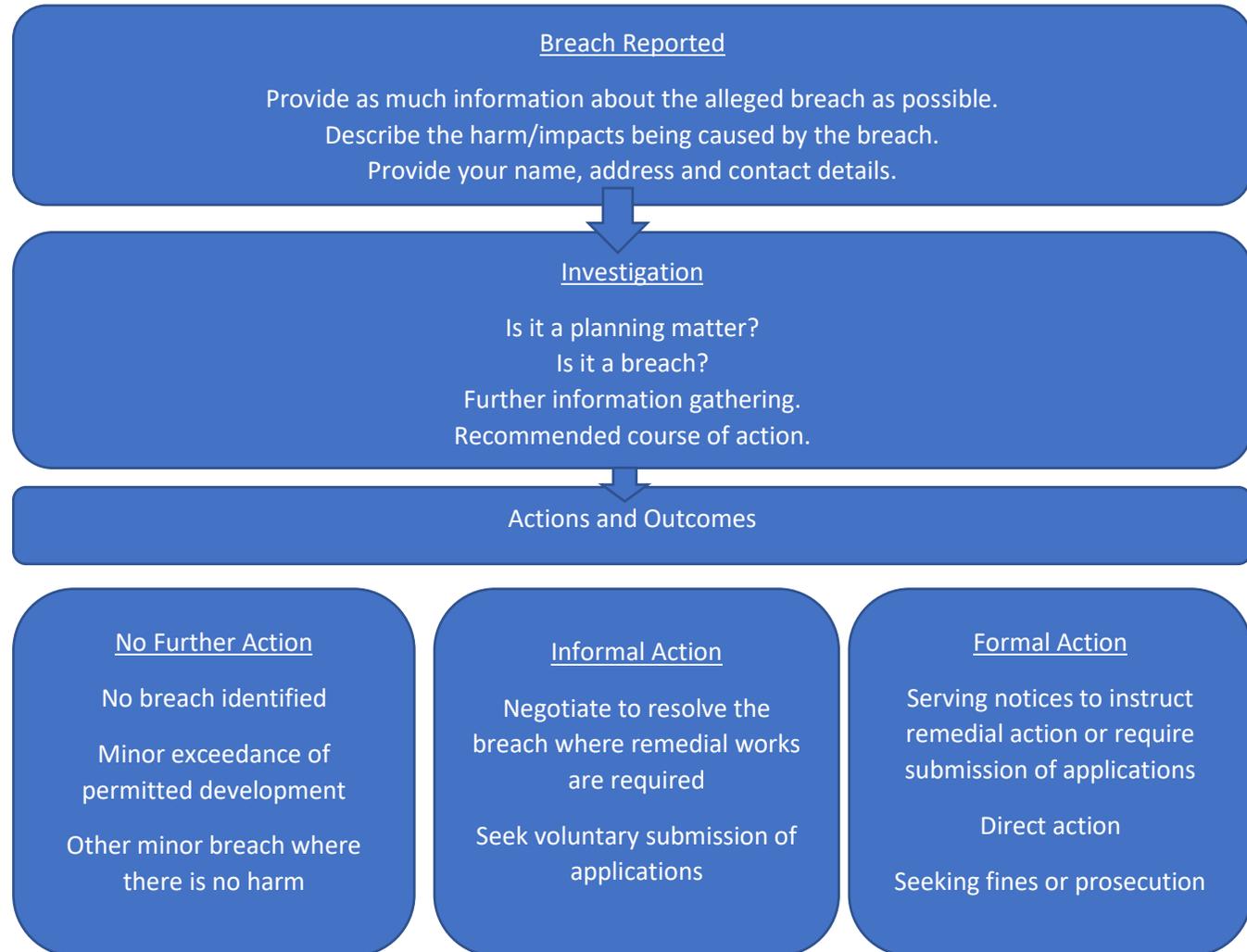
Introduction

This charter explains the purpose of the Council’s planning enforcement service, the process for handling enquiries, and sets out the standards of service we seek to achieve. It also explains where planning enforcement has no remit. Planning enforcement powers are set out in legislation and the use of these powers is informed by Scottish Government guidance (Planning Circular 10/2009). **The quick guide below highlights the key points:**



The aim of the Charter is to ensure that the Council's procedures are fair and reasonable, that interested parties are made aware of what is required and that they are kept informed at key stages within the enforcement process. The diagram below illustrates the main stages of the enforcement investigation process. Each of these stages are described in detail in the following pages of the Charter.

Enforcement Investigation – Key Stages



Planning Controls

There are three types of planning control against which the Council, as the planning authority, may consider taking enforcement action. Each of these are explained in more detail within this charter, they are:

- Planning Control - relating to development including building works and changes of use;
- Listed Building Control – relating to works to listed buildings;
- Advertisement Control – relating to the display of advertisements.

Where works do not involve development or where they do not affect the character of a listed building, involve the loss of or damage to protected trees, or involve the display of an advertisement, they will not be subject to planning controls or enforcement.

