

North Lanarkshire Council Report

Planning Committee

approval noting

Ref

Date 24/02/22

Enforcement Charter Review 2022

From Head of Planning and Regeneration

E-mail bowdenl@northlan.gov.uk

Telephone

Lorna Bowden
Tel: 07939280460

Executive Summary

The purpose of this report is to advise the Committee that the Council's Enforcement Charter is now approaching two years old and has been revised, as required by the Planning etc (Scotland) Act 2006 and to request that the Committee approve the revised contents of the Charter

Recommendations

The Committee is asked to approve the revised Enforcement Charter attached at Appendix A.

The Plan for North Lanarkshire

Priority Improve the health and wellbeing of our communities

Ambition statement (17) Ensure we keep our environment clean, safe, and attractive

1. Background

- 1.1 The Planning etc. (Scotland) Act 2006 requires planning authorities to produce an enforcement charter which sets out how the enforcement system works, how the public can report breaches of planning control, the role of the council and the service standards it sets itself. The charter must be reviewed every two years.
- 1.2 The Council's first Enforcement Charter was approved by the Committee on 20th May 2010 and published online in November 2010. The current version was approved by Committee on 30 April 2020.
- 1.3 It should be noted that there have been no changes to the Enforcement legislation which would have necessitated changes to the Charter since it was last published.

2. Report

- 2.1 The Charter explains how the enforcement process works, the role of North Lanarkshire Council: the service standards we set and what happens at each stage of what can be a lengthy process.
- 2.2 Enforcement is one of the most complex parts of the planning system. The aim of this Charter is to ensure that adopted procedures are fair and reasonable and that interested parties are kept informed and are made aware of what is required.
- 2.3 The main revisions are in response to feedback received from members of the public and one issue raised by the Public Services Ombudsman and aim to make the public more aware of the discretionary nature and practicalities of the enforcement system. It sets out the process and expands on the reasoning of when and why discretionary powers are used.
- 2.4 The enforcement process looks to protect the principles set out by the planning legislation and allows the resources available to be targeted towards matters that are more serious in nature and scale.

3. Public Sector Equality Duty and Fairer Scotland Duty

- 3.1 Fairer Scotland Duty
No impact - the aim of this Charter is to ensure that adopted procedures are fair and reasonable, and that interested parties are kept informed and are made aware of what is required.
- 3.2 Equality Impact Assessment
This is a review of our existing charter no negative impacts on equality groups or potential for infringement of individuals' human rights have been identified.

4. Impact

- 4.1 **Financial impact**
There will be no financial impact arising from this proposal
 - 4.2 **HR policy / Legislative impact**
There will be no impact arising from this proposal
 - 4.3 **Technology / Digital impact**
There will be no impact arising from this proposal
 - 4.4 **Environmental impact**
There will be no environmental impact arising from this proposal
 - 4.5 **Communications impact**
The charter has been reviewed to try to ensure it sets out our enforcement process and what we will and will not take action over is clearer for the public.
 - 4.6 **Risk impact**
There will be no additional risk impact arising from this proposal
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5. Measures of success

- 5.1 The measures of success would be an increased public awareness and understanding of the enforcement system which prioritises resources on addressing the most significant breaches including those where there is a risk of environmental harm.

6. Supporting documents

- 6.1 Appendix A – Enforcement Charter



Pamela Humphries
Head of Planning and Regeneration

**North Lanarkshire Council
Planning Enforcement Charter**

A guide to enforcing planning controls

January 2022

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Introduction

This Planning Enforcement Charter explains how the planning enforcement process works, our role and our service standards. It sets out the current powers available to planning authorities and the standards that North Lanarkshire Council has set.

Under planning legislation, we need to provide this Charter and review and update it every two years. By doing so we can ensure our service users have relevant information on our procedures, what to expect and what is required when they engage with the planning enforcement service.

What is a breach of planning control?

Planning permission is required for most development that takes place in Scotland. A breach of planning control is where development has been carried out without the required planning permission, or the failure to comply with any condition or limitation subject to which planning permission has been granted.

