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East Dunbartonshire Council

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Planning Enforcement Charter

June 2025

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1. Introduction

The carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land for an alternative use, is in planning terms 'development', and therefore any such works fall within the remit of the Council as Planning Authority.

Planning permission is required for most forms of development undertaken in Scotland, with the exception of some minor works. Unfortunately, developers (which can include householders) sometimes undertake work without the benefit of planning permission or fail to keep to the terms of the permission they have been given.

When this happens the Council as the Planning Authority has powers to take enforcement action against the unauthorised development, if it considers it is in the public interest to do so.

The Council routinely monitors development sites to ensure planning controls are being followed. However, there is a role for the public in alerting the Council to any problems that they become aware of.

This Charter explains how the enforcement process works, our role and the service standards that we have set ourselves. It also explains what happens at each stage of what can be a lengthy process.

Planning enforcement is one of the most complex parts of the planning system. The aim of this charter is to ensure that our adopted procedures are fair, reasonable, consistent and transparent so that interested parties are fully aware of the procedures involved in the process, and of what is required.

Planning enforcement is an issue that concerns many members of the public. We hope you will find this charter useful. Please let us know if you think we could improve the service further.

2. Key Points on Planning Enforcement

The Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc. (Scotland) Act 2006 and the Planning (Scotland Act) 2019 sets out the statutory powers available to the Council to investigate a breach of planning control, including the breach of any condition attached to a planning permission or other consent i.e. Listed Building Consent or Advertisement Consent. However, any action taken has to be appropriate and proportionate to the scale of the breach and to the effect that the breach has on the environment or residential amenity.

Breaches of planning control do not in most cases constitute a criminal offence. The exceptions to this are:

- unauthorised works to a listed building;
- unauthorised works to a tree protected by a Tree Preservation Order; or,
- unauthorised display of an advertisement without consent.

The purpose of planning enforcement is the Council's policy to resolve the problem rather than to punish the mistake.

We may decide to take formal action where a satisfactory outcome cannot be achieved by negotiation. However, any **action is discretionary**. This means that, even where there is a breach of planning control, we need to consider whether it is in the public interest to take enforcement action. It is worth noting that we are not required to take any particular action on a specific breach of planning control, and indeed can decide that no action is necessary.

Further information on the use of enforcement powers can be found in the Scottish Government publication Planning Circular 10/2009: Planning Enforcement.

Planning enforcement also covers the physical display of advertisements, such as billboards and advertisement hoardings, although slightly different procedures apply. These are set out in a separate section at the end of this document. It is important to note that the actual content of an advertisement i.e. wording and images are not covered by planning control. We therefore have no power to act on those matters.

Any complaints about the content of an advertisement should be made directly to the Advertising Standards Authority Ltd.

3. Guiding Principles of Planning Enforcement

It is clearly undesirable that anyone should carry out development without the necessary approvals being in place. The main objective of planning enforcement is to remedy the undesirable effects of unauthorised development on the environment and the amenity of our communities. Bringing unauthorised activity under control ensures that the credibility of the planning system is not undermined.

The Council follows these guiding principles in relation to planning enforcement:

Consistency:

The enforcement process shall be followed in the same manner for each similar case;

Fairness:

Outcomes shall be equitable and fair;

Proportionality:

Enforcement action shall relate directly to the scale, type and nature of breach of planning control;

Clarity:

Any enforcement action taken by the Council shall be easily understood by members of the public, organisations and businesses;

Equality:

Every individual or group shall be treated with respect and in accordance with their individual rights, beliefs or circumstances. However, no decision will be influenced by those.

In considering whether it is expedient to take any form of enforcement action, the deciding issue for us will be whether the breach of planning control or the condition of a site would unacceptably affect amenity, the environment or the existing use of the land or buildings meriting protection in the public interest. In other words, we will need to be satisfied that the breach of planning control is causing or may cause demonstrable harm.

4. Service Standards

Service Standard 1

- By publishing our standards and targets, we aim to improve our enforcement service and make it responsive to the needs of our customers. We will monitor the contents of this charter to ensure that standards and targets are being met and ensure it is available on the Council's website.

