

Report

Report to:	Planning Committee
Date of Meeting:	14 December 2021
Report by:	Executive Director (Enterprise Resources)

Subject:	Planning Enforcement Charter
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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) that the Council's amended Planning Enforcement Charter, attached as Appendix 1 to the report, be approved 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. Scottish Government policy on planning enforcement is set out in Circular 10/2009. As a general principle it states that Planning authorities have discretion to take enforcement action against any breach of planning control if they consider such action to be expedient, having regard to the provisions of the development plan and any other material considerations. Considering whether any particular formal enforcement action is appropriate should be guided by the following considerations:-

- ◆ Enforcement action should only be necessary if it is in the public interest to do so.
- ◆ In considering if enforcement action is appropriate, consideration should be given as to whether the breach of control would affect unacceptably either public amenity or the use of land and buildings meriting protection in the public interest.
- ◆ Enforcement action should always be commensurate with the breach of planning control to which it relates. For example, it is usually inappropriate to take formal enforcement action against a trivial or technical breach of planning control which has no material adverse planning implications.

- 3.3. Many enquiries the Council receives relate to unauthorised development by small businesses or the self-employed and development carried out by householders. In the case of the former the circular states that, although some breaches of control are clearly deliberate, in many cases the owner or operator of a business has carried out unlawful development in good faith believing that no planning permission is needed. The initial aim in this type of case should be to explore whether the business can be allowed to continue on the site at its current level of activity, or perhaps less intensively. The advice is to suggest ways in which the planning issues may be overcome. This may result in the grant of conditional planning permission, enabling the owner or operator to continue in business at the site without harm to local amenity. Before taking formal enforcement action informal discussion should take place to resolve the problem by minimising harm to local amenity caused by the business activity. If this cannot be achieved the Planning and Economic Development service will seek the possible relocation of the business to another site.
- 3.4. In the case of unauthorised householder development, planning authorities are asked to consider that the householder may have been unaware of the need for planning permission, or that the development qualified as permitted development. Enforcement action should not normally be taken in order to remedy a slight variation in excess of what would have been permitted. However, if the breach is clearly unacceptable, then formal enforcement action should be taken.
- 3.5 As a general rule, while it may be possible to resolve a breach of planning control through informal negotiations, particularly where the breach is relatively minor and/or unintentional, where such an approach is initially unsuccessful, further negotiations should not be allowed to delay whatever formal enforcement action may be required to make the development acceptable on planning grounds, or for it to stop.

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.

2017/18	2018/19	2019/20	2020/21	From 1 April 2021
194	187	188	280	270

A key part of the review of the current charter was to consider whether the current process for dealing with the increasing scale of enforcement cases remains appropriate in view of the current workload. This has resulted in the development of a four stage process and this is described as follows.

4.2. Stage 1 - Receipt of enquiry

This initial stage involves checking whether the enquiry relates to a planning matter.

The list of breaches the Planning Enforcement Team will not investigate include:-

- ◆ Land ownership disputes
- ◆ Enforcement of conditions on title deeds
- ◆ General maintenance of land - this includes maintenance of open space within housing developments
- ◆ Clearing land of trees and shrubs (unless protected or in Conservation Area)
- ◆ Untidy land/Fly tipping and abandoned vehicles
- ◆ Health and safety matters/site working practices
- ◆ Construction working hours
- ◆ Content of an advertisement
- ◆ Parking on Public Road/blocking driveways
- ◆ Unsafe structure/buildings
- ◆ Light/noise/odour complaints (unless covered by a planning condition)
- ◆ Any development on Council owned land including works to Council houses
- ◆ A prediction that something might happen

Where a complaint falls under the remit of another Council Service, it will be forwarded to the relevant Service to investigate and respond direct.

4.3. Stage 2 Investigation

Once it is confirmed that the enquiry is a planning matter, the main purpose at this stage is to identify if a breach has actually occurred and this normally involves a site visit. The timescales for this depend on the priority the case is given; the following guidelines apply:-

High Priority Cases (Site visit made within 5 working days of the original enquiry)

These cases are time critical and have a severe impact on public/road safety and/or public amenity and are causing significant harm

- ◆ Causing immediate harm to amenity of the environment for example landfilling or large scale engineering works
- ◆ Active works to a listed building including demolition
- ◆ Felling of protected trees
- ◆ Works likely to adversely affect a designated natural or historic site of international or national importance
- ◆ Works likely to irreparably adversely affect a conservation area including demolition
- ◆ Works causing an immediate danger to public/road safety

Medium Cases (Site visit made within 4 weeks of the original enquiry)

Cases that have a significant impact on public amenity and/or public safety and cause a degree of harm

- ◆ Ongoing building works or changes of use that are not significantly affecting public amenity or safety
- ◆ Works unlikely to give rise to severe or lasting harm
- ◆ Minor unauthorised works affecting a listed building or conservation area
- ◆ Departure from approved plans or a breach of condition that would cause demonstrable harm to the amenity of an area or public safety

- ◆ Works at a residential property that affect the amenity of the immediate area including the running of businesses or operation as a short term let.