Planning enforcement also covers some other matters that do not need planning permission including:

- Advertisements such as billboards and hoardings that are not consented under the Advertisement Regulations
- Carrying out work to trees that are protected by a Tree Preservation Order (TPO), are within a conservation area or protected by a planning condition
- Concerns relating to High Hedges Act 2013
- Works in Conservation Areas that don't have consent
- Works to listed buildings that don't have Listed Building Consent

A breach of planning control is not a criminal offence and the purpose of planning enforcement is to resolve a problem rather than to punish a mistake.

What is not a breach of planning control?

Planning enforcement can only be used to address a breach of planning legislation.

Permitted development rights allow some alterations and extensions to be carried out without the need for planning permission. Where work doesn't require planning permission, or is considered permitted development, we do not have legal powers to act as there is no breach of planning control.

Other matters that are not controlled through planning legislation are:

- Boundary disputes and/or title deed enquiries
- Dangerous buildings

- Noise nuisance, including noise on construction sites unless specifically controlled by a planning condition
- Public health nuisance such as drainage issues resulting in the discharge of sewage or wastewater, accumulations of refuse which could provide harbourage for rodents or smells coming from commercial premises
- Fly tipping
- Flooding or blocked drains on roads, pavements or footpaths

Appendix 4 gives information on who to best contact regarding other legislation that may address some of the points noted above.

Time limits

Planning enforcement time limits are set in legislation.

A four-year limit applies to 'unauthorised operational development' (the carrying out of building, engineering, mining or other operations in, on, over or under land) and change of use to a single dwellinghouse. After four years following the breach of planning control, the development becomes lawful, and no enforcement action can be taken.

A ten-year limit applies to all other development including change of use (other than to a single dwellinghouse) and breaches of condition. After ten years, the development becomes lawful if no enforcement action has begun. There is no limit regarding enforcement action being taken against unauthorised works on a listed building.

How to report a breach of planning control

It is not practical, nor is it expected that we will be aware of every breach of planning control so the public can play a vital role in reporting a possible breach and any concerns should be raised with us.

To report a breach of planning control, [please use our online form](#). You will need to include:

- your name (we do not investigate anonymous complaints)
- your address
- details of what you are reporting
- the address or location of what you are reporting
- when did the work you are reporting take place
- who is responsible, if known
- any other information such as photographs and/or documents to provide more information on the work you wish to report.

Where we haven't been given enough information to investigate a complaint, we will get back to you.

Anonymous enquiries and confidentiality

We do not investigate anonymous complaints and where false contact information is given.

If you report something to us your details will be held confidentially. This is subject to the requirements of the Freedom of Information (Scotland) Act 2002. If you request total

confidentiality, this may limit our ability to take formal action as confidentiality cannot be guaranteed if the case leads to court proceedings.

Investigating a possible breach of planning control

An investigation begins with the case officer checking the historical information and assessing the site. The length of time taken to fully investigate a breach of planning will vary from case to case. It is not always possible to anticipate how a particular case will develop, nor how long it will take to investigate.

The length of time required to resolve a case or take action can be affected by a number of factors. Progress can depend on the need to gather further evidence, to allow negotiations to take place or for formal procedures to be concluded. Similarly, an application to regularise the breach of control or an appeal against a decision of the planning authority can also influence the time taken.

We recognise that delays can be a source of considerable frustration to those submitting information, particularly if they consider their amenity is affected. We will try to keep interested parties informed after six weeks of either the outcome or of significant stages in the progress of a case.

Priority for investigating complaints is based on matters such as the level of impact in planning terms of the breach, and the significance of the site.