Service Standard 2

- After preliminary checks, only enforcement enquiries which have sufficient information will be registered as a valid enquiry and acknowledged within 5 working days of the date of receipt providing you with a reference number and the contact details of the investigating officer. For the avoidance of doubt, such information required shall include:
 - The address or location of the site where the suspected breach of planning control has occurred;
 - Details of the type and nature of the suspected breach of planning control, including when you became aware of it, with times and dates, if relevant;
 - The date when the suspected breach of planning control commenced;
 - Name and address of the person/business responsible;
 - Dated electronic photographs of the land (including a building) where an unauthorised advertisement or harm to amenity is being reported.
 - Your contact details, including name, telephone number, address and email address if available;
 - Information on how the breach affects you.
- Where the suspected breach relates to a recently determined or ongoing planning application it will not initially be treated as an enforcement case. In the first instance, the planning officer assigned to the application will attempt to resolve the issue directly with the developer. Where this is unsuccessful and/or more formal action is needed, a case will then be opened in line with these Service Standards.

Service Standard 3

- Priority will be given to significant breaches of planning control including:
 - Unauthorised development causing immediate or potentially serious harm.
 - Unauthorised works to a listed building.
 - Unauthorised works to a tree protected by a tree preservation order.
 - Unauthorised works to a tree within a conservation area.
 - A breach of planning condition which adversely affects amenity and/or resulting in continuing harm.

Service Standard 4

- We will visit sites subject of an enquiry of a suspected breach of planning control within 10 working days of the acknowledgement, except during holiday periods, or during periods of inclement weather.

Service Standard 5

- Where there has been no breach of planning control or that we do not intend to pursue matters in the public interest we will inform you of our position within 30 working days of the acknowledgement. Similarly, where a breach of planning control has been identified, we will inform you of our proposed course of action in order to remedy the breach within 30 working days of the acknowledgement. This may include the need for additional investigation prior to deciding on a course of action.

Service Standard 6

- Where a breach of planning control cannot be resolved and action is justified, a formal notice will be served, and we will notify you within 5 working days of that notice being served.

Service Standard 7

- When an appeal is submitted on an enforcement notice served by the Council, we will inform you within 5 working days of our receipt of the appeal.

Service Standard 8

- Where the terms of any formal notice are not complied with, every effort will be made to resolve the case to the satisfaction of the Council. Options include:
 - in the case of an enforcement notice and amenity notice, direct action by the Council.
 - referring the matter to the Procurator Fiscal for possible prosecution.
 - issuing the offender with a Fixed Penalty Notice.

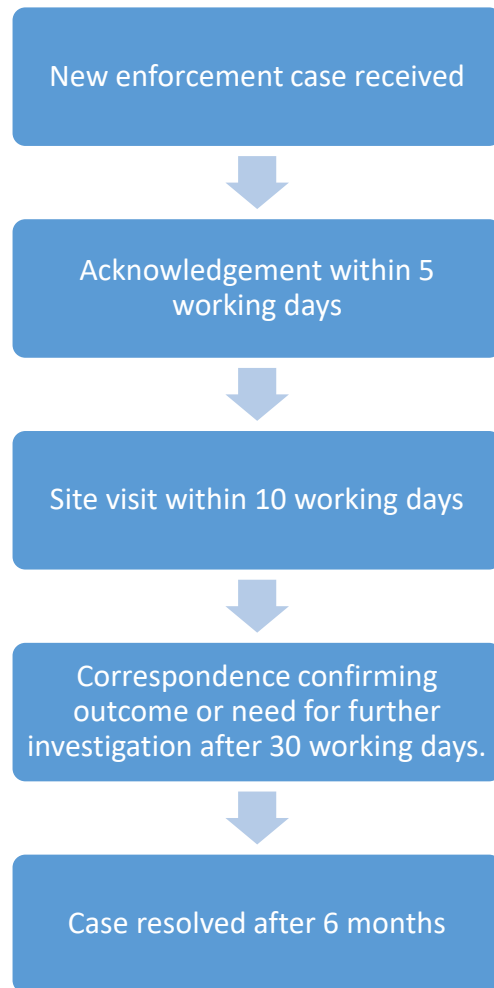
Service Standard 9

- We will notify you when a Notice has been fully complied with and/or of the outcome of a case within 10 working days of the case being closed, with an explanation of the outcome provided.

