



Planning Enforcement Charter

2023

Aberdeenshire
COUNCIL



aberdeenshire.gov.uk

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Introduction

Planning permission is required for all development that takes place in Scotland, with the exception of some minor work. Sometimes, however, 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'.

A breach of planning control is not a criminal offence. 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. Aberdeenshire Council has statutory powers to investigate breaches of planning control and the conditions attached to planning permissions, and to 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. Aberdeenshire Council is not required to take any particular action on a specific breach of planning control, and indeed can decide that no action is necessary.

Councils have powers to enforce planning controls, if they consider it is expedient to do so. Councils do not routinely monitor developments to ensure planning controls are being followed and therefore there is also a role for the public in alerting the Council to any problems they become aware of.

The Charter explains how the planning enforcement process works and what happens at each stage of what can be a lengthy process. It explains the role of the Planning Authority and the service standards it sets itself when enforcement complaints are made relating to breaches of planning control. It is important to highlight that a planning enforcement complaint is not a complaint against the Council but a complaint about alleged breaches of

planning control. The Charter also explains the current powers available to the Planning Authority and sets out what it can and cannot investigate.



Enforcement is one of the most complex parts of the planning system. The aim of this Charter is to ensure that adopted procedures are fair and reasonable, and that interested parties are kept informed and are made aware of what is required.

Planning Enforcement is an issue that concerns many members of the public. We hope you will find this Charter useful and will let us know if you think we can improve the service further.

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What do Planning Enforcement Investigate?

The Council's Planning Enforcement Team investigate breaches of planning control. These include:

- work being carried out without planning permission or listed building consent
- an unauthorised change of use of land or building
- not following conditions imposed by a planning permission
- not following plans approved by a planning permission
- Unauthorised advertisements

Time Limits for Enforcement Action

Where breaches have been identified time limits apply to pursuing enforcement action. This means that where a breach has been in place for a number of years and no action has been taken, the Local Authority are then prevented from taking action. 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 change of use (other than to a single dwellinghouse) and breaches of condition. After ten years, no enforcement action can be taken.

Further information on the use of enforcement powers can be found in the Scottish Government publication [Circular 10/2009](#) Planning Enforcement.



What is a breach of Planning Control?

What the Enforcement Team will investigate

- The change of use of buildings without planning consent
- The change of use of land without planning consent
- Works to Listed Buildings without consent
- Erection of buildings without planning consent
- Carrying out of engineering works without planning consent
- Display of advertisements without consent
- Non-compliance with planning conditions
- Works to or felling of protected trees which are the subject of a TPO or trees in a Conservation Area
- Neglect to land or buildings which harm public amenity

What the Enforcement Team will not investigate

- Land ownership or boundary disputes (civil disputes)
- Fly tipping
- Content of an advertisement
- Devaluation of property
- Parking on public road or road closures
- Graffiti and anti-social behavior
- Unsafe buildings and structures
- Health and Safety matters
- Site working practices and construction working hours
- Noise complaints (unless specified in a planning condition)
- Light Pollution
- Hours of operation (unless specified in a planning condition)
- Clearing land of shrubs and trees (unless protected)

Advertisements

Planning enforcement also covers the physical display of advertisement such as billboards and advertisement hoardings, although slightly different procedures apply. The actual content of an advertisement is not covered by

planning control. Any complaints about this should be made to the [Advertising Standards Authority](#).



Anonymous Complaints

Anonymous complaints about suspected breaches of planning control will not be investigated. The Senior Enforcement Planners screen all enforcement complaints received. Only in exceptional circumstances will anonymous complaints be investigated where the breach would lead to serious harm to public amenity or public safety, but only in these limited circumstances.

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Getting in Touch

Planning Enforcement

Online: [Enforcement website](#)

Email: planningenforcement@aberdeenshire.gov.uk

Telephone: 01467 534333 (normal office hours 08:45 – 17:00 Mon to Fri)

Preliminary Enquiries

Planning – for Planning Enquiries

Online: [Planning website](#)

Email: planning@aberdeenshire.gov.uk

Telephone: The contact telephone number for all area offices is [01467 534333](tel:01467534333). On contacting the service, your query will be directed to the appropriate duty or case officer.