Planning Control

Planning permission is required for most development that takes place in Scotland. Development is defined in legislation and further established in planning case law. Permitted development rights allow a range of works to be carried out without the need to formally apply for planning permission.

The Council has no remit to assess the merits of or consider enforcement action against permitted development.

Similarly, the enforcement service has no remit to revisit or overturn planning decisions, and this includes approved drawings and conditions attached to any planning permission. Concerns with the application process, or with the decision itself would be a matter for the Scottish Courts. These enquiries should in the first instance be directed to the case officer for the application and you may also need to seek independent legal advice.

Breaches of Planning Control

A breach of planning control is defined in legislation and can include:

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

It is important to note that a breach of planning control is not a criminal offence.

Identifying and Reporting Alleged Breaches

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 potential breaches. Before reporting a possible breach you should use the Council's [online planning service](#) to check if the works have the appropriate consents. If you still believe there is a breach you should submit an enforcement enquiry using the [online form](#).

Anonymous complaints will not be accepted. However, if you have concerns about raising an enquiry, you can ask a [local ward Councillor](#) to raise it on your behalf. The Council does not comment on enquiries relating to possible breaches or individual cases on social media.

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

Our Approach to Enforcement

The planning authority has statutory powers to investigate alleged breaches of planning control and to take enforcement action where it is expedient to do so, having regard to the development plan and any other material planning considerations.

It is important to understand that planning enforcement is a discretionary power, and it is for the Council to take a view on whether or not to exercise that power. **If the Council determine that it is expedient to take enforcement action, then any such action must be reasonable and proportionate to the breach.**

Expediency and Proportionality

This means that even if a breach of planning control has occurred, the Council must consider if it is in the public interest to take enforcement action. In doing so, the Council will consider the level of material 'harm' that the breach is resulting, or is likely to result in. Although not exhaustive, 'harm' in planning terms can include:

- Adverse impacts to public amenity or the use of land and buildings meriting protection in the public interest.
- Adverse impact on visual amenity.
- Loss of protected trees.
- Loss or damage to a listed building and demolition of buildings in a conservation area.
- Adverse impacts on neighbouring amenity including loss of privacy and daylight, overshadowing, and operational noise.

Where it is appropriate to do so, the Council will seek to resolve breaches through negotiation, and it is only a relatively small number of cases which require formal action.

Where there has been a relatively minor breach of permitted development rights it is unlikely to be expedient to take enforcement action and this applies particularly where there would be no discernible difference in the resulting development.

Where a breach involves more substantial unauthorised development and additional planning controls may be required, it may be more appropriate to formally seek the submission of an application in retrospect.

While the Council does not condone any breach of planning control, the aim of the enforcement service is to resolve breaches rather than to punish those who carried out the work.

Council-Owned Land

Sometimes breaches of planning control occur on land which is under the ownership and control of the Council. In these circumstances it is not expedient to take formal planning enforcement action, however, the planning enforcement service will work with other relevant Council services to try and secure an appropriate resolution.

Time-Limited Procedures

In some cases, the Council is time-barred from taking enforcement action.

For unauthorised operational development, e.g. building, mining, engineering and other physical works, and the change of use of any building to a single dwelling house the time limit is four years. This means that after a period of four years from the date when operations were substantially complete, the development becomes lawful and

no enforcement action can be taken. This could include development such as replacement windows, extensions or the erection of fences and sheds.

For other breaches of planning control including changes of use (other than to a single dwelling house) and breach of conditions, the time limit is ten years from the date of the breach.

Non-Planning Matters

Sometimes the enforcement service receives enquiries about matters that cannot be controlled or conditioned by planning. These may be civil/legal matters or may fall under different legislative regimes. Examples include:

- Private disputes over land ownership/title deeds/right of access/maintenance and common repairs
- Devaluation of property
- Loss of private views
- Competition between businesses
- Fire Safety
- On street parking or allocation of parking spaces
- Building warrants
- Building safety
- Construction noise/arrangements
- Anti-social behaviour

Any non-planning matters will be outwith the remit of a planning enforcement investigation. However, where appropriate, planning will pass enquiries onto the relevant Council service to investigate.

Other Enforcement Controls

Listed Building Control

Any works for the demolition of a listed building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest requires listed building consent.

Works carried out without authorisation constitute a breach of listed building control and this is a criminal offence. It is important to note that there is no time limit after which unauthorised works to listed building become immune from enforcement action.

In taking a view on works that are relatively old, the Council will have regard to the nature of the works and whether they have previously given rise to complaints.

It is also important to note that if works to a listed building constitute development then planning permission may be required. Where unauthorised works constitute a breach of planning and listed building control, the Council can take action in respect of either or both breaches.

Advertisement Control

A wide range of signs and advertisements can be displayed without having to apply for advertisement consent if they meet certain criteria and conditions and if the landowner has given permission for the advertisement to be displayed on their land. This is known as deemed consent.