Low Priority Cases (Site visit made within 8 weeks of the original enquiry)

Cases that are generally technical breaches which have low/no impact and cause localised harm

- ◆ All householder development
- ◆ Advertisements with low road safety impact
- ◆ Minor alterations to business premises
- ◆ Unauthorised development or breaches of condition that have limited or no impact on public amenity

When, following investigation, Planning Enforcement find a planning breach has not occurred or that it is immune from action, the case is closed and customers are informed with an explanation of the decision.

4.4. Stage 3 Triage Assessment

Where a breach of planning control is established, Stage 3 focuses on deciding whether to take formal enforcement action and, if so, what form. Planning enforcement is a discretionary function and formal action will only be taken where it is in the public interest to do so. A triage assessment is carried out to determine the most appropriate course of action whereby the breach will be categorised in terms of the nature and severity of the breach and the severity of impacts arising, including the effect associated with not halting the breach. This involves assessment against planning policies and other material planning considerations, taking into account whether the breach causes 'harm' to public amenity, land or buildings meriting protection in the public interest. Breaches will be categorised as follows:-

a) Breach Minor or Acceptable in Planning terms

These are generally minor breaches in scale and impact and accord with planning policies. It will generally be the case that it will not be in the public interest to take formal action and the case will be closed.

b) Breach could be made Acceptable with modifications/planning conditions

These are breaches that could be made acceptable or regularised with some minor amendments. This may result in the submission of a retrospective planning application.

c) Breach Unacceptable

These are cases where the breach is more significant in scale and unlikely to be capable of being made acceptable in planning terms, or at least without significant amendments, or requires urgent action to prevent further harm and impact on public amenity, public safety or the environment.

4.5. Stage 4 Outcomes

Once the breach is categorised the action to be pursued can be determined ranging from taking no action, seeking a retrospective application to regularise or make development acceptable, to the taking of enforcement action to halt or put right a breach.

In many cases no further action will be taken if the breach falls into category A above and the case will be closed.

In situations where action is deemed necessary there are three main approaches which may be taken.

a) Negotiate a solution

This involves trying to sort out the situation by negotiating with the person who is responsible for breaking planning control, rather than immediately taking enforcement action against them. This will normally mean the person responsible being asked to stop the activity and get them to carry out work to put right any harm that it has caused; or modify it so that the development does not require planning permission. The person responsible will be given a specific amount of time to meet either of these requirements. The length of time will depend on how serious the problem is and any harm it is causing.

b) Make a retrospective application

In some cases, it will be appropriate to ask the person responsible to submit a retrospective planning application. Until a decision is made on the retrospective application, formal action will not be taken. A retrospective application will only be encouraged where the situation has no negative effects or if the operations or work could be made acceptable by placing conditions on the planning permission. This does not however prevent the developer submitting an application where they are advised it is unlikely it will be granted.

Retrospective planning applications are dealt with like any others including the normal neighbour notification and publicity being carried out. A decision on the application will take into account the Local Development Plan, responses from consultees and the impact on the area and public safety. The application cannot be refused simply because it is retrospective. If planning permission is granted or if the unauthorised activity stops and any harmful effects are put right, enforcement action will not be taken.

c) Take formal enforcement action

If the problem continues beyond the timescale given to put right any harmful effects or to submit a planning application, formal enforcement action will be taken. We may also take action where a retrospective application is unacceptable on its planning merits and cannot be made acceptable by placing conditions on it. Taking action has to be in the public interest not because someone does not have planning permission or does not make a retrospective planning application. Only a relatively small number of cases result in formal enforcement action.

4.6. It is only when someone who has been served with a notice does not comply with its requirements that an offence under the Planning Act is committed. If this is the case the options available to the Council include:-

- ◆ referring the case to the Procurator Fiscal for possible prosecution
- ◆ serving a fixed-penalty notice
- ◆ carrying out work to put the problem right and charging the person for the costs involved

- ◆ getting a court order to stop or prevent someone from breaking planning controls
- ◆ seeking prosecution involves reporting the case to the Procurator Fiscal. If the Fiscal accepts a case, the matter is referred to the Sheriff Court. If the case is not accepted, or the case is dismissed by the Court, the Council will not continue with enforcement action. It is for this reason that it is more appropriate to work with the person who has committed the breach to try and remedy it through negotiation. The Council can serve a Fixed Penalty Notice if the notice is not complied with. The responsible person has the option to pay, within 30 days, the fixed penalty, which would indemnify them from prosecution. This is an option that will be explored further. Carrying out the work to remedy the breach is a last resort due to the costs involved and the problems of recovering the costs from the person responsible.

5. Next Steps and Timescale

- 5.1. If approved, it is intended that the revised Charter 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 two 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 climate change, sustainability or environmental implications 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. 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)

2 December 2021

Link(s) to Council Values/Ambitions/Objectives

- ◆ Accountable, effective, efficient and transparent
- ◆ Ambitious, self aware and improving
- ◆ Improve the quality of life of everyone in South Lanarkshire

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:-

Tony Finn Planning and Building Standards Manager, Montrose House, Hamilton

Ext: 4672 (Tel: 01698 454672)

E-mail: tony.finn@southlanarkshire.gov.uk

Planning and Economic Development Services Planning Enforcement Charter

A guide to enforcing planning control

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1 Introduction

Planning permission is needed for most types of development, including new buildings and extensions and the change of use of land or buildings. However, some minor work (known as permitted development) can be carried out without applying for permission.