Drop in Surgeries: drop-in surgeries will be conducted via telephone. For all enquiries, please call [01467 534333](tel:01467534333).

You can make preliminary enquiries to the Area Planning Office by telephone, or in person, or via the website to discuss suspected breaches and whether they require planning permission or may be permitted development (exempt from the need for planning permission).

How to report a breach

If you consider that a breach of planning control has taken place, you are encouraged to contact the Enforcement Team within the Planning Service. The quickest and easiest way to do this is by going to the Aberdeenshire Council website and using either:

- [online services](#) – report a breach on the home pages of the Council website; or
- via the Planning and Building Standards pages of the website, [report a breach to planning enforcement](#)

If you wish to report a breach you must use the online form. If you are unable to do this, you can report a breach over the phone or in person, where you will be asked for the information set out above and this will be recorded on the online complaint form by Council staff. All the necessary information must be provided to allow a complaint to be logged with the Enforcement Team and to allow the investigation to commence. Failure to give the following information will delay the start of an investigation:

- address of the property/land where the breach has taken place
- details of the suspected breach, with dates and times
- your name, address, telephone number and email address

Confidentiality

While the Council will do its best to honor requests for confidentiality, it is subject to the requirements of the Environmental Information (Scotland) Regulations 2004, and the Freedom of Information (Scotland) Act 2002). Requests for total confidentiality may limit the ability of the authority to take formal action and cannot be guaranteed if the case leads to court proceedings.

Role of the Public

Members of the public have an important role in bringing breaches to the attention of the Council, such as non-compliance with planning conditions. Details of the conditions attached to planning permissions are included within the decision notice and can be found by searching for the relevant planning approval on the Council's website [here](#).

Whilst the Council endeavors to monitor development where it can, given the large number of permissions granted each year, it is not practical nor is it

expected that, Aberdeenshire Council staff monitor all planning permissions. It relies on a large extent on the public bringing potential breaches of planning control to its attention. Your involvement is, therefore, invaluable in providing information where it is believed that a breach has occurred or conditions attached to a permission are not being complied with or have not been discharged in a satisfactory way.

How to find out more about Planning Enforcement

The Planning Enforcement pages on the Aberdeenshire Council 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.

Planning Enforcement Register

When the Council takes enforcement action, a copy of the relevant Notice is placed on the Planning Enforcement Register. Recent and extant notices can be viewed online via the public access register at [Planning Enforcement Notices](#).



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Enforcement Policy

This policy sets out the principles and priorities which underpin all planning enforcement decision making in Aberdeenshire.

The primary aim of planning enforcement is to protect the environment and the quality of life in the public interest. The need for effective planning enforcement, both underpins the Council vision to be the best area, by protecting the area's special environment and sustaining the quality of life for all; and is necessary to ensure that the Local Development Plan policies are upheld.

General Approach to Enforcement

The integrity of the planning process depends on the Council's readiness to take enforcement action when it is required to do so. Local Authorities have the primary responsibility for taking whatever enforcement action is necessary within their area and the Council will always exercise its planning enforcement powers rigorously when it is expedient 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 harm, or may cause lasting harm if not stopped.

The enforcement policy sets out the approach to decision making, setting out the principles and priorities that apply when the Council are investigating breaches of planning control and deciding what action, if any, to take. In determining the appropriate actions, the Council will have regard to the level of harm resulting from the breach.

When considering enforcement action, the Council will have regard to the following and be guided by the approach set out in Stage 3 of the Enforcement Process. The **Principles** underlying effective enforcement are:

Expediency – We will only pursue enforcement action when it is 'expedient' to do so. Scottish Government has given Council's the primary responsibility for taking whatever action it considers necessary. We will exercise our planning enforcement powers rigorously when we consider it **expedient** to do so.

In deciding whether to pursue formal action the following factors are taken into account when applying the expediency test:

- 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 merit 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.

