
Report To:	Environment and Regeneration Committee	Date: 17th January 2012
Report By:	Corporate Director, Environment, Regeneration & Resources	Report No: E+R/13/01/10/SJ/NMcL
Contact Officer:	N.McLaren, Development and Building Standards Manager	Contact No: 01475 712420
Subject:	Planning Enforcement Charter	

1.0 PURPOSE

- 1.1 The purpose of this report is to seek approval for the adoption of an updated Planning Enforcement Charter.

2.0 SUMMARY

- 2.1 The Planning etc. (Scotland) Act 2006 requires planning authorities to prepare and keep up to date a Planning Enforcement Charter. An updated and revised Charter has been prepared, and to comply with legislative requirements it must be submitted to the Scottish Ministers, copies placed in each public library and made available for viewing on the Council's web site.

3.0 RECOMMENDATION

- 3.1 It is recommended that the Committee agrees to adopt the updated Planning Enforcement Charter.

4.0 BACKGROUND

- 4.1 Section 27 of the Planning etc. (Scotland) Act 2006 introduces a mandatory requirement on each planning authority to prepare and keep up to date a Planning Enforcement Charter.
- 4.2 The Charter must set out a statement of enforcement policies, advise on how the public may bring breaches to the Council's attention and list the Council's procedures for dealing with complaints.
- 4.3 The Council is required to keep the Charter up to date and when reviewed send two copies of it to the Scottish Ministers, place a copy of it in each public library in Inverclyde and make it available for viewing on the Council's web page.
- 4.4 The Scottish Government has prepared a template format typically followed by planning authorities. This is reflected in the updated charter attached as an appendix to this report.

5.0 RECOMMENDATION

- 5.1 It is recommended that the Committee agrees to adopt the updated Planning Enforcement Charter.

6.0 IMPLICATIONS

- 6.1 Finance:

Financial Implications – One off Costs

Cost Centre	Budget Heading	Budget Year	Proposed Spend this Report	Virement From	Other Comments
n/a	n/a	n/a	n/a	n/a	n/a

Financial Implications – Annually Recurring Costs/ (Savings)

Cost Centre	Budget Heading	With Effect from	Annual Net Impact	Virement From	Other Comments
n/a	n/a	n/a	n/a	n/a	n/a

- 6.2 Personnel: None.

- 6.3 Legal: None.

7.0 LIST OF BACKGROUND PAPERS

Scottish Government Planning Enforcement Charter: A Guide to enforcing planning controls.
The Town and Country Planning (Scotland) Act 1997 (consolidated) incorporating the Planning etc. (Scotland) Act 2006.

PLANNING ENFORCEMENT CHARTER

INTRODUCTION

Planning permission is required for most development that takes place in Scotland, with the exception of some minor works. Sometimes, however, development takes place without the benefit of planning permission or developments do not accord with the approved plans. The Council undertakes monitoring of planning permissions but can also act on unauthorised development taking place. Some matters are also brought to the attention of the Council by members of the public.

The Council has powers to enforce planning controls if it is considered that it is in the public interest to do so.

This charter explains how the enforcement process works in Inverclyde, outlines the key points about planning enforcement, the Council's procedures relating to enforcement matters and the service standards that the Council sets. The Charter also explains what happens at each stage of what can often be a lengthy process.

The aim of the charter is to ensure that our adopted procedures are fair and reasonable and that interested parties are kept informed and are made aware of what is required. The Council hopes you will find this charter useful and that you will let us know if you think we could improve the service further.

GENERAL OVERVIEW OF PLANNING ENFORCEMENT

KEY POINTS ON PLANNING ENFORCEMENT

A breach of planning control is not a criminal offence. The main purpose of planning enforcement is to resolve the problem rather than punish the mistake. Furthermore, any action the Council takes has to be proportionate to the scale of the breach, but it should be noted that once an enforcement notice of whatever description has been served, non-compliance with its requirements can lead to criminal prosecution.

Possible breaches of planning control include the following:

- Development works being carried out without the required planning permission or other consent.
- Unauthorised changes of the use of buildings.
- Failure to comply with approved plans or conditions attached to planning permission or other consent.