Sometimes developers or householders undertake work without planning permission or fail to keep to the permission they have been given. When such works are undertaken, this is referred to as a **breach of planning control**. This is not itself a criminal offence. This only occurs when a notice served by the Council has not been complied with in the timescale required.

The purpose of planning enforcement is to resolve the problem rather than to punish the mistake. In addition, any action taken has to be proportionate to the scale of the breach.

The Council has legal powers to investigate breaches of planning control. It can take formal action where a satisfactory outcome cannot be achieved by negotiation. However, enforcement is a discretionary power. That means that, even where there is a breach of planning control, the Council has to consider the breach against the planning policies of the Local Development Plan and whether it is in the public interest to take enforcement action.

The Council has statutory duty to prepare an Enforcement Charter and to review it at least every 2 years. It explains how the enforcement process works (including matters we cannot investigate); what happens at each stage of what can be a lengthy process; and the service standards we have set. It aims to make sure that our procedures are fair and reasonable and that we keep everyone involved informed when enforcement issues arise. The Charter also explains the current powers available to the Council.

The Planning Enforcement pages on the website includes useful information on planning enforcement to compliment the Planning Enforcement Charter. The website explains how to report a breach of planning control to the Council, how we process complaints relating to breaches of planning control, and information on enforcement powers. The Enforcement Register can also be found there.

SERVICE STANDARD

We will carry out our investigations in accordance with the following key values

Independence: We will make our decisions based on a fair, impartial and objective assessment of what is in the public interest and the level of harm caused by the breach

Integrity: We will be open in our contact with the customers while preserving their confidentiality

Sensitivity: We recognise the needs of the customers involved in the enforcement process

Professionalism: We will investigate and record cases thoroughly and accurately

2 Planning Enforcement

What we Investigate

The Planning Enforcement Team will investigate the following enquires about alleged breaches of planning control

- Work being carried out without planning permission or listed building consent
- Unauthorised change of use of land of buildings
- Not following conditions attached to a planning permission already granted
- Not complying with approved drawings and plans on a planning permission
- Works to trees that are protected by a Tree Preservation Order or within a Conservation Area.
- Unauthorised advertisements

There will be cases where the work that has been carried out is permitted development because of its size and position and does not require planning permission in the first place. It is also not always the case that works to a listed building need consent if that work does not affect its character. In addition, there are many situations where running a business from a house does not require permission. You can get further guidance on these matters by contacting the Planning Service.

Time Limits for Enforcement Action

Where breaches are identified we have statutory time limits in which we can pursue enforcement action. This means that where a breach has been in place for a number of years the Council is prevented from taking action. It is deemed to be lawful. The relevant time limits are:

A four year limit – this applies to “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, no enforcement action can be taken.

A ten year limit – this applies to all other development including a change of use (other than to a single dwellinghouse) and breaches of condition. After ten years, no enforcement action can be taken.

What we will not investigate

There are a number of matters that we will not investigate because they are legal or civil matters or can be dealt with by other services within the Council (in which case we will forward the enquiry to the relevant service to investigate).

- Land ownership disputes
- Enforcement of conditions on title deeds
- General maintenance of land - this includes maintenance of open space within housing developments
- Clearing land of trees and shrubs (unless protected or in Conservation Area)
- Untidy land/Fly tipping and abandoned vehicles
- Health and safety matters/site working practices
- Construction working hours
- Content of an advertisement
- Parking on Public Road/blocking driveways
- Unsafe structure/buildings
- Light/noise/odour complaints (unless covered by a planning condition)
- Any development on Council owned land including works to Council houses
- A prediction that something might happen

Anonymous Complaints

Anonymous complaints about suspected breaches of planning control will generally not be investigated. Only in exceptional circumstances will anonymous complaints be investigated where the breach would lead to serious harm to public amenity or public safety,

SERVICE STANDARD

By publishing our standards and targets, we aim to improve our enforcement service so we respond to the needs of our customers. We will monitor this charter to make sure that we are meeting standards and targets.

3 Reporting a Breach of planning control

Members of the public have a vital role in reporting situations where control has been broken. If you are concerned that someone is carrying out work without permission or not keeping to planning permission they have been given or any conditions attached to it, please contact the Planning Enforcement team. You can see decision notices for planning applications online at www.southlanarkshire.gov.uk.

You should report a breach using an online form.

https://www.southlanarkshire.gov.uk/info/200145/planning_and_building_standards/321/planning_enforcement/2

The following information is important and helpful to us when you report a suspected case where planning control has been broken.

- The address or location of the property or land involved where the suspected breach has taken place.
- Full details of the suspected problem (for example, details of the building work or activities being carried out, or the particular condition on a planning permission which you think may not be being kept to).
- Dates and times when the activity is carried out or when the building work began, if this applies.
- Details of any problems caused by breaking the planning controls.
- Details of your name, phone number, address and e-mail address, if you have one are helpful if you want to know the outcome of an investigation into your enquiry.
- Any photographs you have of the alleged breach

Confidentiality

We will do our best to honour requests for confidentiality and treat personal data in accordance with data protection legislation. We are however subject to information requests and we may have to release personal information in some limited circumstances. Requests for total confidentiality may also limit our ability to take formal action and we cannot guarantee this if the case leads to court proceedings.