Proportionality – In considering the taking of any formal action, such action must always be proportionate to the seriousness of the harm being caused. Formal action 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 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).

Consistency – We will carry out our duties in a fair, equitable and consistent manner. While each case will be considered on its merits, we will have a consistent approach to enforcement when Officers are faced with similar circumstances. In reaching decisions we will be mindful of Government guidance, Statutory Provisions and relevant case law.

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 in a timely manner. 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 or reduce an unauthorised use or activity
- Remove or modify an unauthorised operational development
- Apply for planning permission, a variation of permission, or variation of condition

Confidentiality – The identity of persons reporting a suspected breach of planning control will always be treated in confidence, unless (1) the persons authorise otherwise, (2) or the persons are required to give evidence at a court case.

Openness – persons making a complaint and persons subject of a complaint will be kept informed as to the progress of an investigation. When formal action is necessary, we will explain why such action has been taken. Equally, if it is decided that it is not expedient to take enforcement action, all parties will be informed of the decision and reasons for the decision.

Helpfulness – We will actively work to provide a courteous and efficient service advising on compliance. 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. Such actions will result in the Councils Unacceptable Actions Policy being activated.

The **Priorities** underlying effective enforcement are set out in Appendix 2. In order to deal effectively with a large number of complaints about breaches of

planning control, cases will be given priority based on the seriousness of the breach, and the likelihood of serious harm to amenity or public safety.



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How the Enforcement Process Works

What to expect once a complaint is received

When enforcement complaints are received, all complaints are initially screened to check that they are a valid planning enforcement complaints; namely that they relate to a planning enforcement matter. The list of Breaches outlined in Chapter 2 set out what the Planning Enforcement Team can investigate. Where a complaint does not relate to a planning enforcement matter, customers are 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 1 – Investigation

The main purpose at this stage is to identify if an alleged breach has occurred. This stage is relatively quick, normally involving a site visit within 14 days or, in the case of priority breaches an urgent site visit is carried out. After carrying out the site visit it may not always be apparent who the responsible parties are or the landowners. In these circumstances further checks are carried out and contact made with appropriate bodies and agencies to gather further evidence of the breach and the relevant landowners. Planning Enforcement will gather as much information as possible to establish the facts about the case, speaking to the owners or occupiers of the land, and sometimes this may involve serving a 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 no planning breach or a breach that is immune from action, the case is closed and customers are informed, by email or letter, with an explanation of the decision.

Stage 2 – Triage Assessment

Where a breach has been established, Stage 2 focuses on deciding whether to take action. Planning Enforcement is a discretionary function and formal enforcement action should only be taken where a breach of planning control has occurred and it is 'expedient' to take action.

A triage assessment is carried out at this stage to determine the most appropriate course of action. Where a planning breach has been found, 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. The 'Expediency Test' will be applied to determine if the breach warrants taking action in the public interest 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. The Council is also required to give consideration to the Human Rights Act and Equalities Act to ensure that it is meeting these legal requirements also.

Categorisation of Breaches:

Breach Minor or Acceptable in Planning terms – these are generally minor breaches in scale and impact and accord with planning policies.

Breach could be made Acceptable with modifications/planning conditions – having had regard to planning policies, these are breaches that could be made acceptable or regularised with some minor amendments.

Breach Unacceptable – 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 3 – Outcomes

Once the breach is categorised, Stage 3 deals with 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; however, in more serious cases there will be no or little negotiation. A retrospective application may be submitted at any time and appeals lodged against Notices served, which can incur delays to this stage in the process. Also, some actions relating to the serving of Notices may involve further information gathering to identify all parties with an interest in the land subject to a Notice. This ensures that Notices are properly served.

Breaches and Possible Outcomes:

Breach Type	Possible Action
Minor breach e.g. a technical breach, only marginally over permitted development rights, or a breach which does not raise any impacts and accords within Planning policies.	A Section 33a Notice will be served requesting a retrospective application to regularise the breach. If no application is submitted we will then consider if it is expedient to take any further action. In the case of very minor breaches, the case is closed and no further action is taken. This is because not all breaches warrant officer time and the cost of follow up action.