Service Standard 10

- We will aim to negotiate a suitable outcome within a maximum period of 6 months from the date the enquiry is registered. This will involve a decision being made to either pursue formal action or, where it is not expedient to do so, close the case. You should note that there may be instances where a notice has been served but direct action or referral to the Procurator Fiscal are not considered viable options. In these cases, the Council will consider the use of a Fixed Penalty Notice.

Typical timeline of an enforcement case following the above standards:



5. Possible Breaches of Planning Control

Planning enforcement involves two issues – whether a breach of planning control has actually taken place, and whether it is appropriate to take enforcement action. That decision is at the discretion of the Council and is a matter of judgement

What we will not investigate

The following complaints will not be investigated further as an enforcement case:

- Anonymous complaints.
- Complaints regarding a property where it is alleged the condition is harming amenity which are not accompanied by at least one dated electronic photograph of a suitable quality to allow an initial assessment to be made.
- Complaints regarding unauthorised advertisements not accompanied by at least one dated electronic photograph of a suitable quality to allow an initial assessment to be made.

- Issues not determined by the Planning Authority to be a matter within our remit. This may include, but is not limited to: Boundary disputes; Dangerous buildings; Noise nuisance, including noise on construction sites unless specifically controlled by a planning condition; and, Fly-tipping.
- Potential breaches relating to an ongoing or recently determined planning application. As described by Service Standard 02 these will initially be investigated as part of the planning application process before considering the opening of an enforcement case.

Enquiries can sometimes involve matters that are more appropriately dealt with by other Council Services such as Building Standards, Environmental Health, Housing, Roads, Property Assets or an external agency such as the Scottish Environment Protection Agency. If we receive a complaint which involves another Council service we will pass it onto the relevant service and we will advise you of the appropriate contact details. Should this involve an external agency (an organisation out with the Council) we will advise you who you should contact.

Identifying Possible Breaches of Planning Control

Possible breaches of planning control can include:

- The erection of a new building or an extension to an existing building without the necessary planning permission.
- Changing the use of land or buildings without the necessary planning permission (this does not necessarily involve any building works taking place);
- Where planning permission has been granted but the work has not been carried out in accordance with the approved plans.
- Where planning permission has been granted and the conditions attached to the approval have not been complied with.
- Where there has been removal of, or works to, protected trees without the necessary approval.
- The carrying out of works to a listed building, both internal and external, without listed building consent.
- The display of advertisements that require consent under the Advertisement Regulations without that consent having been granted.

Enquiries from Third Parties

Members of the public and Community Councils have a vital role in reporting suspected breaches of planning control and are considered a valued asset in supporting us. Any concerns should be raised with us at the earliest opportunity. You can make preliminary enquiries by telephone or in person by appointment at the Council offices, but these must be followed up in writing or by e-mail.

To report a suspected breach of planning control please use our online form at <https://www.eastdunbarton.gov.uk/planning-enforcement-form#overlay-context=residents/planning/enforcement> or in writing to:

Development Applications - Enforcement

Land Planning & Development,

Southbank House,

Strathkelvin Place,

Kirkintilloch,

G66 1XQ

Tel: 0300 1234510

E-mail: planning@eastdunbarton.gov.uk

The following information must be provided when reporting a suspected breach:

- The address or location of the site where the suspected breach of planning control has occurred.
- Details of the type and nature of the suspected breach of planning control, including when you became aware of it, with times and dates, if relevant.
- The date when the suspected breach of planning control commenced.
- Name and address of the person/business responsible.
- Dated electronic photographs of the land (including a building) where an unauthorised advertisement or harm to amenity is being reported.
- Your contact details, including name, telephone number, address and email address if available.
- Information on how the breach affects you.