It should be pointed out that enforcement action has to be taken within strict time limits:

- A four year limit – this applies to “unauthorised operational development” (the carrying out of building, engineering, mining or other operations in, on, over or under land) and change of use to a single dwellinghouse. After four years following the breach of planning control, the development becomes lawful, and no enforcement action can be taken.
- A ten year limit – this applies to all other development including change of use (other than to a single dwellinghouse) and breaches of condition. After ten years, the development becomes lawful if no enforcement action has begun.

Planning enforcement also covers the following:

- Dealing with cases of neglect of land or buildings which are considered to have a detrimental effect on the amenity of any part of the Council's area.
- The display of advertisements such as billboards and advertisement hoardings without the benefit of advertisement consent.

The 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. Enforcement is, however, a discretionary power. It is possible that even where a breach of planning control has occurred, the Council may decide that it is not in the public interest to take enforcement action.

PLANNING ENFORCEMENT POWERS

The Planning Enforcement powers available to the Council are set out in the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc. (Scotland) Act 2006 and the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. The Planning Acts are available from HMSO, 71 Lothian Road, Edinburgh and can be accessed online at <http://www.opsi.gov.uk/>

Government policy on planning enforcement is set out in Circular 10/2009 "Planning Enforcement." This document is available from the Scottish Executive and can be viewed electronically at www.scotland.gov.uk/planning

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 £1,000.
- **Enforcement Notice** – this is generally used to deal with unauthorised development, but can also apply to breaches 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 advertisements); the steps that must be taken to remedy the breach and the time for this to be completed.

There are limited rights of appeal to the Scottish Ministers and the terms of the notice are suspended until a decision is reached. Failure to comply with an enforcement notice within the time specified is an offence, and may lead to a fine of up to £20,000 in the Sheriff Court. Failure to comply may also result in 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 either to an unlimited fine or imprisonment.
- **Stop Notice** – this is used in urgent or serious cases where unauthorised activity must be stopped, usually on grounds of public safety. When a stop notice is served, the planning authority must also issue an enforcement notice. There is no right of appeal against a stop notice and failure to comply is an offence. An appeal can be made against the accompanying enforcement notice. If a stop notice is served without due cause, or an appeal against the enforcement notice is successful, the Council may face claims for compensation. The use of stop notices therefore needs to be carefully assessed by the Council.
- **Temporary Stop Notice (TSN)** - this is used to require the immediate halt of an activity which breaches planning control. The provisions make an exception in that a TSN cannot prohibit the use of a building or a caravan as a dwellinghouse. TSNs are enforceable for 28 days, after which they time they expire. They may, however, be followed by further enforcement action such as an Enforcement Notice and Stop Notice. There is no provision to appeal against a TSN.

- **Fixed Penalty Notice (FPN)** - this provides an alternative process, in addition to the option to seek prosecution, to address situations where a person has failed to comply with the requirements of an enforcement notice (EN) or a breach of condition notice (BCN). By paying the penalty imposed by the FPN, the person will discharge any liability for prosecution for the offence. They will not, however, discharge the obligation to comply with the terms of the EN or BCN and the Council will retain the power to take direct action to remedy the breach and recover the costs of the work from that person. The Council is not required to offer the option of paying a fixed penalty. Any decision to do so would be dependant on considerations such as the scale of the breach and its impact on local amenity.
- **Notice Requiring Application for Planning Permission for Development Already Carried out** - Where the Council considers that a development which does not have planning permission may 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 Council 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 is used to obtain information about activities on land where a breach of planning control is suspected. It is served on the owner or occupier, on a person with any other interest in the land or who is carrying out operations on the land. They are required to provide information about operations being carried out on the land and any conditions or limitations applying to any planning permission already granted. Failure to comply with the notice within 21 days of it being served is an offence and can lead to a fine in the Courts.
- **Notice under Section 272** (of the Town and Country Planning (Scotland) Act 1997) – this provides limited powers to obtain information on interests in land and the use of land. Failure to provide the information required is an offence.
- **Notice under Section 179** (of the Town and Country Planning (Scotland) Act 1997) – this allows the Council 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. There is a right of appeal and the terms of the notice are suspended until a decision is reached. Failure to comply may also result in the Council taking **Direct Action** (see below).
- **Advertisement Enforcement Notices** – the Council’s powers are set out in the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984. The Council has powers to serve advertisement enforcement notices in relation to advertisements that are unauthorised in terms of the regulations. A notice of this type can specify a time period (normally 28 days) for compliance with its terms. This period can, however, be reduced to 7 days if the Council believes there is an urgent need for the advertisement to be removed or altered in the interests of public safety. Displaying an advertisement in contravention of the regulations is an offence and, if convicted in court, an offender can be fined. The Council also has powers to remove or destroy placards and posters that do not have planning permission or deemed consent. If the person who put up the item can be identified, they have to be given at least 2 days notice that the Council intends to take the item down. If they cannot be readily identified then the advert can be removed immediately. It is important to note that the content of an advertisement is not under planning control. Any complaints about advertisement content should be made to the Advertising Standards Authority.