Outcome	Possible Action
Breach but time barred from taking enforcement action e.g. a development or use has been in existence for a long period of time that makes it exempt from enforcement action.	No action can be taken. A Certificate of Lawful Development may be invited to regularise the breach.
Breach could be made acceptable or regularised with modifications.	A Section 33 Notice will be served requesting a retrospective application. If no application is submitted, we will then consider if it is expedient to take further action e.g. Serve a Notice requiring the breach to be addressed within a set period of time.
Breach is unacceptable/incapable of being made acceptable e.g. breaches that are unlikely to gain planning approval due to technical or policy reasons.	Serve an Enforcement Notice or other appropriate Notice to resolve the breach. We may also consider taking immediate remedial action to halt the breach if it is causing or likely to cause serious harm.
Emergency Case – a priority breach causing immediate and serious harm to people or the environment, or could lead to serious harm if not promptly addressed. Such cases require an immediate response, usually within 24 hours. Emergency cases will override the normal site visit programme and take priority over all other cases.	Immediate preventative action will likely be required to halt the breach, such as a Temporary Stop Notice, or Stop Notice along with remedial action such as an Enforcement Notice. An Interdict may also be applied for from the Courts to halt the breach or stop the threat of a breach continuing.

Useful Things to Remember:

Retrospective Application - A request to submit a retrospective application does not imply or guarantee that an application will necessarily be approved. It will be judged on its merits in the normal way.

There are no provisions in legislation restricting when a retrospective application may be submitted and in most cases this option will be pursued early in the enforcement process.

Enforcement Action - enforcement action may be taken to halt or remedy a more serious breach, or it may be taken some time later after other actions have failed to resolve an unacceptable breach. Once a Notice is served it is expected that the Notice will be complied with and within the timescales set by the Notice. Occasionally, the time period for compliance may be extended due to the particular circumstances of the case and the co-operation shown. It should be remembered that enforcement action cannot itself remedy a breach. Its purpose is to coerce the subject of the Notice, usually the landowner, into doing so.

Appeals

Enforcement Notices can be appealed, and this can often delay conclusion of the enforcement process.

Appeals against Enforcement Notices are considered by Scottish Ministers and dealt with, in most cases, by Reporters from the Directorate for Planning and Environmental Appeals. Anyone who has submitted information on a breach of planning control is advised of the appeal. There is no right of appeal against a Breach of Condition Notice or a Temporary Stop Notice.

Stage 4 – Non-Compliance

This stage deals with the period after the expiry of an Enforcement Notice (or other Notice) and where the Notice has not been complied with. In instances where a Notice has not been complied with, the Council require to consider a

number of possible actions to bring the case to a conclusion. In the event of noncompliance all cases are referred to a Non-Compliance Meeting at which the circumstances of the case are discussed, the expediency test is applied, and a way forward is agreed. The agreed outcome may be one of serving a Fixed Penalty Notice, taking Direct Action, reporting to the Procurator Fiscal (PF), or taking no further action. Interdicts may also be applied for in the Courts to halt works where a formal Notice has not been complied with and unlawful works continue. The options of Direct Action and referring matters to the Courts can often be time consuming, costly and the outcomes uncertain.