Monitoring of Conditions – Non-Major Developments

The monitoring of conditions attached to individual planning permissions and other consents granted by the Council as Planning Authority is required to ensure that the development is carried out in full compliance with the terms of the permission or consent granted. Details of the conditions are included within the decision notice relating to the development. Conditions must be discharged before work can start on site and monitoring is routinely undertaken by our Development Applications Team. However, there are a large number of permissions granted each year and it is not practical, nor is it expected, that we monitor all conditions at all times.

You can provide information to the Planning Service if you suspect that any condition attached to a permission or consent is not being complied with or has not been discharged in a satisfactory way. The large number of permissions and consents granted each year makes your involvement invaluable in the monitoring process.

When a breach of condition is identified, it will initially be investigated as described in Service Standard 2 and may result in a new enforcement case being opened.

Decision notices can be viewed on our website at:

www.eastdunbarton.gov.uk/residents/planning/planning-applications/planning-applications-search

Monitoring of Conditions – Major Developments

The Council will actively monitor all ongoing major developments by ensuring a case officer is assigned to each and regular monitoring of conditions, legal agreement clauses, enforcement issues and general progress is taking place. To ensure accountability of this, a Major Sites Monitoring Document is updated quarterly and published on the Council's website. If you have concerns regarding a breach of planning control at a major development site, please consult this document for progress and contact the relevant officer listed therein for advice. The most recent version can be viewed here:

<https://www.eastdunbarton.gov.uk/media/110atnvy/monitoring-of-major-and-significant-local-planning-applications.pdf>

6. How We Investigate Breaches of Planning Control

What Happens Next?

A priority system is used for investigating enquiries based on matters such as the effect of the breach and its significance on neighbours. Priority will be given to significant breaches of planning control, including:

- Unauthorised development causing immediate or potentially serious harm.
- Unauthorised works to a listed building.
- Unauthorised works to a tree protected by a tree preservation order.
- Unauthorised works to a tree within a conservation area.
- A breach of planning condition which adversely affects amenity and/or resulting in continuing harm.

Initial Investigations

The first things that we need to establish are whether the suspected breach reported relates to planning matters and that a breach of planning control has actually occurred, in that works constitute 'development'. For planning purposes, 'development' is defined by Section 26 of the Town and Country Planning (Scotland) Act 1997 as amended. It may be that the development is regarded as 'permitted development'. 'Permitted development' is development that can be carried out without an application for planning permission and therefore is lawful. The Scottish Government sets out the extent of permitted development. In instances where development is found to constitute 'permitted development', it should be noted that there is no requirement for the development to meet Council policies or guidance relative to design. If the enforcement case is not founded, it will be closed and a letter sent explaining why.

In some cases, additional investigation may be required, but where a breach of planning control has been identified, we will establish an appropriate course of action. We will attempt to resolve breaches through negotiation. In cases where a breach is serious or must be brought under control and cannot be resolved informally, we will take formal action, and you will be advised of this.

For minor breaches, or those not causing significant harm, this will usually involve the submission of an application for retrospective planning permission for the development already carried out. For more complicated breaches, or those that may have a detrimental impact on the environment or community this may involve the serving of a formal notice to remedy the breach.

It is not always possible to anticipate the length of time required to resolve a case or to take action. Progress can be delayed for a number of reasons i.e. where evidence must be collected and verified over a period of time, where negotiations take place or where formal procedures have to be used. In line with the Service Standards, we commit to closing an enforcement case within 6 months. You should note that this may involve a decision being reached that while a breach has occurred it is not expedient to pursue further. This is necessary to ensure our resources are focussed on the most harmful breaches and to avoid long standing unresolved legacy cases which don't benefit the alleged offender, the complainant or the Council.

Similarly, where the landowner submits an application for retrospective planning permission to regularise the breach of control or an appeal is made to Scottish Ministers if an enforcement notice is served. If this happens, it will affect the timescale to resolve the case. It is important to note that there is no right for the enquirer to make any comments on the appeal. Where an application is sought to regularise a breach but subsequently refused, the Council may choose not to take further enforcement action until the period within which an appeal could be lodged or until such an appeal is determined.

We recognise that delays can be a source of considerable frustration to those submitting information in respect of suspected breaches, particularly if they consider their amenity is affected. Consequently, we

will try to keep you informed of significant stages in the progress of a case, for example, where an application is received for the site.