Advertisements which are displayed without authorisation or deemed consent constitute a breach of advertisement control and this is an offence. Adverts which are attached to and affect the character of a listed building will also require listed building consent.

Within Edinburgh, a regulation 11 Order is in place which removes deemed consent for most advertisements on the Royal Mile. This is known as an Area of Special Control. Unauthorised advertisements within the Area of Special Control which result in unacceptable impacts on amenity will be treated as a priority.

It is important to note that planning cannot control the content of any advertisement. This would be a matter for the Advertising Standards Agency.

Monitoring Major Developments

The Planning (Scotland) Act 2019 introduced provision for Planning Authorities to include a statement within their Planning Enforcement Charter setting out how they monitor and record compliance with planning permission for

major developments.

It is primarily the responsibility of the developer to ensure they are in compliance with the terms of a permission. Where permission has been granted subject to conditions which prohibit the commencement of development on site, Officers undertake to ensure that these conditions are complied with. Information relating to the compliance with conditions is recorded in the application file and is available to view via the planning portal. This approach is supported by the Council's existing monitoring frameworks for legal agreements and the implementation and delivery of major housing and commercial use sites. Where further guidance relating to monitoring of major developments is brought in to force we will continue to review our processes and will update this statement as appropriate.

Enforcement Service Priorities

The Development Plan provides the policy framework for development across the City of Edinburgh. Unauthorised development which raises significant issues of conflict with the development plan is unlikely to be supported by the Council and may be subject to enforcement action.

Listed Buildings and Conservation Areas

The City of Edinburgh has a rich heritage with over nine thousand Listed Buildings and fifty designated Conservation Areas. The Old and New Towns are designated as a UNESCO World Heritage Site and are recognised for their contribution to European urban planning.

Planning enforcement has a responsibility in helping ensure that the character and appearance of land and buildings which contribute positively to the city's heritage are preserved.

Priority will be given to remedying unauthorised works which:

- Have resulted in unacceptable impacts to Category A listed buildings and listed buildings within the World Heritage Site;
- Have significant adverse impacts to the character of a conservation area.

However, it is also important to recognise that a number of the City's buildings have been altered and adapted over time and this may have already significantly compromised their character. This will be taken into account when considering the expediency and proportionality of any potential enforcement action.

A similar approach will be taken when considering the expediency and proportionality of any potential enforcement action in respect of unauthorised works within a conservation area.

Short Term Lets

The Council recognises the impacts that short term commercial visitor accommodation, short term lets, can have on neighbourhood character and residential amenity.

Planning enforcement will continue to investigate and take action where unauthorised changes of use to short term lets would have a materially detrimental effect on the living conditions of nearby residents, or where there is unacceptable conflict with policies in the Local Development Plan. Enforcement action will have regard to **any future the** designated short-term let control area and Planning Enforcement will work with other Council services to support the implementation of any related licensing scheme.

Trees

It is an offence to carry out works to protected trees that results in their uprooting, felling, lopping or wilful destruction, without the prior consent of the planning authority. This includes trees that are subject to a Tree Preservation Order (TPO), and trees 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.

All enquiries relating to alleged unauthorised work on protected trees will be investigated as a matter of urgency.

Residential Amenity

Where the Council is concerned that a breach of planning control may require immediate action to address serious material harm to residential amenity, this will be investigated as a matter of urgency.

Investigation Process

Registration of your enquiry

When an alleged breach of planning control is submitted, we check it to ensure that it includes all the detail required for a possible enforcement case to be investigated. This must include a full address for the location of the alleged breach (including number and flat position where possible), legitimate enquirer contact details, and a description of the alleged breach and any associated impacts or harm.

It may be necessary to request further information from you before we can register your enquiry. This might include copies of relevant photographs or a more detailed account of the alleged breach and its specific impacts on you.

Your role in the investigation

In your role as the enquirer, we will need you to engage in the investigation process. For detailed investigations and enquiries involving alleged harm to amenity it may be necessary for enquirers to actively contribute to evidence gathering procedures. This can include providing access to your property to carry out appropriate tests, providing written witness statements and participating in interviews. We may also need to involve other Council services where specific impacts of the alleged breach require additional technical assessments to be carried out. Failure to engage with the investigation process may mean we are unable to progress with a detailed investigation and this is likely to result in the case being closed with no further action being taken.

Our service standards identify the key stages in an investigation where we will provide updates on how the case is progressing. While we aim to respond to correspondence which raises additional material considerations not raised in your initial enquiry in accordance with the [Planning and Building Standards Customer Service Charter](#), we may not be able to provide responses to repeat correspondence or correspondence which does not raise concerns of planning harm.

Occasionally, the behaviour or actions of customers using our service can make it difficult for us to deal with their enquiry. If we consider a customer's actions to be unacceptable we may restrict or change access to our service in accordance with the [Council's managing customer contact policy](#). This is to ensure we can protect our staff and the services we provide to our customers.