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

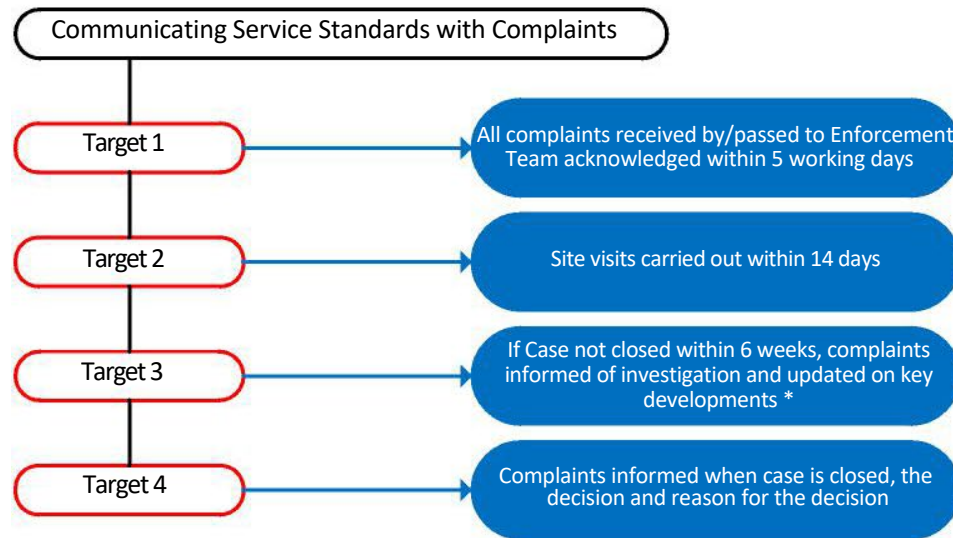
Aberdeenshire Council recognises that delays can be a source of considerable frustration to those submitting information, particularly if they consider their amenity is affected. Consequently, we will try to keep interested parties informed of significant stages in the progress of a case, but they may wish to contact the Enforcement Team for a more regular update.

In some cases it may not be expedient to undertake further action, even though planning controls have been breached. As stated previously, the purpose of planning enforcement is to resolve problems, not punish mistakes.

6 Service Standards

Planning Enforcement Service Standards

The Service Standards are what you should expect when you interact with the Council’s Planning Enforcement Team. If a complaint is received, we will:



* Key developments – Notices served, appeals received, outcome of appeals, further breaches, breach addressed

Investigating Breaches of Planning Control

When an enforcement complaint is received we will:

- Check, verify and register the complaint. Once registered, a written or e-mail acknowledgement will be sent to the person who made the complaint within five working days (Target 1). The acknowledgement will include a reference number and contact details for the Enforcement Team.
- In the case of **priority complaints**, respond within 20 working days of receipt of the complaint. In **all other complaints**, respond within 8 weeks. The response will advise of the proposed action to be taken. This may include the need for additional investigation prior to deciding on a course of action. It will also advise if the matter does not involve a breach of planning control. If the case is not closed within 6 weeks, we will provide an update on the case (Target 3), and once closed, we will provide an update and reason for the decisions (Target 4).



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Enforcement Powers

The Planning Enforcement powers available to the Local Authority are set out in Part IV of the Town and Country Planning (Scotland) Act 1997 as amended and in Chapter IV of the Planning Listed Buildings and Conservation Areas (Scotland) Act 1997.

Government policy on Planning Enforcement is set out in [Circular 10/2009, "Planning Enforcement"](#).

Types of Notice

Breach of Condition Notice – this is used to enforce the conditions applied to any planning permission. It is effective from the date it is 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. Contravening a Breach of Condition Notice can result in the Council deciding to prosecute, with a fine of up to £5,000.

Section 33a – Notice Requiring Application for Planning Permission Already Carried Out - This is used to encourage the submission of a retrospective planning application, which would then allow the Council to consider the granting of planning permission, subject to any conditions, that would make the development acceptable in planning terms.

Enforcement Notice – this is generally used to deal with unauthorised development but can also apply to breach of planning conditions. There are similar Notices and powers to deal with Listed Buildings (see below), and advertisements. An Enforcement Notice will specify a time period to take effect (a minimum of 28 days but see the section below on advertisement); the steps that must be taken to remedy the breach and the time for this to be completed. There is a right of appeal and the terms of the Notice are

suspended until a decision is reached. Failure to comply with an Enforcement Notice within the time specified is an offence and may lead to a fine of up to £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 must be served on the current owner, occupier and anyone else with an interest in the property. The procedures are similar to those outlined above. The Notice must specify the steps to be taken to remedy the breach and a final date for compliance. Failure to meet the terms of the Notice by the date specified is an offence. There is the right of appeal to Scottish Ministers against the Notice. Breaches of Listed Building Control are a serious matter. It is a criminal offence to undertake unauthorised works to demolish, significantly alter, or extend a Listed Building. In certain circumstances, this can lead to an unlimited fine and/or imprisonment.