Resolving Cases

In some instances, even though a breach of planning control has occurred, it may not be appropriate to take further action. This is because the Council has to consider each case on its merits and decide on the best solution, having regard to its development plan, the material considerations and to the circumstances of each case, that it is necessary and proportionate to issue a notice. In many cases, the harm being done by the breach does not justify any action with most enforcement investigation cases resolved without the need for formal action. Where a decision has been reached that no action is necessary this will close the case and no further correspondence on the matter will be issued unless there is a significant change in circumstances on the site in question.

Where the development is likely to be acceptable, it may be more appropriate to seek the submission of an application for retrospective planning permission. We will consider this as we would any other application made under planning legislation and may grant or refuse permission, depending on the planning merits of the application. Permission may be granted subject to conditions or limitations which we consider are required to make the development acceptable. In these cases, any action proposed is suspended until a decision is made on the application.

In accordance with Regulation 6 of The Town and Country Planning (Fees for Applications)(Scotland) Regulations 2022 as amended a surcharge is now applicable to retrospective applications of 25% of the normal planning fee. For example, a domestic scale proposal which is retrospective in nature would require a fee of £432.50 rather than the normal fee of £346. If a retrospective application relating to an enforcement investigation is not validated due to failure to pay the surcharge, the Planning Authority may elect to proceed to formal enforcement action to resolve the matter.

Exemptions from this surcharge include:

- Where the applicant is a charitable or community organisation.
- Where the surcharge is likely to present a significant barrier to an application being submitted and the breach satisfactorily resolved.
- Where the works have been of an urgent or emergency nature.

Any exemption from this surcharge which may be requested will be considered in full at the discretion of the Council as Planning Authority.

Formal Action

Only a relatively small number of cases require to be dealt with by formal enforcement action. With only a few exceptions, the Planning Service has delegated authority to proceed with such action without referral to the Members of the Planning Board.

Formal enforcement action is instigated by the legal service of a notice (see the 'The Enforcement Toolkit' section within Chapter 8 of the Charter) and this is usually carried out by Sheriff Officers on behalf of the Council. All such notices include the following information:

- a description of the breach of control that has taken place;
- the reasons why the Council considers it necessary to serve the notice;
- the steps that should be taken to remedy the breach;
- the timescale for taking these steps;
- the consequences of failure to comply with the notice; and
- the rights of appeal that the recipient may have, and how to lodge an appeal.

If an appeal is lodged against the serving of a Notice, it is submitted to and considered by Scottish Ministers and dealt with, in most cases, by a Reporter from the Scottish Government's Planning and Environmental Appeals Division (DPEA).

Failure to comply with a notice may result in the Council taking further action. The options available to the Council include:

- referring the case to the Procurator Fiscal for possible prosecution;
- carrying out any work(s) in default of a Notice. In other words, the Council may arrange for the works required by a Notice to be carried out and then recover the cost of this work from the recipient of the notice;
- seeking a Court interdict to stop or prevent a breach of planning control.
- serving a Fixed Penalty Notice

For more detail, see the 'The Enforcement Toolkit' section in Appendix ii

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

When it has been confirmed that a Notice has been fully complied with, you will be notified of this.

Enforcement Register

The Council as Planning Authority is required to enter details of all Amenity Notices (formerly known as Wasteland Notices), Enforcement Notices, Breach of Condition Notices, Notices under section 33A requiring the submission of an application for retrospective planning permission, Temporary Stop Notices and Stop Notices served into its Enforcement Register. The Register is now available to view on our website at:

<https://www.eastdunbarton.gov.uk/residents/planning-and-building-standards/enforcement/enforcement-register>

Powers of Entry

Appointed Officers of the Council have been authorised to legally enter land to find out if there has been a breach of planning control, to check whether there has been compliance with a formal notice, or to check whether a breach has been satisfactorily resolved.