SERVICE STANDARD

Valid enquiries will be registered and acknowledged within 10 working days of receipt. The acknowledgement will include a reference number and details of the case officer

4 Enforcement Policy

Our policy is required to comply with national policy which is set out in Circular 10/2009 – Planning Enforcement. The Council is required to consider whether the breach of control would affect unacceptably either public amenity or the use of land and buildings meriting protection in the public interest. Enforcement action should always be commensurate with the breach of planning control to which it relates.

When we find that planning control has been broken, we have to decide what action, if any, is needed. The effect of unauthorised development has on an area and the local environment varies and when considering whether to take formal enforcement action, our main concern is whether the unauthorised development or activity has a harmful effect on an area (for example, through noise, visual impact (what it looks like), smell, dust, fumes or traffic safety).

General enforcement policy

The primary aim of planning enforcement is to protect the environment and the quality of life in the public interest. The Council will always exercise its planning enforcement powers rigorously when it is appropriate to do so.

There will be occasions where formal action is necessary but in general, we will seek to achieve compliance through negotiation, co-operation, and those carrying out the breach putting it right themselves without recourse to formal action. There will be occasions when immediate formal action is necessary to halt breaches that are causing significant harm, or may cause lasting harm if not stopped.

When considering enforcement action, the Council will have regard to the following principles and be guided by the approach set out in Stage 4 of the Enforcement Process.

a) Expediency

We will only pursue enforcement action when it is appropriate to do so. In deciding whether to pursue formal action the following factors are taken into account

- whether the breach is causing harm that would unacceptably affect amenity, the environment or Public Safety;
- whether the existing use of land and/or buildings merits protection in the public interest;
- if planning permission would likely be granted for the unauthorised development i.e. the event of an application being submitted whether the development complies with planning policies.

b) Proportionality

Taking formal action must always be proportionate to the seriousness of the harm being caused. It will not be taken solely to regularise development which is otherwise acceptable on its planning merits but for which planning permission has not been sought. Carrying out works without planning permission or contrary to a planning condition is not a criminal offence (subject to a few exceptions – works to listed buildings, trees protected by a Tree Preservation Order and failure to comply with an Enforcement Notice).

c) Negotiation

Where a breach of planning control has occurred, we will normally try to negotiate a solution to regularise the breach. In all but the most serious cases, we will initially seek to persuade those persons responsible for a breach to voluntarily remedy the harmful effects, rather than pursue formal enforcement action, providing that an appropriate solution can be achieved.

Negotiation may also include inviting the persons responsible for the breach to submit a retrospective planning application to try to regularise the breach.

Negotiation aims to achieve:

- Cease an unauthorised use or activity and reduce it so it becomes acceptable

- Remove or modify an unauthorised operational development
- Apply for planning permission, a variation of permission, or variation of condition

d) Openness

Those making a complaint and persons subject of a complaint will be kept informed about progress of an investigation. When formal action is necessary, we will explain why such action has been taken. Equally, if it is decided we will not take enforcement action, all parties will be informed of the decision and reasons for it. Other than the most serious of cases, we will provide an opportunity for discussion and negotiation before formal enforcement action is taken. We will give clear explanation of the need for immediate action.

We aim to assist the public whenever possible. However, officers will not tolerate abusive language, persons who are unreasonably demanding on staff resources, or show unacceptable behaviour towards staff.

Prioritisation of cases

In order to deal effectively with a large number of complaints about breaches of planning control, we will prioritise cases based on the seriousness of the breach, and the likelihood of serious harm to amenity or public safety.

High Priority Cases_(Site visit made within 5 working days of the original enquiry)

These cases are time critical and have a severe impact on public/road safety and/or public amenity and are causing significant harm

- Causing immediate harm to amenity of the environment for example landfilling or large scale engineering works
- Active works to a listed building including demolition
- Felling of protected trees
- Works likely to adversely affect a designated natural or historic site of international or national importance
- Works likely to irreparably adversely affect a conservation area including demolition
- Works causing an immediate danger to public/road safety.

Medium Cases_(Site visit made within 4 weeks of the original enquiry)

Cases that have a significant impact on public amenity and/or public safety and cause a degree of harm

- Ongoing building works or changes of use that are not significantly affecting public amenity or safety
- Works unlikely to give rise to severe or lasting harm
- Minor unauthorised works affecting a listed building or conservation area
- Departure from approved plans or a breach of condition that would cause demonstrable harm to the amenity of an area or public safety
- Works at a residential property that affect the amenity of the immediate area including the running of businesses or operation as a short term let.

Low Priority Cases_(Site visit made within 8 weeks of the original enquiry)

Cases that are generally technical breaches which have low/no impact and cause localised harm

- All householder development
- Advertisements with low road safety impact
- Minor alterations to business premises
- Unauthorised development or breaches of condition that have limited or no impact on public amenity

Deciding whether to take enforcement action

We will take enforcement action against any unauthorised development that unacceptably harms public amenity, public safety or the existing use of land and buildings which need protecting in the public interest. In considering whether to take enforcement action, we will assess the situation against:

- the local development plan policies.
- the effect on residential amenity (for example whether a development would result in an unacceptable loss of privacy, overlooking or overshadowing or affect the overall character of an area and its enjoyment by residents or visitors);
- the effect on road safety;
- the scale of the problem;
- how sensitive the area is to the harmful effects of noise, visual effect, smell, dust, fumes; and
- how much harm will be done to the environment – landscape character, listed buildings, archaeology and habitats.