Temporary Stop Notice – Similar to a Stop Notice (see below), except that it takes effect immediately as it is served. As with a Stop Notice there is no right of appeal, however, there is no need to serve an accompanying Enforcement Notice.

Typically, a temporary Stop Notice would be used to stop an activity that would, in the Council's opinion, cause damage to the environment or local amenity. The maximum period a temporary Stop Notice can be in effect for is 28 days and it is not possible to issue a 2nd or subsequent Notice after the first one expires, unless the Council has taken some other form of enforcement action between the issue of the Notices.

Stop Notice – this is used in urgent or serious cases where unauthorised activity must be stopped, usually on grounds of public safety, amenity or harm to the environment. When a Stop Notice is served, the Planning Authority must also issue an Enforcement Notice. There is no right to appeal against a Stop Notice and failure to comply is an offence. An appeal can be made against the accompanying Enforcement Notice. If a Stop Notice is served without due cause, or an appeal against the Enforcement Notice is successful, the Council may face claims for compensation. The use of Stop Notices, therefore, needs to be carefully assessed by the Council.

Other Powers

Planning Contravention Notice – this is used to obtain information about activated on land where a breach of planning control is suspected. It is served on the owner or occupier, on person/s with any other interest in the land or the person/s carrying out operations on the land. They are required to provide information about operations being carried out on the land and any conditions or limitations applying to any planning permission already granted. Failure to comply with the Notice within 21 days of it being served is an offence and can lead to a fine in the Courts.

Notice under Section 272 (of the Town and Country Planning (Scotland) Act 1997) – this provides limited powers to obtain information on interests in land and the use of land. Failure to provide the information required is an offence.

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 adversely affecting the amenity of the area. This is also known as an ‘Amenity Notice’ and sets out the action that needs to be taken to resolve the problem within a specified period.

Interdict and Interim Interdict – an interdict is imposed by the Courts and is used to stop or prevent a breach of planning control. Court proceedings can prove costly and Aberdeenshire Council will normally seek interdicts in serious cases or where Enforcement Notices have been ignored in the past. However, a 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.

Direct Action – failure to comply with the terms of an Enforcement Notice within the time specified can result in the Council carrying out the specified work. The Council may recover any costs it incurs from the landowners.

Enforcement and Advertising

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

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

The Council has the power to serve an Advertisement Enforcement Notice. This specifies a time period (normally 28 days) for compliance with the Notice. However, this period can be reduced to seven days if the Council believes there is an urgent need for the advertisement to be removed or altered in the interests of public safety, or if the advertisement can be removed without any other work being required.

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

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

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

8

Complaint and Compliment Procedure

How to report a complaint or compliment

Planning Enforcement is a complex procedure and individuals may consider that their complaint has not been dealt with effectively or efficiently. Aberdeenshire Council is committed to continually improving the services which it provides to the people of Aberdeenshire and has developed a complaints procedure for all Council Services.

Our aim is to provide customers with a good quality customer service that gets things right first time.

Aberdeenshire Council is committed to continually improving the service which it provides to the people of Aberdeenshire and has adopted a nationally agreed 2 step procedure for individuals to make a formal complaint, comment or compliment.

Comments and compliments are also welcomed where individuals feel that they have received good customer service. This feedback is used as part of continuous improvement of service that the Council strives for.

Getting in touch

Have your say: Let us have your comments, compliments and complaints

Online: [Have your say website](#)

Email: feedback.team@aberdeenshire.gov.uk

Telephone: 01224 001846



APPENDIX 1

Planning Enforcement FAQs

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

All such 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 divulged to other Council service (for example Environment Health, Building Standards, Roads Development) 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, the details of the complaint will be referred to the Senior Enforcement Planner, who will decide whether or not the matter should be investigated. Such complaints will not normally be investigated unless it is considered to 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.

What happens after I submit my complaint?