Unacceptable actions include aggressive or abusive behaviour, unreasonable demands, unreasonable levels of contact, and unreasonable use of the complaints process. Further information can be found on the Council website.

Where insufficient information is provided and where no significant concerns of material harm have been raised, it may not be possible to carry out a detailed investigation.

Where your enquiry concerns purely non-planning matters an investigation will not be opened however your enquiry will be passed to another relevant Council Service where appropriate.

Service Standard: After preliminary checks, enforcement enquiries which have sufficient information will be registered within five working days of receipt and an acknowledgement will be sent to the enquirer.

Initial Investigations

To ensure that we focus our resources on investigating and resolving alleged breaches which are resulting in obvious and significant material harm, cases will be allocated to reflect our service priorities.

In practice, this means that if your enquiry raises genuine planning matters, but the level of material harm is low and any associated impacts do not widely affect public amenity, your enquiry may only be progressed to a detailed investigation when there is sufficient capacity to do so, or, timescales to complete the investigation may be affected. This can include enquiries where the alleged breach:

- Is likely to benefit from permitted development,
- Involves very minor departures from approved plans, or
- Is not widely visible from common or public land.

Once an enforcement case has been set up, an Officer will carry out preliminary investigations and may undertake a site visit. The need and timescales for a site visit will depend on the nature and urgency of the alleged breach and the level of information provided by an enquirer.

Once initial investigations have been carried out, a proposed course of action will be decided as soon as possible. In some cases, a more detailed investigation is required to establish if a breach has occurred, and this can significantly lengthen the process involved in reaching a decision.

Service Standard: You will receive an update within 20 working days of registration of your enforcement enquiry. For cases where no breach has been identified or the breach is minor and does not give rise to significant harm, we will aim at this stage to include notification if no further action is being taken and the case is to be closed.

Actions and Outcomes

Resolving Cases

Resolving cases involves two decisions – i) whether a breach of planning control has occurred, and ii) where a breach has occurred, whether it is expedient to take enforcement action. The decision to take formal action is at the discretion of the planning authority and is a matter of judgement. **There is no right of appeal if the Council decides not to take enforcement action.**

There are three possible outcomes when resolving cases; no further action, informal action and formal action.

No Further Action

Where there is no breach, or a breach of planning control is identified which is not resulting in material harm and no remedial works are required, it would not be expedient to take any further action and the case will be closed. This can include:

- minor exceedances of permitted development rights
- minor departures from approved schemes
- occurrences where the outcome of any enforcement action would not result in a significant gain or benefit.

Service Standard: Where no further action is to be taken we will aim to close the enquiry no later than three months from the date the initial enquiry was registered.

Informal Action

Where a breach of planning control requiring remedial action is identified, and where it is practicable to do so, the Council will seek to resolve the breach through negotiation. This can involve a request to carry out further works. It can be difficult to predict timescales and progress can be delayed for a number of reasons.

For more substantial breaches of planning control where the unauthorised development is likely to be acceptable, but may require modification or control by conditions, it may be more appropriate to seek the submission of a planning application and there are provisions in the Planning Acts for the planning authority to require applications to be made in retrospect. In most cases, potential enforcement action is suspended until the application is determined.

The Council recognises that delays can be a source of frustration to those affected by potential breaches, particularly if they consider their amenity is affected. We will try to keep you informed at significant stages in the investigation process, such as when remedial works are agreed or when a planning application is submitted. To ensure efficient use of our resources, Officers may not be able to provide additional interim updates or respond to follow-up enquiries which do not raise new material concerns.

You will be informed once a final decision has been made and an investigation report will be produced to explain why the case is being closed or why formal action is recommended.

Service Standard: Where informal action is appropriate, we will seek to negotiate a suitable outcome to resolve the breach within 3 months from the date the enquiry is registered. (This may take up to 6 months for Short Stay Commercial Visitor Accommodation cases).

Formal Action

Where unauthorised development is not acceptable, or it has not been possible to resolve the case through informal negotiation, formal action will be taken.

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). These all 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. Further information is provided on pages 10 to 12 of this charter.

Service Standard: Where formal action is required, we will aim to serve the enforcement notice either within 3 months from the date the enquiry is registered, or within 1 month of the informal action stage where negotiation has not resolved the breach. (This may take up to 6 months for Short Stay Commercial Visitor Accommodation cases).

Where a notice is appealed this will add to the timescale to resolve the breach. If an appeal is successful, the notice will not take effect and the Council may be limited in what further action can be taken.

When a notice has been complied with a closing report will be published on the Planning portal and the enquirer will be notified.

If a notice is not complied with, and it is expedient to do so, the Council may take further action to remedy the breach of planning control, including:

- Prosecution through the Courts;
- Carrying out works in 'default' of an Enforcement Notice. This means the Council may arrange for works to be carried out and then recover the cost of this work from the recipient of the notice. This is known as direct action.

If the recipient of an enforcement notice is found guilty of contravening the notice, 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.