Time Limits on Enforcement Action

Time Limited Procedures: In some cases, the Council is time-barred from taking enforcement action as set out in Section 124 of the Town and Country Planning (Scotland) Act 1997 as amended, as follows:

Time Limited to Four Years for Enforcement Action: This applies to 'unauthorised operational development' (the carrying out of building, engineering, mining or other operations in, on, over or under land) and to a change of use to a single dwellinghouse.

Time Limited to Ten Years for Enforcement Action: This applies to all other development including changes 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.

Appendix i – Data Protection

It should be noted that all information received by us is subject to the requirements of the Data Protection Act 1998. This means that the Council has a duty to protect the personal information of complainants.

Under the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004, we may need to disclose information relating to the substance of complaints.

Notwithstanding the above, requests for total confidentiality may limit our ability to take formal action and cannot be guaranteed if the case leads to court proceedings. East Dunbartonshire Council processes personal data according to the General Data Protection Regulations or GDPR and all other relevant national data protection laws.

Any personal data you provide will be held by East Dunbartonshire Council in accordance with the General Data Protection Regulations (GDPR) and all other relevant data protection laws. The personal information will be recorded and used to help us to consider, administer and decide (where relevant) the application, enforcement case, enquiry or related appeal or review. Your information may also be shared with other departments within the Council and other organisations for the same purposes and also to:

- To fulfil your request for information or services
- Check that the information we have is accurate
- Prevent and/or detect crime
- As input to improving our site
- As part of the process of consultation

For information on our privacy notices visit our website at www.eastdunbarton.gov.uk a copy of the Development Applications Privacy Notice is located within the following web link:

<https://www.eastdunbarton.gov.uk/council/privacy-notice>

Appendix ii – The Enforcement Toolkit

The Enforcement Toolkit

Planning Enforcement powers are set out in Part VI of the Town and Country Planning (Scotland) Act 1997, as amended by Part 4 of the Planning etc. (Scotland) Act 2006, and in Chapter IV of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

The Scottish Government's policy on the use of the enforcement powers contained in the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006 is set out in Circular 10/2009, "Planning Enforcement". The Planning Act and other associated legislation including Circulars can be viewed on its Planning website.

Types of Notice

Breach of Condition Notice - this notice makes provision for enforcing the conditions to which any planning permission is subject. It comes into effect on the date 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. The recipient of such a notice may make representations to the Council if they believe the notice to be unreasonable. The non-compliance with a breach of condition notice is an offence and can result in a summary prosecution in the Sheriff or District Court being sought by the Council. The maximum penalty on conviction is a fine not exceeding level 5 on the standard scale, which is currently £5,000.

Enforcement Notice - this notice is generally used to deal with unauthorised development, but can also be used for a breach of planning conditions. There are similar notices and powers to deal with listed buildings and advertisements (see below). An enforcement notice will specify;

- a notification period before it comes into effect (usually a minimum of 28 days);
- the steps that must be taken to remedy the breach; and,
- a further period (known as the compliance period) which is set by the Council and gives the recipient time to carry out any work 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 against an enforcement notice. The appeal must be lodged with the Scottish Government's Planning and Environmental Appeals Division (DPEA) before the expiry of the notification period i.e. before the date that the notice takes effect. If an appeal is made, the terms of the notice are suspended until a decision is reached by the Scottish Ministers.

Failure to comply with an enforcement notice within the time specified is an offence and may lead to a fine of up to £50,000 in the Sheriff Court. Failure to comply may also result in the Council taking Direct Action to correct the breach (see other powers below).

Listed Building Enforcement Notice - this notice must be served on the owner, lessee, occupier and on anyone else with an interest in the property, and 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. If the current owner fails to meet the terms of the notice by the date specified, they are guilty of an offence.

There is a right of appeal against a listed building enforcement notice. The appeal must be lodged with the Scottish Government's Planning and Environmental Appeals Division (DPEA) before the expiry of the notification period i.e. before the date that the notice takes effect. If an appeal is made, the terms of the notice are suspended until a decision is reached by the Scottish Ministers.

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, and this could, in certain circumstances, lead to either an unlimited fine or imprisonment.