We firstly screen each case to determine if it is a planning enforcement matter and then prioritise enforcement cases based on the nature of the development and the harm caused to amenity and public safety. We aim to visit the site within the prescribed targets. Once the facts of the case have been established,

We will provide you with an update on our findings and proposed course of action as soon as possible. Once a case is closed, we will inform you of the decision and the reasons for closing the case.

Please note that enforcement matters can take a substantial length of time to resolve due to the procedures that must be followed and the volume of cases the Council receive.

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, such as the construction of a garage/conservatory/outbuilding 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, it is a breach of planning control. Most breaches of planning control are not criminal offences. There are some exceptions to this e.g. (1) if a building is listed, it is a criminal offence to carry out works that extend, alter, demolish etc. any part of the building without first obtaining consent from the Council or e.g. (2) if 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. It should be noted that the subject of the Notice has the right of appeal against such a Notice.

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 a neighbour's property that you believe part of which has been built on 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 Planning Authority 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 Planning Authority 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, and the Planning Service's Environment Team may be able to look into an alleged obstruction of a public right of way.

Planning Enforcement can only investigate an alleged unauthorised boundary wall or fence if it exceeds Permitted Development height restrictions. Further information about Permitted Development Rights and what does and does not require planning permission can be obtained from the Area Planning Offices where the Development Management Teams are based and they can provide advice on planning matters.

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.

Also, in some cases, Permitted Development Rights, which allow people to insert new windows/roof lights, may have been removed, in which case you would need to apply for planning permission. It is always advisable to check with the local Planning Office before you carry out such works.

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 cannot become involved in and 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 the breach is found to be minor or a technical breach will Planning Enforcement take enforcement action to have the breach resolved?

Enforcement action must always be proportionate with the breach of planning control to which it relates. Planning Enforcement will not take formal action against trivial or technical breaches that cause no harm to amenity, the environment or public safety.

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?

As outlined above, Enforcement action must always be proportionate with the breach of planning control to which it relates. In such a case, Planning Enforcement 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. Development Management colleagues would become involved in such cases in the first instance to deal with the discharge of conditions and liaise with the developer/person carrying out the development to secure the necessary information to satisfy the planning condition. 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.

APPENDIX 2

Prioritisation of Complaints

High Priority Cases	Examples
<ul style="list-style-type: none"> • Causing immediate harm to public amenity or the environment • Causing unrepairable or irreversible harm • Cases where it is immediately apparent that development is unacceptable on planning grounds • Causing or likely to cause permanent damage/long term effects • Causing immediate danger or threat to public safety • Potential to escalate if not addressed promptly 	<ul style="list-style-type: none"> • Quarrying, landfilling, land raising or large-scale site recontouring • Partial or full demolition of a Listed Building (LB) • Works to trees subject to a Tree Preservation Order (TPO) or within a Conservation Area • Demolition of a building in a Conservation Area • Adverts or works causing serious road visibility issues or serious distraction to drivers
Non Priority Cases	Examples
<ul style="list-style-type: none"> • Unlikely to give rise to severe or lasting harm • Cases that may warrant the submission of a retrospective planning application to regulate acceptable development or impose conditions • Breach causing low harm/non immediate harm to public amenity or the environment • Breaches likely to remain stable • Breaches that have gone undetected for a long time (but still within period for taking action) • Adverts causing harm to visual amenity 	<ul style="list-style-type: none"> • Minor breaches of a planning condition or approved plans • Minor breaches of a planning condition or approved plans • Minor works without planning permission e.g. gates, wells, fences, satellite dishes, domestic outbuildings • Minor variations or breaches that exceed PD (Permitted Development) limits

APPENDIX 3

What if a complaint is made about your property?

If a complaint is received alleging a breach of planning control at your property or works that you are carrying out, then 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, and in other cases it is found 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 without advance warning being given. Officers have a right of entry onto land without warrant in order to investigate an alleged breach of planning control. The Officer will make themselves known to any person(s) present when they enter the land.

Your Responsibilities

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.

Consequences of Unauthorised Developments

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.

Planning Enforcement Charter

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Aberdeenshire
COUNCIL



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