Service Standard: Where a notice has been served, we will aim to confirm that it has been complied with within 1 month of the end of the compliance period or, where appropriate, progress any further action within 3 months from the end of the compliance period.

Service Standard: Where a breach of planning control has required informal or formal resolution an investigation report will be published explaining our decision.

Appeals

In most cases, if an appeal is lodged against a notice, it 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). There is no appeal against breach of condition notices however these may be challenged in court. There is no provision in planning legislation for enquirers to appeal the Council's decision. Any challenge to that decision would be a legal matter.

Service Standard: We will inform the enquirer within 5 working days of receipt of an appeal against an enforcement notice served by the Council.

Burden on Property

In some circumstances where a notice has not been complied with the Council may decide not to take any action and leave an extant enforcement notice as blight on land/property. This can lead to a delay if a house/land is to be sold and the sellers agents require these breaches to be rectified for the sale to conclude. Where there are any outstanding financial implications registered against land/property that appear on a Councils Property Enquiry Certificate, all sums due to the Council will be deducted from the future sale of that land/property.

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.

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

Customer Care

[The Planning 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 suggestions on how we could improve the service are welcomed. We are committed to 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 however, disagreement with a decision of the Council will not in itself be a ground for complaint.

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.

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 noncompliance 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.

Notice Requiring Application for Planning Permission for Development Already Carried out

Where the planning authority considers that a development which does not have planning permission may be acceptable (i.e. they consider that it might be granted planning permission) they may issue a notice requiring the landowner or developer to submit a retrospective planning application. This application will be considered on its planning merits and handled in the same way as any other planning application. Issuing such a notice does **not** guarantee that permission will be granted; the planning authority may, on consideration of the application, decide instead to refuse permission, or to grant permission subject to conditions or alterations to make the development acceptable.

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

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.

Power to Enter Land

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. This power applies to *any* land and may involve officials entering land owned by neighbours adjacent to the site of the breach or alleged breach.

Direct Action

Failure to comply with the terms of an enforcement notice within the time specified can result in the Council carrying out the specified work. The Council may recover any costs it incurs from the landowner.

Removal and Obliteration of Placards and Posters

The Council has powers to remove or obliterate placards and posters that do not have express or deemed advertisement consent. If the person who put up the poster can be identified, they have to be given at least two days' notice that the Council intends to take the poster down. If they cannot be readily identified, then the advert can be removed immediately.

Council officials can enter unoccupied land, if necessary, to remove an advertisement. However, they have no powers to remove advertisements displayed within a building to which there is no public access.

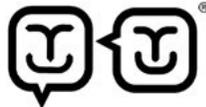
Contact Details

Email: planning@edinburgh.gov.uk

Telephone: 0131 529 3550

Waverley Court
4 East Market Street
Edinburgh
EH8 8BG

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



HAPPY TO TRANSLATE

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The City of Edinburgh Council
Place Directorate
December 2023

APPENDIX 2

Planning Customer Service Charter

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What this Charter does

This Charter explains what the Council's Planning service does and what its customers can expect from us. It begins by setting out what you can expect from us when contacting the service and then more specific standards linked to our three main responsibilities which are planning policy, development management, planning enforcement.

Planning

- To prepare a policy framework that sets out how land should be developed and our natural and built places protected; and
- To consider and make decisions on applications for planning permission, listed building consent and other types of application and investigate breaches of planning control to ensure the development of our City is properly managed.

What you can expect from us

If you contact us by telephone: *

- We will help you with your query on the spot if we can
- We will direct you to further information online, including online forms to request pre-application advice

If you email or write to us:

- will respond to you within 10 working days or tell you if we need longer
- ensure our response is free from jargon and easy to understand
- direct you to further information online, including online forms to request pre-application advice
- translate information into large print, other languages or Braille if needed

If you visit us: *

- we will advise you when the Planning helpdesk is available for general enquiries
- one of our staff will give you information that meets your needs or direct you to where you can find it online, including online forms
- we will see you within five minutes of your appointment time
- have friendly public offices, with clean and tidy waiting areas

* Our Helpdesk is an email service with customer call-backs where necessary.

Planning service

Policy Framework

What the Planning System does is set out by the Scottish Government in legislation, guidance and advice. Further information is available at www.gov.scot/planning

Scottish Government legislation requires that all Councils prepare a document setting out principles for where development of land will be allowed and where buildings and green spaces will be protected. These are called **Development Plans**. In Edinburgh, the Scottish Government requires that this Development Plan be made up of two documents: [National Planning Framework 4](#) and the adopted Local Development Plan.

The Local Development Plan for Edinburgh contains detailed policies and proposals for the future use of land and the protection of the natural and built environment over a 10-year period. This includes key topics such as identifying sites for housing to meet the requirements set out by the Scottish Government. Preparation of the document begins with the evidence gathering stage which includes inviting communities to prepare a [local place plan](#) and preparing the evidence report.

