

Report

Report to:	Planning Committee
Date of Meeting:	23 March 2021
Report by:	Executive Director (Community and Enterprise Resources)

Subject:	Planning Enforcement Charter
-----------------	-------------------------------------

1. Purpose of Report

1.1. The purpose of the report is to:-

- ◆ seek Committee approval to revise the Council's Planning Enforcement Charter

2. Recommendation(s)

2.1. The Committee is asked to approve the following recommendation(s):-

- (1) Approve the amendments to the Council's Planning Enforcement Charter set out in the appendix to this report, subject to the Head of Planning and Economic Development being authorised to modify the document to take account of drafting, presentational and technical matters, prior to publication.

3. Background

- 3.1. Section 158A of the Town and Country Planning (Scotland) Act 1997 requires a planning authority to prepare an enforcement charter. It should contain the Council's policies for taking enforcement action; how members of the public can report breaches of planning control; and information on how the enforcement system works. The charter must be kept under review and be updated and re-published at least every 2 years.
- 3.2. The current version of the charter includes a priority system to ensure that officers prioritise their responses to potential breaches. This established hierarchy gives priority to cases that have the most serious potential effects and which may affect important or sensitive sites. They include those where the unauthorised works are causing an immediate threat to public safety or significant and immediate harm to the amenity of an area (due to the impact for example of additional noise and pollution or the visual impact). Cases involving damage to listed buildings, designated natural or historic sites and conservation areas also fall into this high priority category. These require a response immediately, or within one working day.
- 3.3. Cases which are of a medium priority, require a response within 5 working days. This can include ongoing building operations or the change of use of land or buildings which are not significantly harming amenity and non-compliance with drawings approved by a planning permission or any conditions attached to the consent. Finally, a lower priority is given to cases where the unauthorised development reported is likely to be small scale in nature and unlikely to have a major effect on amenity or public safety. Circumstances where the complaint is anonymous was added to this category at the last review. They should be responded to within 10 working days.

- 3.4 The charter highlights that formal enforcement action will only be considered where it is in the public interest to do so which reflects national policy on planning enforcement. For example, taking action is not appropriate in order to resolve a neighbour dispute. The most recent update, approved by Committee in February 2019, clarifies when enforcement action will be taken, how unauthorised works to protect trees would be dealt with, how breaches can be reported, who a notice would be served on and how a retrospective planning application will be assessed.

4. Review of the Planning Enforcement Charter

- 4.1 The following table shows that the number of enforcement cases investigated by the service has increased significantly in the period since 1 April 2020 compared to previous years.

2017/2018	2018/2019	2019/2020	2020/2021
194	187	188	280

A key part of the review of the current charter was to consider whether the system for the prioritisation of enforcement cases remains appropriate in view of the current workload. Overall, it is considered that the existing hierarchy is relevant as are the timescales for investigating each type of priority. The addition of anonymous complaints as a low priority has been reviewed and it is noted that these have often related to more minor matters that have resulted from neighbour disputes or private legal matters. Given the upsurge of unauthorised works that are being reported, it is not considered an efficient use of resources to continue to investigate anonymous complaints unless the alleged unauthorised works relate to a case which would cause a significant level of harm (ie are in the high priority category).

- 4.2 It is therefore proposed that anonymous complaints no longer be investigated. It is expected that, if the complaint is valid, the complainant would be willing to provide their details. It is always preferable that a complainant provides these as it allows officers to put their location and relationship to the alleged breach into context. The Service always respects requests for confidentiality and treats personal data in accordance with the data protection legislation. However, the Council is subject to information requests and there may be limited circumstances where the identity of those reporting breaches has to be released. This is made clear in the charter. Notwithstanding this, should an anonymous complaint be received that relates to a case which would cause a significant level of harm, it is proposed that this would continue to be investigated.
- 4.3 Additional changes to the charter are also proposed as a consequence of the legislative requirements set out in the Planning (Scotland) Act 2019. Section 42 of the Act increases the penalties for non-compliance with notices served by the Council. Should an enforcement notice not be complied with, the maximum fine that can be issued by the Sherriff Court on conviction has been increased from £20,000 to £50,000 and, for a breach of condition notice, from £1,000 to £5,000. In addition, section 44 states that the charter should also contain a statement in relation to the planning authority's monitoring of compliance with planning permissions which have been granted in respect of major developments including how the authority will monitor compliance with such planning permissions, record its findings, and how the authority will make such records available to the public. The enforcement charter has, therefore, been updated to reflect these changes in legislation when they come into effect. In addition to these changes, other minor wording changes are included to clarify how to contact the Enforcement Team and on legislative powers available to the Service.

5. Next Steps and Timescale

- 5.1. Following Committee approval, it is intended that the revised charter, attached as an appendix to the report, would be published on the Council's website and form the basis for guiding the Service's approach to the application of its enforcement powers. In addition, in accordance with legislation, 2 copies will be sent to Scottish Ministers and a copy placed in each public library once they are open again to the public.

6. Employee Implications

- 6.1. There are no employee implications.

7. Financial Implications

- 7.1. There are no budgetary implications at this stage. Any publishing costs can be met from existing revenue budgets.

8. Climate Change, Sustainability and Environmental Implications

- 8.1. There are no implications for climate change, sustainability or the environment in terms of the information contained in this report.

9. Other Implications

- 9.1 There would be a reputational risk if the Council did not provide an updated Planning Enforcement Charter.

10. Equality Impact Assessment and Consultation Arrangements

- 10.1 This report does not introduce a new policy, function or strategy or recommend a change to an existing policy, function or strategy and therefore, no impact assessment is required.
- 10.2 There is also no requirement to undertake any consultation in terms of the information contained in this report.

Michael McGlynn

Executive Director (Community and Enterprise Resources)

3 March 2021

Link(s) to Council Values/Ambitions/Objectives

- ◆ Improve the quality of life of everyone in South Lanarkshire
- ◆ Accountable, effective, efficient and transparent
- ◆ Make communities safer, stronger and sustainable

Previous References

- ◆ Report to Planning Committee 26 February 2019 - Planning Enforcement Charter

List of Background Papers

- ◆ South Lanarkshire Planning Enforcement Charter

Contact for Further Information

If you would like to inspect the background papers or want further information, please contact:-

Gwen McCracken, Planning Team Leader, Montrose House, Hamilton

Ext: 4672 (Tel: 01698 454672)

E-mail: gwen.mccracken@southlanarkshire.gov.uk