We will not take action against trivial or technical breaches that cause no harm to amenity or safety. We will try to persuade an owner or occupier of land to voluntarily put right any harmful effects of unauthorised development. However, negotiations will not delay formal enforcement action that we think is necessary to stop the activity or make the development more acceptable.

5 The Enforcement Process

Stage 1 Receipt of enquiry

When enforcement complaints are received, they are initially screened to check to make sure that all the details that we need to carry out an investigation have been provided (See section 3 above) and that they relate to a planning enforcement matter. The list of Breaches outlined in section 2 set out what the Planning Enforcement Team will investigate.

Where a complaint does not relate to a planning enforcement matter, customers will be informed by email or letter, with an explanation given why the complaint is not being investigated. Where a complaint falls under the remit of another Council Service, the Enforcement Team will forward it to the relevant Service to investigate and respond direct.

Stage 2 Investigation

Once it is confirmed that the enquiry is a planning matter we will send an acknowledgement to the person who made the enquiry which will include details of the case reference number, details of the officer dealing with the enquiry and other contact details. We will try to keep you informed about significant stages in the progress of a case.

The main purpose at this stage is to identify if a breach has occurred. This normally involves a site visit within the following timescales described in section 4.

After carrying out the site visit we will gather as much information as possible to establish the facts about the case and speaking to the owners or occupiers of the land. Sometimes this may involve serving a Planning Contravention Notice requesting specific information when an owner is unwilling to provide information or there is a lack of evidence to clarify matters.

When, following investigation, Planning Enforcement find a planning breach has not occurred or that it is immune from action, the case is closed and customers are informed with an explanation of the decision.

Stage 3 Triage Assessment

Where a breach is established, Stage 3 focuses on deciding whether to take action and, if so, what form. Planning enforcement is a discretionary function and formal action will only be taken where it is in the public interest to take action. A triage assessment is carried out to determine the most appropriate course of action whereby it will be categorised in terms of the nature and severity of the breach and the severity of impacts arising, including the impacts associated with not halting the breach. This will determine if the breach warrants taking action and any such action is proportionate to the breach. This involves assessing the scale and impact of the breach against planning policies and other material planning considerations, taking into account whether the breach causes 'harm' to public amenity, land or buildings meriting protection in the public interest. Breaches are categorised as follows;

A) Breach Minor or Acceptable in Planning terms

These are generally minor breaches in scale and impact and accord with planning policies. It will generally be the case that it will not be in the public interest to take formal action and the case will be closed.

b) Breach could be made Acceptable with modifications/planning conditions

These are breaches that could be made acceptable or regularised with some minor amendments.

c) Breach Unacceptable

These are cases where the breach is more significant in scale and unlikely to be capable of being made acceptable in planning terms, or at least without significant amendments, or requires urgent action to prevent further harm and impact on public amenity, public safety or the environment.

Stage 4 Outcomes

Once the breach is categorised we consider the action to be pursued. There will be a number of Actions ranging from taking no action, seeking a retrospective application to regularise or make development acceptable, to the taking of enforcement action to halt or put right a breach. The period for resolving cases will vary depending on the action to be pursued, the circumstances of the case, and the co-operation shown.

If we do find that a breach has occurred, there are three main courses of action which we may take.

d) Negotiate a solution

We will usually try to sort out the situation by negotiating with the person who is responsible for breaking planning control, rather than immediately taking enforcement action against them. In many cases, we do this through discussion and negotiation. We will take this approach when we consider that it is the most reasonable way of dealing with a problem. This will normally mean the person responsible being asked to stop the activity and get them to carry out work to put right any harm that it has caused; or modify it so that the development does not require planning permission. We will give the person responsible a specific amount of time to meet either of these requirements. The length of time will depend on how serious the problem is and any harm it is causing.

e) Make a retrospective application

In some cases it may be appropriate to ask the person responsible to submit a retrospective planning application. Until we make a decision on the retrospective application, we will not take formal action. We will only encourage a retrospective application if we consider that the situation has no negative effects or if the operations or work could be made acceptable by placing conditions on the planning permission. The person applying would then have to keep to these conditions. This does not prevent the developer submitting an application where they are advised it is unlikely it will be granted.

An owner or developer should never rely on 'retrospective permission' to get permission for unauthorised work. Anyone doing this is taking a considerable risk and may face formal enforcement action if planning permission is refused. If we do receive a retrospective planning application the normal neighbour notification and publicity will be carried out and we will fully consider any comments made before we make a decision.