The Planning Service can also prepare more detailed guidance, for example on design, which forms part of the Local Development Plan but is prepared at a later time. This is called Supplementary Guidance and must meet Scottish Government requirements on preparation, participation and adoption.

The next local development plan will be called City Plan 2030 and was approved in its proposed form in September 2021 and it is expected to be adopted in 2024.

The Local Development Plan

What you can expect from us:

- The programme for adopting City Plan 2030 and the preparation of the next local development plan – [City Plan 2040](#) – can be found in a document called the Development Plan Scheme at www.edinburgh.gov.uk/cityplan2030
- We will update this document annually.
- We will use a range of ways of making sure there are opportunities to comment on future plans including using the [Council's Consultation Hub](#), drop-in sessions, website information and workshops.

As stated above, the “Development Plan” for the city consists of National Planning Framework 4 and the Local Development Plan. Planning applications must be decided in line with the content of the Development Plan unless there are important planning reasons for an alternative decision.

Planning Applications

This charter explains what you can expect to happen when you want to make an application for planning permission or other planning consents and when you want to comment on someone else's application. It then explains what happens when making a decision on a planning application.

All applications for planning permission are grouped in terms of size and importance of the type of development that is being proposed. National developments are proposed by Scottish Government, are of Scotland-wide significance, and are the top tier in the hierarchy. An example is the Central Scotland Green Network. Below national developments are major developments which are of a size and scale to be considered of major importance. Examples might be a new shopping centre, a business park or a large-scale housing development. All development proposals which are not national or major are classed as local developments. Examples are house extensions, small scale housing development of less than 50 houses and changes to the use of a property.

Anyone proposing a national or major development must carry out [pre-application consultation](#) with the local community to allow them to be better informed and to have an opportunity to contribute their views to the developer prior to the submission of a planning application. Developers must submit a Proposal of Application Notice with details of consultation at least 12 weeks before they want to submit a planning application.

Further information is on our [major applications webpage](#).

Pre-Application Consultation

What you can expect from us:

- We will assess Proposal of Application Notices in accordance with the [Edinburgh Development Concordat](#) which sets out how the Council, communities and developers work together on major developments.
- We will expect developers to carry out more than the minimum consultation for more complex and contentious cases and we will encourage developers to set up websites to allow communities to access information and make comment more easily.

Further information can be found in our [Pre-Application Consultation Process Guidance Note](#).

Making an application for planning permission, and all types of applications, is quicker when done online and it helps to avoid many of the reasons for applications not being valid on receipt.

- Online applications are submitted via the Scottish Government ePlanning website at www.edevelopment.scotland.gov.uk.
- Forms can be downloaded from ePlanning.

As well as applications for planning permission, there are many other types of application depending on what it is you are proposing.

Heads of Planning Scotland have prepared [standards for the validation and of planning applications and other related consents](#).

If you are unsure whether you need planning permission or other consents, read our [online information](#) on when to make an application.

The completion and submission of planning application forms, and all other types of application, can be submitted by applicants themselves or using a professional agent, such as an architect.

Making an application for planning permission

What you can expect from us

- **Within 5 working days**, we will check your application and advise you of any problems. It is the responsibility of the applicant to ensure that their application is submitted correctly. Further information on the process and what should be submitted is in the [guide to the Validation of Applications](#).
- **Within 10 working days** of a valid application being received, we will send you an acknowledgement letter and inform you of the planning officer who will be dealing with it and the timescale for making a decision.
- If a professional agent is used to submit a planning application, we will deal with the agent rather than the applicant in all discussions and negotiations. It is the responsibility of the agent to keep their client informed of progress and of any requirements of, or delays to, the process.
- **Within 15 working days** of a valid application being received, we will carry out neighbour notification and consult on the application, where it applies. Notification involves sending a letter to all postal properties within 20 metres of the application site giving details of the proposal and highlighting that comments must be made to the planning service within 21 days from the date of the notification letter. Some applications are also advertised in the Evening News and a site notice is put up nearby.
- **Within 25 working days** of a valid application being received, we will visit the site where appropriate. The case officer will advise if minor changes are needed to make the proposals acceptable. If we do accept amendments during the application process, we will only arrange for neighbours to be re-notified if the changes raise new planning matters. However, if substantial changes are needed, we will refuse the application.

* Decision making times include period up to signing of any legal agreement, after which planning permission is issued. National average times are published annually by the Scottish Government here: <https://www.gov.scot/collections/planning-statistics/>

Time Performance Indicators

Major and Local Developments

We aim to issue decisions* within the timescales set in processing agreements and/or extensions, or faster than the national average time where bespoke timescales have not been agreed.

Householder Developments

We aim to issue decisions faster than the national average time.

Listed Building Consents

We aim to issue decisions within 8 weeks.

Commenting on someone else's planning application

If you wish to look at a planning application or decision, or on an application, you can do so via the [Planning and Building Standards Portal](#). Your comments cannot be treated as confidential for a number of reasons:

- If the application is refused, the applicant needs to know about objections if deciding to appeal;
- The closeness of an objector to the application site may be an important factor in the decision;
- Comments on an application are part of the background papers and have to be available under Freedom of Information and Environmental Information Acts.