Other actions

- **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 the Council 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.
- **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 landowner.

COUNCIL PROCEDURES

PROCEDURE FOR IDENTIFYING AND REPORTING ALLEGED BREACHES OF PLANNING CONTROL

Members of the public have a vital role in reporting breaches of control. Concerns should be raised with the Council. Preliminary enquiries may be made by telephone or in person at the Council offices but if you wish to be kept up to date with progress of the Council's actions these must be followed up in writing or by e-mail.

To report a suspected breach of planning control, please write to: The Head of Regeneration and Planning, Inverclyde Council, Cathcart House, 6 Cathcart Square, Greenock PA15 1LS. Alternatively you can e-mail devcont@inverclyde.gov.uk or telephone 01475 712401

Information from the Public

The following information is essential when reporting a suspected breach:

- the address of the property concerned;
- details of the suspected breach of planning control, with times and dates if relevant;
- your name, telephone number and address;
- an e-mail address if available or if the complaint is submitted electronically;
- information on how the breach affects you;
- whether the enquiry is to be treated confidentially.

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

The Monitoring of Conditions

Although the Council monitors conditions attached to a grant of planning permission, members of the public also have an important role to play. Details of conditions are included within the decision notice attached to the permission (if you have made representations on an application that has been approved by the Council you will receive a copy of these). However, there are a large number of permissions granted each year and it is not practical, nor is it expected, that Council can monitor all conditions at all times.

The involvement of the public is therefore invaluable in providing information where it is believed that conditions attached to the consent are not being complied with or have not been discharged in a satisfactory way. Breaches of conditions are investigated in the same way as breaches of planning control. Information received by the Council's Development Management Team is checked to ensure that it involves a possible breach of control and includes all the detail required for a possible investigation. After preliminary checking and compliance with the requirements for investigation, the complaint will be registered. Once registered, a written or e-mail acknowledgement will be sent to the person who made the complaint.

PROCEDURE FOR INVESTIGATING AND ACTING ON POSSIBLE BREACHES OF PLANNING CONTROL

Investigation Procedures

A priority system is used for investigating registered complaints. The breaches of planning control that the Council considers to be of major significance will be given priority. This is based on matters such as the environmental effects and consequences of the breach, the significance of the site, and whether the works or activity subject of the complaint are actively ongoing or not.

Procedures when investigating a Breach

An investigation begins with an officer from the Council's Development Management Team visiting the site. The officer will, where possible, contact the person whose property appears to be involved in the alleged breach and advise them of the nature of the investigation. Following this visit, the individual who has made the complaint will be informed of what action, if any, is proposed. In some cases additional investigation may be required.