Breaches that are high impact in planning terms

Examples of breaches of planning control that have a high impact in planning terms and those involving significant or environmental harm such as:

- Unauthorised works to a Listed Building or Scheduled Ancient Monument
- Unauthorised land engineering or waste tipping
- Unauthorised felling of a tree covered by a Tree Preservation Order
- Demolition of a building in a Conservation area
- Non-compliance with site investigation requirements

Breaches that are low impact in planning terms

Examples of breaches of planning control that have a lower impact in planning terms include:

- Minor breaches that minimally exceed permitted development limits
- Minor works without planning permission. For example, walls, fences and satellite dishes
- Small scale householder developments and domestic outbuildings such as sheds, home offices or outhouses
- Work that has gone undetected for an extended period (but still within the period when action could be taken)

Acting on breaches of planning control

The purpose of planning enforcement is to resolve the problem rather than to punish the mistake. Our aim will always be to negotiate and work with the developer to resolve the issue.

A breach of planning control is not a criminal offence and any action we take must be appropriate to the scale of the breach.

We have statutory powers to:

- Investigate breaches of planning control and the conditions attached to planning consents.
- Take formal action where a satisfactory outcome cannot be achieved by negotiation.

Our planning enforcement powers are discretionary, so not all breaches will result in formal action being taken. Planning enforcement legislation is designed to protect the wider public interest, rather than the interests of private individuals.

This means that even where a breach of planning control has been identified we have to consider if it is in the wider public interest to take enforcement action. We may consider some breaches of planning control to be acceptable due to their limited impact or it may be more appropriate to see the submission of a retrospective planning application

The decision not to act is a necessary tool to ensure that resources are targeted to matters that are serious in nature and scale while protecting the principles set out in planning legislation.

Enforcement action will only be taken if we consider such action to be expedient, having regard to the provisions of the development plan and any other material considerations. In addition, any enforcement action should always be commensurate with the breach of planning control to which it relates.

In making this assessment we gather evidence and consider the nature and scale of the breach, and whether it unacceptably affects public amenity and or the built or historic environment.

Only a relatively small number of cases require formal enforcement action. This may be a Notice requiring a retrospective application to be made, an Enforcement Notice or a Breach of Conditions Notice. In some instances, formal action may require the agreement of elected members.

Appeals against enforcement notices are considered by Scottish Ministers and dealt with, in most cases, by Reporters from the Directorate for Planning and Environmental Appeals. Anyone who has submitted information on a breach of planning control is advised of the appeal.

There is no right of appeal against a breach of condition notice.

Failure to comply with a Notice may result in the Planning Authority taking further action. This can include a range of possible options including:

- Referring the case to the Procurator Fiscal for possible prosecution

- Carrying out any work required by an enforcement notice and charging the person for the costs involved
- Seeking a court interdict to stop or prevent a breach of planning controls

In addition to or instead of the above other action may be appropriate. This can include a range of possible options including:

- Serving of a Stop Notice
- Carrying out work and charging the person for the costs involved
- Seeking a Court interdict to stop or prevent a breach of planning controls

Our service standards

Our service standards tell you what level of service you can expect from us. They define what you can expect from us and how we will deliver that.

1	We will review this charter every two years to make sure it remains relevant and effective.
2	If you report work without permission, we will send you an acknowledgement within five working days. The acknowledgement will include a reference number and contact details. If preliminary checking of a complaint indicates that there is no breach of planning control, we will advise you and no further action will be taken.
3	<p>If you report work without permission, you will get a formal response within six weeks to advise of our decision on the case, or to advise that further investigation is needed before we decide.</p> <p>We will give priority to significant breaches of planning control. These include:</p> <ul style="list-style-type: none"> ○ significant or irreversible harm to the environment ○ irreversible damage to listed buildings ○ unauthorised felling of trees and matters affecting trees protected by Tree Preservation Orders
4	Where a planning breach cannot be resolved and action is justified, a formal notice will be served. We will write to the recipient of the notice to explain what is required, the timescales involved and the available options to resolve the issue.
5	<p>Where the terms of any enforcement notice are not complied with, every effort will be made to resolve the case. Options for further action will vary depending upon the nature of the case, but include:</p> <ul style="list-style-type: none"> ○ in the case of an enforcement notice, direct action by the council ○ for either an enforcement notice or a breach of condition notice, the matter being referred to the Procurator Fiscal for possible prosecution or alternatively offering the opportunity to pay a fixed penalty (issue of a fixed penalty notice)

6	We will respond to formal complaints within the time frames set out in the council's formal complaint procedure. The council will monitor all complaints and suggestions made and use them to review and improve the service provided.
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Making a suggestion or complaint about planning enforcement

We hope you will be satisfied with our planning enforcement service.