Retrospective planning applications are dealt with like any others and we will take into account the Local Development Plan, responses from consultees and the impact on the area and public safety. The application cannot be refused simply because it is retrospective. If we grant planning permission or if the unauthorised activity stops and any harmful effects are put right, we will not take any enforcement action.

f) Take formal enforcement action

If the problem continues beyond the timescale that we give to put right any harmful effects or to submit a planning application, we will consider what formal enforcement action we should take to deal with the matter. We will normally take formal action if a situation where planning control has been broken is causing harm to an area and where negotiations have failed to deal with the matter. We may also take action if we have received a retrospective application which is unacceptable on its planning merits and cannot be made acceptable by placing conditions on it.

Taking action has to be in the public interest. We will not take action simply because someone does not have planning permission or does not make a retrospective planning application. Only a relatively small number of cases result in us taking formal enforcement action. This usually involves either an 'enforcement' or 'breach of condition' notice being served on the owner and occupier of the land and other persons with an interest in the development – this can include those with a

financial interest in the land such as a lender. Serving a notice can have severe repercussions for a property and can for example impact on the ability of the owner to sell it or seek further lending.

Most notices include:

- a description of the problem;
- the steps that should be taken to put the situation right;
- the timescale for taking these steps;
- the consequences of not taking these steps; and
- where appropriate, any rights of appeal that the person has and how to make an appeal.

We keep an online enforcement register with details of enforcement notices, breach of condition notices and stop notices. You can see details of notices which have been served since 1st September 2012 online at www.southlanarkshire.gov.uk. Service standard

SERVICE STANDARD

We aim to provide an initial formal response to enquiries (including the proposed course of action to be taken) within the following timescales

- High priority cases – 20 working days
- Medium priority cases – 40 working days
- Low priority cases – 60 working days

You will be advised if no action is to be taken and the reasons why.

Where appropriate we will provide regular updates on the progress of the investigation.

SERVICE STANDARD

Where a breach of planning control cannot be resolved and formal action is justified a Notice will be served. The Council will write to the recipient to explain what is required and the timescales involved.

7 Not keeping to legal notices

It is only when someone who has been served with a notice does not comply with its requirements that an offence is committed. If this is the case the options available to us include

- carrying out work to put the problem right and charging the person for the costs involved;
- getting a court order to stop or prevent someone from breaking planning controls;
- referring the case to the Procurator Fiscal for possible prosecution; and
- serving a fixed-penalty notice.

We may consider whether we could carry out the work ourselves (although only a very limited number of cases are likely to involve direct action due to the nature of the problem, the costs involved and the problems of recovering the costs from the person responsible). We may also decide to seek prosecution. This involves reporting the case to the Procurator Fiscal. If the Fiscal accepts a case, the matter is referred to the Sheriff Court and a date is set for a trial. If the case is not accepted, we will not continue with enforcement action unless a revised notice is served based on new evidence. We would usually only make a report to the Fiscal as a last resort and if the problem is causing serious harm. Finally we are able to serve a Fixed Penalty Notice. The responsible person has the option to pay, within 30 days, the fixed penalty, which would indemnify them from prosecution.

Service standard If someone does not keep to the terms of any enforcement notice, we will make every effort to sort the case out satisfactorily. Options include:

- direct action by the council.
- getting a court order;
- referring the matter to the Procurator Fiscal for possible prosecution; or
- serving a fixed-penalty notice

8 Appeals against notices

Anybody served with an enforcement notice has a right of appeal to Scottish Ministers. We will let anyone know about the appeal if they have sent us information on the breach.

If an appeal is made, the notice will have no effect until the Scottish Ministers make a decision on it. This may take a number of months from when the appeal is made. During this time, the unauthorised activity may continue. If the Scottish Ministers agree with us and decide that the person responsible should keep to the notice, they may give them extra time for this to be done. Or, the Scottish Ministers may cancel the notice.

There is no right of appeal against a breach of condition notice, a stop notice, a temporary stop notice or a fixed-penalty notice.

9 Enforcement and advertising

The display of advertisements is covered by the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984. Many advertisements may be displayed with what is called 'deemed consent'. This means that they do not need advertisement consent if they meet the conditions set out in the regulations. We have the power to serve an enforcement notice if we think the advert is affecting the amenity of an area or public safety. This gives a time period (normally 28 days) for a person to keep to the notice. However, we can reduce this period 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 needed. An

We also have powers to remove or destroy placards and posters that do not have planning permission or 'deemed consent'. If we can identify the person who put up the poster, we have to give them at least two days' notice that we plan to take the poster down. If we cannot easily identify them, we can remove the advert immediately.

10 Trees

We have powers to make Tree Preservation Orders where the trees make a positive contribution to the amenity of an area. When a TPO is in place it is an offence to cut down, lop, top or willfully damage a protected tree without our consent. The same restrictions apply to trees within a conservation area. Any person who is responsible for unauthorised works to trees is guilty of an offence and may be prosecuted.

Owners of trees that are protected should make an application to us before carrying out any work. When we grant consent it will normally be a requirement to plant a replacement tree(s).

When granting planning permission for new development we may add a condition to prevent the removal of trees as well as making sure trees that are to be retained are protected during the development. Failure to adhere to this type of condition can result in the serving of a breach of condition notice.

Where a tree protected by a tree preservation order is removed, uprooted or destroyed in contravention of the order or any conditions of a consent given under a tree preservation order requiring the replacement of trees is not complied with, the council can issue a replacement tree notice requiring the owner of the land to plant a tree or trees. Any notice served can be appealed to the Directorate for Planning and Environmental Appeals.