There is no statutory requirement to consult on Certificates of Lawfulness for a Proposed Use or Development, non-material variations and Tree work applications. Comments received on non-material variations and tree work applications are not taken into account in the assessment of these applications.

Comments may be made in relation to Certificates of Lawfulness. However, they will only be taken into account where they raise matters in relation to the lawfulness of the application and not on planning issues as described below.

Only comments relevant to planning issues can be considered as part of the assessment of the planning application. Relevant planning issues include:

- traffic and parking
- appearance of the area
- loss of sunlight or daylight
- overshadowing
- economic benefits.
- noise and disturbance
- effect of cooking odours
- impact on a conservation area
- setting or character of a listed building
- loss of significant landscape features
- privacy

We cannot consider comments on non-relevant planning issues such as;

- loss of private view
- effect of development on property values
- building regulation matters.

Racist remarks may be forwarded to Police Scotland.

Our guide on [How to Comment on Planning Proposals](#) outlines how to ensure you make a valid comment.

Comments must be received within 21 days of the date of registration, neighbour notification letter, or advertisement in the press, whichever is later. Extra time is given for public holidays and if the application has an Environmental Impact Assessment.

Community Councils should contact the case officer if they need more time to comment.

What you can expect from us:

- You will have the opportunity to receive an automatic email acknowledgement when commenting online using the Planning and Building Standards Portal.
- We will send you a letter acknowledging receipt if you comment by letter or email.
- We will consider all comments on applications provided they are submitted on time and the comments are relevant to planning issues. We will only consider late comments if they raise important planning matters that were not previously considered. We do not accept anonymous comments.
- We will make a summary your comments known to the agent during the consideration of an application, but we will not make your personal details available at that time.
- We will only re-notify you of changes to the application if they raise new planning issues: changes can be viewed on the [Planning and Building Standards Portal](#).
- We are unable to discuss the merits or demerits of a case with objectors or other third parties when an application is being considered as this may affect the objective assessment of the proposal. We will not provide a direct response to the issues raised in the comments submitted.
- We will inform you of the decision on the planning application.
- Comments on Committee items will be publicly available online when the agenda is published for the meeting. Comments on delegated items will be publicly available online after the decision has been issued. We will redact personal information such as email addresses, phone numbers and signatures. Comments will be taken offline 6 months after the decision is issued.
- We will deal with requests for comments to be taken offline before 6 months as sympathetically as possible.

Making a decision on a planning application

Once the application, including the responses from consultees, and public comments has been assessed by the planning officer, a report of handling is prepared. Decisions on planning applications are taken in one of two ways. In some cases, the decision can be made by planning officers and is referred to as a “[delegated decision](#)”. Delegated decisions make up the vast majority of all decisions and enable quicker decisions on simpler cases. They are usually the less contentious, smaller applications, but can include cases with objections or which are being recommended for refusal.

In other cases, the planning officer makes a recommendation to the [Development Management Sub-Committee](#) or a Full Council meeting in some circumstances and the decision is then taken by the city’s councillors.

What can you expect from us:

- We will notify you or your agent within 4 working days of the decision being made.
- We will notify all those who have made comments on the application within 4 working days of the decision being made.
- We will place a copy of the decision notice and the report of handling on Planning and Building Standards Portal.

Planning permission lasts for 3 years although we can make a Direction for it to be longer or shorter.

If an applicant is unhappy about a delegated decision taken on a local development, or the application has taken longer than the legal time limit, they can request a review by the [Local Review Body](#).

In cases that cannot be decided by a Local Review Body, the applicant has the right to appeal to Scottish Ministers. Further information is available at www.dpea.scotland.gov.uk

There is no 3rd party right of appeal in Scotland. This means that if anyone commenting on an application is unhappy about the decision, they cannot ask for a review and they cannot appeal to Scottish Ministers. We will direct any aggrieved parties to our Report of Handling which explains the reasons for our decision. We are unable to respond if you think the decision was wrong. However, you can complain if you thought our processes or procedures were wrong in coming to the decision.

*Our Helpdesk is an email service with customer call-backs where necessary

If a scheme needs to be changed after the decision:

A Non-Material Variation can be requested for changes which are unlikely to raise any new planning issues. For changes which raise new planning issues requiring assessment, a new planning application will be required.

Further details on Non-Material Variations are available at [Non-Material Variations](#).

Seeking Advice

The Council is committed to giving advice on a range of planning proposals. Details of general planning advice and our pre-application service are online.