In some cases action may not be appropriate, even though planning controls have been breached. As stated previously, the purpose of planning enforcement is to resolve problems, not punish mistakes. The Council has to consider each case on merit and decide on the best solution. Other than inviting a retrospective planning

application, it is unlikely to take formal action over developments which, in planning terms, are seen as acceptable even though the individual did not apply for planning permission. In other instances negotiated solutions will be sought and achieved and, if successful, formal enforcement action may not be required. In all cases where unauthorised development is undertaken, a planning application is not submitted and where the Council do not consider enforcement action appropriate, the works are logged in the Council's Register of Unauthorised Works. This is a publicly available document and may be inspected, for example, by potential house purchasers.

Only a relatively small number of cases require formal enforcement action. This normally involves either an enforcement or breach of condition notice being served on those involved in the development. Both notices include the following information:

- a description of the breach of control that has taken place
- 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
- where appropriate, any rights of appeal the recipient has and how to lodge an appeal

Planning officers have powers to enter any land to:

- establish if there has been a breach of planning control
- check if there has been compliance with a formal notice
- check if a breach has been satisfactorily resolved.

Where an enforcement notice is not complied with, effort will be made to resolve the case to the satisfaction of the Council. Options which the Council may consider include:

- referring the case to the Procurator Fiscal for possible prosecution or
- seeking a Court interdict to stop or prevent a breach of planning controls.

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

Details of enforcement notices, breach of condition notices and stop notices are entered into an Enforcement Register. You can inspect these documents at Cathcart House, 6 Cathcart Square, Greenock during normal office hours Monday to Friday.

SERVICE STANDARDS

PROCEDURE FOR MAKING A SUGGESTION OR COMPLAINT

The Council hopes the public will be satisfied with the planning enforcement service. However, if you have any suggestions, concerns or difficulties, we want to hear from you. We are committed to improving our service and dealing promptly with any failures.

We will consider all complaints made about the way an enforcement enquiry was dealt with. Some people may disagree with the outcome of an investigation but, of itself, that is not grounds for complaint.

In the first instance, complaints should be discussed with the member of staff involved. If you are still dissatisfied, talk to the Development Management Team Leader (telephone 01475 712416). If he is unable to help, you will be given the name of a more senior officer who will investigate the matter.

If you remain dissatisfied, the Council has a complaints procedure that you may follow. Details may be obtained directly from Cathcart House, 6 Cathcart Square, Greenock or online at <http://www.inverclyde.gov.uk/contact-us/>

If, having followed the Council's complaints procedure you remain unhappy then you may take your complaint to the Scottish Public Services Ombudsman. Please note that the Ombudsman does not normally entertain complaints that have not been the subject of the Council's own complaints procedure in the first instance. The Ombudsman may be contacted at:

SPSO
FREEPOST EH641
Edinburgh EH3 0BR
Telephone: 0800 377 7339, or e-mail: ask@spsa.org.uk

Generally, you must contact the Ombudsman within 12 months.

SERVICE STANDARDS

1. By publishing this Charter, the Council aims to improve the enforcement service and make it responsive to the reasonable needs of customers. The Council will monitor the contents of the Charter to ensure the standards and targets are met.

2. If preliminary checking of a complaint suggests a breach of planning control, the complaint will be registered. Once registered, a written or e-mail acknowledgement will be sent to the person who made the complaint within 10 working days. The acknowledgement will include a reference number and contact details for the investigating officer.

3. Priority will be given to investigating the most significant breaches of planning control, including:

- Major breaches of planning control which may be causing serious and significant damage or harm to the environment, including the built environment
- Breaches of planning control relating to major developments
- Potential damage to listed buildings
- The unauthorised felling of trees or matters affecting trees protected by Tree Preservation Orders
- Breaches of planning control which have a significant detrimental impact on amenity or which cause significant harm.

4. Where a planning breach cannot be resolved and action is justified, a formal notice will be served. This will be either an enforcement notice or a breach of condition notice. The Council will write to the recipient of the notice to explain what is required, the timescales involved and the available options to resolve the issue.

5. Where the terms of any enforcement notice are not complied with, every effort will be made to resolve the case to the satisfaction of the Council. This may involve the matter being referred to the Procurator Fiscal for possible prosecution.

6. We will monitor all complaints and suggestions made and use them to review and improve the service we provide.