Stop Notice - this notice is only used in urgent or serious cases where an unauthorised activity must be stopped, usually on grounds of public safety or a significant impact on public amenity. A Stop Notice is served together with an Enforcement Notice. A Stop Notice cannot prohibit the use of a building as a dwellinghouse or prohibit the carrying out of any activity if that activity has been carried out for a period of more than four years. If a stop notice is served without due cause or an appeal against the accompanying enforcement notice is sustained, the Council may be open to a claim for compensation. The use of Stop Notices therefore needs to be carefully assessed by the Council. There is no right of appeal against a Stop Notice, and failure to comply with its terms is an offence.

Temporary Stop Notice - this notice is served in certain cases where a breach of planning control is considered to have a severe impact on amenity, and requires the immediate halt of that activity from the moment it is displayed on a site. The provisions make an exception, in that a temporary stop notice cannot prohibit the use of a building or a caravan as a dwellinghouse. The maximum period a temporary stop notice can be in effect for is 28 days. It may, however, be followed by further enforcement action such as an enforcement notice and associated stop notice. There is no provision to appeal against a temporary stop notice.

Fixed Penalty Notice – where an enforcement notice or a breach of condition notice has been served, and has not been complied with, the Council can serve a Fixed Penalty Notice on the recipient of the notice. The fine is £2,000 for a Fixed Penalty Notice relating to a planning Enforcement Notice and £300 in respect of failure to comply with a Breach of Condition Notice. There is no right of appeal against these notices, although timeous payment prevents the Council from reporting the non-compliance with the original notice to the Procurator Fiscal.

Other Powers

Notice Requiring Application for Planning Permission for Development Already Carried Out - where the Council considers that a development which does not have planning permission may be acceptable (i.e. they consider that it might be granted planning permission) they may issue a notice requiring the landowner or developer to submit a retrospective planning application. This application will be considered on its planning merits and handled in the same way as any other planning application. Issuing such a notice does not guarantee that permission will be granted; the Planning Authority may, on consideration of the application, decide instead to refuse permission, or to grant permission subject to conditions or alterations to make the development acceptable.

Planning Contravention Notice - this notice 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 of the land in question; on a person with any other interest in the land; or on a person who is using or carrying out

operations on the land. They are required to provide information about operations being carried out on the land.

Those who receive a Planning Contravention Notice are required to provide specific information about operations being carried out on the land, or relating to conditions or limitations which apply to any planning permission already granted in respect of the land.

Supplementary information or representations on the matters raised in the notice may also be requested.

Failure to comply with the notice within 21 days of it being served is an offence and can lead to a fine in the Courts.

Notice under Section 272 (of the Town and Country Planning (Scotland) Act 1997) - 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.

Amenity Notice - this allows planning authorities to serve a notice on the owner, lessee or occupier of land which is adversely affecting the amenity of the area and sets out the action that needs to be taken to resolve the problem within a specified period.

There is a right of appeal against an amenity notice. The appeal must be lodged with the Scottish Government's Planning and Environmental Appeals Division (DPEA) before the expiry of the notification period i.e. before the date that the notice takes effect. If an appeal is made, the terms of the notice are suspended until a decision is reached by the Scottish Ministers.

Failure to comply with an amenity notice within the time specified is not an offence but may well result in the Council taking Direct Action to stop the adverse effect (see other powers below).

Interdict and Interim Interdict - an interdict is imposed by the courts and is used to stop or prevent a breach of planning control. Such applications are considered by the Courts and can prove costly. The Council will normally only seek interdicts in serious cases or where enforcement notices have been ignored in the past. However, the Council 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.

Notification of Initiation and Completion of Development and Display of Notices While Development is Carried Out - While not in themselves planning enforcement powers, these notices are intended to improve delivery of planning enforcement by requiring positive confirmation that development has commenced and been completed, and, in the case of on-site notices, to raise community awareness of developments in the local area. Planning authorities will be made aware of active development in their areas, enabling them to prioritise resources with a view to monitoring development.

For any development for which permission has been granted, a Notice of Initiation of Development has to be submitted to inform the Planning Authority of the date on which development will commence. It is to be submitted after planning permission has been granted and before development has commenced. Initiating development without submitting a Notice of Initiation of Development is a breach of planning control and the Planning Authority may consider enforcement action.