11 Enforcement powers

We have a range of enforcement powers available and will need to decide, in each case, which power is best suited to dealing with a particular situation. If we need to take formal enforcement action, we will usually serve an enforcement notice, a breach of condition notice or, in urgent or very serious cases, a temporary stop notice or a stop notice, on the person responsible for breaking the condition as well as the landowner.

Types of notice

Breach of condition notice – this is used to enforce the conditions applied to any planning permission. It applies from the date it is served. We may use this instead of an enforcement notice (see below), and we can serve it on any person carrying out the development or any person who controls the land. There is no right of appeal. Not keeping to a breach of condition notice is an offence and can result in us deciding to prosecute, with a fine of up to £5000. Or, we can serve a fixed-penalty notice for each step that has not been taken, with a fine of up to £300 for each notice.

Enforcement notice – this must be served on the current owner, occupier and anyone else with an interest in the property. This is generally used to deal with unauthorised development, but can also apply to breaking planning conditions. There are similar notices and powers to deal with listed buildings (see below), and advertisements. An enforcement notice will say: what steps must be taken to sort out the problem and when they have to be completed. This amount of time has to be reasonable and will depend on the amount of work that needs to be carried out. If you do not keep to an enforcement notice within the time shown, it is an offence, and may lead to a fine of up to £50,000 in the Sheriff Court.

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 describe the steps to be taken to sort the problem out and a final date for doing so. If you do not do what the notices asks by the date shown, it is an offence. There is the right of appeal to Scottish Ministers against the notice. Breaking listed building control is a serious matter. It is a criminal offence to carry out unauthorised work 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 because of public safety. When we serve a stop notice, we must also issue an enforcement notice at the same time. There is no right of appeal against a stop notice and if you do not keep to the notice, it is an offence. You can though appeal against the enforcement notice. If a stop notice is served without a good reason, or an appeal against the enforcement notice is successful, we may face claims for compensation. As a result, we need to carefully assess when to use stop notices.

Temporary stop notice – we can use this to stop an activity that will damage the environment or local amenity and there is a clear and immediate need to stop it. It can only be used to stop the activity for up to 28 days. If the activity is to be stopped for longer, we will have to serve some other form of notice. We do not need to serve an enforcement notice at the same time and there is no right of appeal. If you do not keep to the notice, it is an offence.

Other powers

Planning contravention notice – this is used to gather information about activities on land where we suspect that planning control has been broken and is normally served at the beginning of the enforcement process. It is served on the owner or occupier, on a person with any other interest in the land or anyone who is carrying out operations on the land. That person will have to provide information about operations being carried out on the land and any conditions or limits applying to any planning permission already granted. If you do not keep to the notice within 21 days of it being served, it 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 gather information on interests in land and how land is used. If you do not provide the necessary information it is an offence.

Amenity Notice under section 179 (of the Town and Country Planning (Scotland) Act 1997) – this allows planning authorities to serve a notice on the owner, lessee or occupier of land which is negatively affecting the area. The notice sets out the action that needs to be taken to sort the problem out within a certain period.

Notice under section 33A (of the Town and Country Planning (Scotland) Act – introduced by section 9 of the 2006 Act) – this allows us to serve a notice saying someone needs to make a planning application for a development that has already taken place. We can use this to encourage you to send us an application that we think might be granted with some conditions that would make the development acceptable.

Interdict and interim interdict – this is an order made by the courts and is used to stop or prevent a problem with planning control. Court proceedings can be expensive and we normally only apply for orders in serious cases or where enforcement notices have been ignored in the past. However, we can get an order in relation to any situation where control has been broken without having to use other powers first. Breaking an order is treated as a contempt of court and carries heavy penalties.

Powers to enter land - we have powers to enter land to see if planning control has been broken; check if you have kept to a formal notice; and check if a problem has been dealt with satisfactorily. This power applies to any land and may involve officers entering land next to the site where the problem took place.

Planning Enforcement FAQs

If I make a complaint against someone will they find out it was me?

All complaints made to the Council about planning enforcement matters are confidential and are not divulged to the subject of the complaint. In some circumstances your details may, however, be given to other Council services if they have powers to assist in investigating your complaint. If a complaint is made about a case that proceeds as far as prosecution proceedings, evidence may be required from you to increase the chances of a positive result, but you would be contacted about this beforehand to enable you to consider your position.

I don't want to leave my name or details; will my complaint still be investigated?

If an anonymous complaint is received, we only investigate where they will give rise to a serious planning harm.

Somebody has made a complaint against me; can I find out who it was?

The information submitted to the Council forming part of an enforcement complaint is considered to be personal data, which is, therefore, exempt from the provisions of the Freedom of information Act 2000 (As Amended) and Environmental Information (Scotland) Regulations 2004 and does not have to be disclosed by the Council. The only details which may be revealed once a case has been closed are the nature of the complaint made, i.e. wall built without planning permission.

My neighbour does not have planning permission for building work they are carrying out; can you force them to stop building?

The Council does have the power under the planning legislation to stop building work. However, in most cases, including for example unauthorised development at a residential property, it will not be expedient to exercise this power. In exceptionally rare circumstances there is the power to serve a Notice requiring that unauthorised development is immediately stopped, where serious planning harm is caused.