If you have any suggestions, concerns or difficulties, we want to hear from you. We are committed to improving our service and dealing promptly with any failures.

We will consider all complaints made about the way an enforcement enquiry was dealt with. Some people may disagree with the outcome of an investigation but, of itself, that is not grounds for complaint. As noted previously there is a separate appeals procedure for a recipient of an enforcement notice.

In the first instance, any concerns regarding the enforcement service should be discussed with the member of staff involved in the investigation. If you are still not satisfied, talk to their line manager.

If you are not happy with their response you may submit a formal complaint using our [complaints procedure](#). This procedure has two stages. The first stage is frontline resolution which aims to resolve complaints within five working days. Stage two complaints require further investigation, and we aim to respond to these within 20 working days. Formal complaints may be made online or in writing.

Lastly, if having made a formal complaint about service provided by us and you remain dissatisfied with the council's handling of your complaint, having exhausted the council's complaint procedure, you have the right to take your complaint to the [Scottish Public Services Ombudsman](#) (SPSO).

- SPSO telephone: 0800 377 7330
- SPSO email: ask@spsso.org.uk

Generally, you must contact the Ombudsman within 12 months.

Appendix 1: Council powers

North Lanarkshire Council has powers to enter land to:

- Establish if there has been a breach of planning control
- Check if there has been compliance with a formal notice
- Check if a breach has been satisfactorily resolved

This power applies to any land and may involve officials entering land adjacent to the site of the breach.

Appendix 2: Enforcement powers

The planning enforcement powers available to us are set out in legislation.

This legislation is the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc. (Scotland) Act 2006. Listed building enforcement notices are covered by the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

The Planning Acts are available from HMSO, 71 Lothian Road, Edinburgh and from the [governments website](#).

Government policy on planning enforcement is set out in Planning Circular 10/2009: Planning Enforcement. The circular is available from [Scottish Government website](#).

Types of Notice

Breach of Condition Notice

This is used to enforce the conditions applied to any planning permission. It comes into effect 28 days after being served. 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. Failing to comply with a breach of condition notice can result in the council seeking to prosecute, with a fine of up to £1,000, if convicted.

Enforcement Notice

This is generally used to deal with unauthorised development but can also apply to 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 notification period before it comes into effect (a minimum of 28 days - but see the section 8 below on advertisements)
- The steps that must be taken to remedy the breach
- A further period (known as the compliance period) which is set by us and gives the recipient time to carry out any works required to comply with the notice. There is no minimum or maximum period, so long as the amount of time allowed is reasonable and reflects the amount of work that may need to be undertaken

There is a right of appeal and the terms of the notice are suspended until a decision is reached.

Failure to comply with an enforcement notice within the time specified is an offence and may lead to a fine of up to £20,000 in the Sheriff Court. Failure to comply may also result in us taking Direct Action to correct the breach (see other powers below).

Listed Building Enforcement Notice

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

Stop Notice

This is used in urgent or serious cases where unauthorised activity must be stopped, usually on grounds of public safety. When a stop notice is served, the planning authority must also issue an enforcement notice. There is no right of appeal against a stop notice and failure to comply is an offence. An appeal can be made against the accompanying enforcement notice. If a stop notice is served without due cause, or an appeal against the enforcement notice is successful, the Stop Notice may be quashed, and the council may face claims for compensation. The use of stop notices therefore needs to be carefully assessed by us.

Temporary Stop Notice (TSN)

This is used to require the immediate halt of an activity which breaches planning control. The provisions make an exception in that a TSN cannot prohibit the use of a building or a caravan as a dwelling house. TSNs are enforceable for 28 days, after which they expire. They may, however, be followed by further enforcement action such as an Enforcement Notice and Stop Notice. There is no provision to appeal against a TSN.