The Notice of Completion of Development requires a developer to submit a further notice as soon as practicable after development has been completed.

Depending on the nature or scale of a development, the developer may also be required to display on-site notices while development is taking place. These notices contain basic information about the site and the development. They also provide contact details where members of the public may find out more information or report alleged breaches of planning control. It is a breach of planning control to fail to display such a notice when required to do so.

Advertisement Enforcement Notice - this notice must be served on the owner, lessee, and occupier of the land to which it relates and on any other person known to the Council to be displaying the advertisement without consent. The procedures are similar to those of an enforcement notice as outlined above. The notice must specify the steps to be taken to remedy the breach and a final date for compliance.

There is a right of appeal against an advertisement enforcement notice. The appeal must be lodged with the Scottish Government's Planning and Environmental Appeals Division (DPEA) before the expiry of the notification period i.e. before the date that the notice takes effect. If an appeal is made, the terms of the notice are suspended until a decision is reached by the Scottish Ministers.

Failure to comply with the terms of an advertisement enforcement notice within the time specified can result in the Council or its appointed contractors carrying out the specified work. The Council will pursue the recovery of any costs it incurs from the landowner or lessee.

Tree Replacement Notice – where a tree within a conservation area, or specifically 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 replacement tree or trees of an appropriate size and species. This notice must be served on the landowner.

There is a right of appeal against a tree replacement notice. The appeal must be lodged with the Scottish Government's Planning and Environmental Appeals Division (DPEA) before the expiry of the notification period i.e. before the date that the notice takes effect. If an appeal is made, the terms of the notice are suspended until a decision is reached by the Scottish Ministers.

It is a criminal offence to undertake unauthorised works to such trees and this may lead to a fine of up to £20,000 in the Sheriff Court.

Direct Action - failure to comply with the terms of an enforcement notice within the time specified can result in the Council or its appointed contractors carrying out the specified work. The Council will pursue the recovery of any costs it incurs from the landowner.

Prosecution - Non-compliance with certain notices as indicated above, as well as unauthorised works to listed buildings, the display of an advertisement in contravention of legislation or contravention of a tree preservation order constitutes a criminal offence under the relevant legislation and can result in the offence being reported to the Procurator Fiscal with a view to criminal proceedings being initiated against those involved. The decision whether or not to prosecute rests entirely with the Procurator Fiscal and will be based on the evidence submitted and whether or not it is in the public interest to prosecute.

Appendix iii. A Summary Guide to Planning Enforcement

Planning permission is required for most development that takes place in Scotland. Sometimes, however, developers or householders undertake work without planning permission or fail to keep to the permission they have been given. Local Councils have powers to act in such cases.

The Council will investigate breaches of planning control. These can include:

- work being carried out without planning permission
- an unauthorised change of use
- not following conditions imposed by a planning permission
- not following plans approved by a planning permission

The public can play a vital role in reporting such incidents to their Council. Any report of an alleged breach will need to include:

- the address of the property concerned;
- details of the suspected breach of planning control, (with times and dates if relevant);
- contact details for the person providing the information;
- whether that person wishes the matter to be treated confidentially. The Council will do its best to honour such requests but anonymity cannot be guaranteed where statutory enforcement action is undertaken, particularly where court action is required and that person may be called as a witness.

The purpose of planning enforcement is to resolve the problem rather than to punish the mistake. Action can involve negotiating a solution, asking for a retrospective planning application to be made, or more formal action such as the issue of an enforcement notice or a breach of condition notice.

Formal action can include serving an enforcement notice on the relevant people, spelling out the action they are required to take. They can challenge this notice, through an appeal to Scottish Ministers. If so, enforcement action is suspended until a decision is issued. Failure to comply with an enforcement notice can result in prosecution.

In some cases, the Council is time-barred from taking action. Generally, work carried out more than four years ago or a change of use that took place more than 10 years ago is considered lawful and immune from action.

It is not always possible to anticipate how a particular case will develop, nor how long it will take. The Council will try to keep people informed of progress. The Council has set down the procedures, its service standards, and contact details in its Charter for Planning Enforcement.