What you can expect from us:

- If you have a general enquiry about a planning matter, we will aim to respond within 10 working days. As part of this process, we will advise you to where you can find the information online.
- The Planning Help Desk operates between 9am – 1pm and will respond to general enquiries by email every weekday other than between Christmas and New Year. *
- The Council offers two tiers of [pre-application advice](#): **generic** and **bespoke**.
Generic advice is free on the Council website that customers can use to determine whether their proposals are in accordance with planning policies.
We will not generally give advice on the following types of development as the information can be found online; householders, windows, driveways, straight forward change of uses, adverts. Advice on these types of proposals can be accessed in the [planning quick guides](#).

Works where there is no Record of Permission

We understand that sometimes work is carried out and there is no record of permission. This is called retrospective works. This can be particularly frustrating when you are trying to sell your house.

In relation to Planning

If the works were completed more than 4 years ago to your house, they are then legal under planning law but if you need a formal letter to confirm this, you will need to apply for a [certificate of lawfulness](#). Other types of development such as a change of use, other than to a house, have a longer period (10years) before they become legal.

It may be that the works did not need planning permission but again you need to apply for a certificate of lawfulness if you want legal confirmation.

If you have a listed building and have done work to it without consent or confirmation that may need consent, you should read out guide to [Selling Your Home](#).

You can check [online whether work has consent](#).

Finally, if you are concerned that work has been carried out without permission, please fill in the [enforcement breach form](#). You can find out more in our [Enforcement Charter](#).

Retrospective Works - What you can expect from us:

- In all cases, the target response time is 10 working days.
- We will direct you to our online systems if you want to check whether work has permission.
- We will direct you to our enforcement breach form if you think work has been carried out without Planning permission.
- We will advise you to apply for a certificate of lawfulness if you need a legal decision on whether planning permission is needed.
- We will direct you to our guidance on Guide to selling your home if work has been done to your listed building without consent. Alternatively you can apply for listed building consent as we do not issue letters of comfort.

Information Requests

The Planning Service holds a great deal of information. Some has to be kept in perpetuity, but other information is only kept in accordance with a records retention schedule. Under the Public Records (Scotland) Act 2011 the Council is obliged to keep schedules of what records we keep and for how long we keep them. You can check if we've already published the information that you want. If you cannot find the information you want online, you can request information via our [Managing Information](#) webpage. Information requests are dealt with centrally within the Council and the Planning service will send any information requests to that unit for processing.

Anyone has a right to request information from a public authority. Many planning applications and certain data relating to building warrants are available online on the [Planning and Building Standards Portal](#).

Details of Tree Preservation Orders are online at www.edinburgh.gov.uk/privatelyownedtrees

What you can expect from us:

- We will hold information in accordance with our records retention schedule.
- We will make information available online in accordance with the [Council's publication scheme](#).
- The [Plan Store](#)* where you can view and copy paper records, when authorised to do so, will be open from 9am to 12 noon and 2pm to 4pm, Monday to Thursday. It is closed all day Friday and between Christmas and New Year.
- Document requests to the Plan Store can be made using the online request form, with all requests sent out by post / email
- We will send any environmental information requests to the Freedom of Information team for processing and you will receive a response within 20 working days.

* The plan store is currently closed to the public.

Complaints

We will consider all complaints made about the way in which your planning application, building warrant, enquiry or comment was dealt with. However, 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. As such we will not discuss the merits or de-merits of a decision and we will direct you to the Report of Handling which sets out the reasons for the decision.

The quickest way to sort things out is to talk to the officer concerned. However, if this does not work our formal [complaints procedure](#) has two stages:

- frontline resolution
- investigation

Frontline resolution

We will respond to your complaint within five working days. We aim to resolve your concerns within this timescale. If we need more time, we'll let you know. If you are not satisfied with our response you can ask us to review your complaint.

Investigation

We will appoint a senior Council officer to review your complaint. We will tell you who the Council officer is and respond within 20 working days. If your complaint is complex, we may be unable to resolve your concerns within this timescale. Instead we'll contact you to agree a different date.

If you are still not satisfied, you can then contact the [Scottish Public Services Ombudsman](#) (SPSO).

Data Protection

When handling personal data, the Council must do so fairly and lawfully in accordance with the General Data Protection Regulations. Our [privacy notice](#) sets out what happens to your details when you make a planning application or submit comments. You should note that your name, address and stance will be published on the public comments tab of the planning portal as soon as you make your comment. Personal details such as email addresses, phone numbers and signatures will not be published.

Where appropriate other "sensitive" personal information within documents will also be removed prior to publication online.

However, all other information relating to a planning application will be available for public inspection in line with the planning acts.

If you are unhappy that information about you is published in connection with a planning application, please contact the Council at planning@edinburgh.gov.uk and, depending on the nature of your concern, we will consider what we can do about the matter.

What you can expect from us:

- We will comply with the Data Protection Act when we publish information.
- We will redact any personal email addresses, phone numbers, signatures and other personal information from our online records
- We will consider whether we can remove information from our website if you are not happy about its publication.



Contact Us

Planning Enquiries

planning@edinburgh.gov.uk

www.edinburgh.gov.uk/planning

Sign up to the [Planning Blog](#) to keep up-to-date on planning related

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