Fixed Penalty Notice (FPN)

This provides us with an alternative process, instead of the option to seek prosecution, to address situations where a person has failed to comply with the requirements of an enforcement notice (EN) or a breach of condition notice (BCN). By paying the penalty imposed by the FPN, the person will discharge any liability for prosecution for the offence. They will not, however, discharge the obligation to comply with the terms of the EN or BCN and we retain the power to take direct action to remedy the breach and recover the costs of such work from that person. We are not required to offer the option of paying a fixed penalty. Any decision to do so would be dependent on considerations such as the scale of the breach and its impact on local amenity.

Notice Requiring Application for Planning Permission for Development Already Carried out

Where we consider that a development which does not have planning permission may be acceptable (for example, 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; we 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

This is used to obtain information about activities on land where a breach of planning control is suspected. It is served on the owner or occupier, on a person with any other interest in the land or who is carrying out operations on the land. They are required to provide information about operations being carried out on the land and any conditions or limitations applying to any planning permission already granted. 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)

This provides limited powers to obtain information on interests in land and the use of land. Failure to provide the information required is an offence and can lead to a fine by the courts.

Notice under Section 179 (of the Town and Country Planning (Scotland) Act 1997)

This allows us to serve a notice on the owner, lessee or occupier of land which is adversely affecting the amenity of the area. This is also known as an 'Amenity Notice' and sets out the action that needs to be taken to resolve the problem within a specified period. As it can prove difficult to recover such costs and given budgetary constraints the use of such notices needs to be carefully assessed. These will normally only be pursued when there is a significant adverse impact upon amenity of an area; the works required are in the wider public interest and there are no other means of addressing the concerns.

Interdict and Interim Interdict

An interdict is imposed by the courts and is used to stop or prevent a breach of planning control. Court proceedings can prove costly, and councils normally only seek interdicts in serious cases or where enforcement notices have been ignored in the past. However, we can seek an interdict in relation to any breach without having to use other powers first. Breaching an interdict is treated as a contempt of court and carries heavy penalties.

Direct Action

These powers enable us to carry out any steps required by an enforcement notice, including such steps to discontinue a use of land and such steps for the purpose of making development comply with the terms of any planning permission which has been granted in respect of the land, or for the purpose of removing or alleviating any injury to amenity which has been caused by the development. If direct action is undertaken, we will seek to recover any costs it incurs from the landowner.

Appendix 3: Planning enforcement and advertising

The display of advertisements is covered by legislation.

This legislation is the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984. Many advertisements are displayed with what is called 'deemed consent' which means they do not require planning permission if they meet the criteria and conditions set out in the regulations. One of these conditions is that the landowner has given permission for the advertisement to be displayed on their land.

Displaying an advertisement in contravention of the regulations is an offence and, if convicted in court, an offender can be fined. The court can impose further fines for each day the breach of the regulations continues.

We have the power to serve an enforcement notice. This specifies a time period (normally 28 days) for compliance with the notice. However, this period can be reduced to seven days if we believe there is an urgent need for the advertisement to be removed or altered in the interests of public safety, or if the advertisement can be removed without any other work being required.

An enforcement notice can also require that a particular piece of land should not be used to display advertisements. This remains in force even if the original advertisement is removed. Any subsequent advertising on this site would amount to a breach of the notice.

We also have powers to remove or destroy placards and posters that do not have planning permission or deemed consent. If the person who put up the poster can be identified, they must be given at least two days notice that we intend 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.

Appendix 4: Other useful contacts

[Report a dangerous building](#)

[Report a noise nuisance](#)

[Report a public health nuisance](#)

[Report fly tipping](#)

[Report flooding or locked drains on roads, pavements or footpaths](#)

[Scottish Environment Protection Agency \(SEPA\)](#)

[Directorate of the Built Environment](#)

[Planning Aid Scotland](#)

[Directorate for Planning and Environmental Appeals](#)

[Health and Safety Executive](#)

[Advertising Standards Authority](#)