Is building an extension/garage/conservatory etc without planning permission a criminal offence?

No, when a breach of planning control is confirmed and an Enforcement Notice is served requiring the removal of an unauthorised development, it is a criminal offence to fail to comply with the requirements of the Notice in the time given.

My neighbour is repairing and/or selling cars on the road outside their house; can Planning Enforcement do anything about this?

No. If an obstruction of the public road is being caused by the activity, the police should be contacted. In some circumstances the Council's Roads Service may be able to investigate and instigate action under Roads Legislation.

My neighbour is building an extension that encroaches slightly onto my property; can Planning Enforcement do anything about this?

Planning Enforcement cannot become involved in matters relating to boundary disputes or allegations of trespass onto your property. If an extension is constructed on what you believe is part of your land, you should seek legal advice from a solicitor/legal advisor about how to pursue the matter. Similarly, if a neighbour has erected scaffolding on your property to enable them to construct an extension, the Council does not have any power to take action.

Do my neighbours need planning permission to park a caravan/motorhome on their property/driveway?

Planning permission is not required for the parking of a caravan/motorhome within the curtilage of a domestic property. Restrictions on matters of this nature are often written into the deeds of a property but

this is not something over which the Council has any powers of enforcement. A civil action would have to be taken in cases such as these.

Do my neighbours need planning permission to allow someone to sleep in a caravan/motorhome stationed on their property? Planning permission would not be required for the use by a family member or friend to use a caravan/motorhome as living accommodation ancillary to the main dwelling.

My neighbour has constructed a fence that blocks off my right of access to the rear of my property; can Planning Enforcement do anything about this?

Planning Enforcement cannot become involved in and has no power to take action regarding matters relating to access rights. If a neighbour has fenced off part of their garden or a shared private drive over which you believe you have right of access, you should seek legal advice from a solicitor/legal advisor about how to pursue the matter. Similarly, if your neighbour constructs a fence or wall over a public footpath or a public right of way, Planning Enforcement does not have the power to take any action in respects of the encroachment. The Council's Road Service may be able to investigate development that appears to encroach onto a public footpath. Planning Enforcement can only investigate an alleged unauthorised boundary wall or fence if it exceeds Permitted Development height restrictions.

Does my neighbour need planning permission to change windows or add new windows or roof lights in their house?

In many cases, planning permission is not required to replace windows, or to add new windows or install roof lights in a dwellinghouse. If the property is a listed building or located within a Conservation Area, listed building consent and/or planning permission will be required.

Does my neighbour need planning permission to use a room in their house as an office? There is something in my deeds that says the properties in this area can only be used for residential purposes.

A property owner can usually use a room in their property as a home office, without needing to apply for planning permission. The Planning Service has no power to take action regarding matters relating to the content of your deeds. If a neighbour has done something which you think is prohibited or restricted by the deeds, you should seek legal advice from a solicitor/legal advisor about how to pursue the matter.

I have received a letter from Planning Enforcement telling me that my extension is unauthorised. I have only demolished and replace my rear extension with an extension of an identical size, so I don't need planning permission, do I?

If you demolish anything such as an extension, garage, outbuilding, wall, or fence and replace it with something identical, you may still require planning permission. Whether or not, you need planning permission will depend on a number of factors. The fact that something similar or identical existed before is not a relevant factor in determining whether or not planning permission is required.

If planning conditions have not been met before a development starts and the planning permission requires information to be agreed in advance, for example details of landscaping proposals, will Planning Enforcement stop the works on site?

Enforcement action must always be proportionate with the breach of planning control to which it relates. In such a case, we would assess the seriousness of the breach and its impact when deciding to take action. In many cases, the breach may not be causing serious harm to warrant the serving of a Stop Notice or Temporary Stop Notice. In some cases, it may be expedient to take enforcement action where the information or pre-works required by the condition is crucial to protect public amenity or public safety.

What if a complaint is made about your property?

If a complaint is received alleging a breach of planning control at your property the Council has a duty to investigate the complaint to establish if a breach of planning control has taken place. In many cases, it is

often established that no breach has taken place, or that the breaches are not intentional and arise from a misunderstanding or no awareness of planning regulations. Very occasionally, breaches are investigated which are deliberate and a flagrant disregard for planning regulations.

When investigating a complaint, a Planning Enforcement Officer will visit your property. If you receive a letter, email or a visit from a Planning Enforcement Officer you are encouraged to respond promptly, positively and to provide any information that can help clarify the alleged breach and resolve it quickly. It is common practice for Planning Enforcement Officers to ask questions about your land or activities/works that you might be carrying out. Once the investigation is complete, the Planning Enforcement Officer will write to you to confirm if a breach has taken place or not. Where a breach has occurred, there will be a number of options outlined to address the breach, depending on the severity of the breach.

Property owners should be aware that development which does not have the necessary planning permission, or development that has not been carried out in accordance with a planning permission, is unauthorised. Any unauthorised development could delay or potentially prevent a future sale or property/land if the relevant permissions do not show up on land searches. Likewise, where enforcement action has been taken, Enforcement Notices and other Notices will also appear during legal searches on the property