



Planning Enforcement

Frequently Asked Questions

What is planning enforcement?

This aspect of the work of the Council as Planning Authority deals with monitoring and enforcing all types of development which have either not obtained the necessary planning or related permissions, or do have permission but have not been or are not being built in accordance with the approved plans or conditions attached to a permission.

The Council has a Planning Enforcement Charter to explain how it will use enforcement powers to deal with breached of planning control. It is divided into three sections, reflecting the three statutory requirements for such a Charter:

- a) Council Policy on taking planning enforcement action, including the Council's priorities and the service standards you can expect.
- b) How you can bring any breach of planning control to the attention of the Council.
- c) How any complaint you have about the Council taking enforcement action can be submitted and how it will be dealt with.

The Charter takes account of published guidance to Councils from the Scottish Government on the use of enforcement powers. Circular 10/2009 'Planning Enforcement' is viewable on-line at <http://www.scotland.gov.uk/Publications>).

The Council has a duty to investigate breaches of planning control and has powers under the planning legislation to remedy breaches. However it must be understood that the Council is not obliged by the Planning Acts to take enforcement action unless it is expedient to do so taking into account the provisions of the development plan and other material planning considerations. This means that each potential breach has to be treated on its individual merits.

Planning is a complex process and it is accepted and understood that individuals may not always know that a particular type of permission is needed, although encouragement is given to establishing the position in advance of any works being carried out. Nevertheless, the Council will, where appropriate, take a positive approach to enforcement and try to achieve the

correct outcome for the developer, neighbours and the environment. In doing this we will ensure that of fairness and consistency are maintained.

The purpose of planning enforcement is normally to resolve the problem either through negotiation, or, failing that through formal enforcement action, rather than punishing the person who breached planning control. Any action taken has to be appropriate to the scale of the breach.

How do I make enquiries about enforcement?

If you feel that a new development or use of a building or land may not comply with approved plans or may not have the necessary planning or related permission, you are encouraged to make further enquiries in the following ways:

1. If possible start by speaking to someone closely connected with the development e.g. the developer or landowner and try to get an explanation about is taking place with a view towards establishing the facts of the situation.
2. If, having established the facts (or if you have been unable to do so), telephone the Development Management section of Planning & Regeneration and ask to discuss the matter with a Planning Enforcement Officer. Contact details are provided at the end of this document. Such an enquiry should be followed up in writing or by email. This allows us to have a clear record of the complaint and to keep you informed about any action we subsequently take.
3. Alternatively, write to or email the Development Management section outlining, in as much detail as possible, the nature of you enforcement enquiry.

It is helpful if you are able to provide the following information:

- a. Your name, address and telephone number, so that we can respond to you in writing and keep you informed whilst your enquiry is being followed up.
- b. The precise location of the perceived breach of planning control.
- c. The description of the activity or construction work taking place, with as much precise information as possible, e.g. the date on which work began, etc.

How are enforcement enquiries dealt with?

When the Council's Planning Enforcement Officer receives an enforcement enquiry, the following procedure is followed:

1. The complaint will be recorded and acknowledged in writing within 5 working days.
2. A visit to the site and further research will take place to establish whether or not the activity or building work is considered to be unauthorised.
3. If further action is considered to be necessary, contact will be made with the owner/occupier of the property concerned and further investigations undertaken as appropriate to establish the full facts and circumstances of the case.
4. You will be advised within 15 working days of the receipt of your initial enquiry about the consequent course of action which the Council intends to take.

All enforcement enquiries will be treated confidentially. Enquiries which are made anonymously will still be investigated to establish whether or not there is a breach. However, it will not be possible to contact the enquirer to obtain further information to assist any investigation, nor can the enquirer be advised about the progress or outcome of the investigation.

Are there priorities for enforcement action?

Yes, whilst all complaints will be investigated, our priorities for enforcement will be linked to significant breaches of planning control including:

1. significant detrimental impact on matters of environmental importance, especially on sensitive or protected environments.
2. significant detrimental impact on residential amenity, particularly where a number of houses are affected.
3. significant detrimental effect on public visual amenity.
4. breaches of condition in respect of a major development or development where there is a significant level of community interest.
5. damage to Listed Buildings.
6. breaches of planning control within designated Conservation Areas, particularly where improvement schemes have been promoted by the Council.
7. unauthorised felling of trees and matters affecting trees protected by Tree Preservation Orders.

8. breaches of planning control which undermine a Council policy or programme.

Are there time limits determining whether or not enforcement action can be taken?

Planning Enforcement action has to be taken within strict time limits. A four year limit 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. A ten year limit applies to all other development including change of use (other than to a single dwellinghouse) and breaches of condition. There is no time-limit restricting the commencement of Listed Building Enforcement Action or action within a Tree Preservation Order.

If a breach of planning control has taken place, will further action always follow?

Further action may not be necessary or appropriate in all cases. There are a few basic considerations which must always be addressed when deciding whether or not to take formal enforcement action. It may be concluded that a change of use or reported works are unauthorised. If this is the case the Enforcement Officer must establish if retrospective planning permission is likely to be granted if an application was to be submitted. If this is the case, no further enforcement action will be taken, pending the determination of that application. Such an application will be dealt with by the Council in the normal way. Permission may or may not be granted and consent may be subject to conditions. If planning permission is not granted, formal enforcement action involving the serving of notices will normally follow if the breach continues. In certain cases the breach may still be rectified by negotiation rather than by the Council taking formal enforcement action.

It is important to bear in mind that the Council must at all times act reasonably and the decision whether or not to take formal action rests solely with the Council.

How long will investigations take?

Since it is not always possible to anticipate how a particular case will develop, the timescale for resolving a complaint is difficult to estimate. Progress can be delayed whilst:

1. relevant and satisfactory evidence is collected and verified.
2. negotiations take place to try to resolve a case without the need for formal action.
3. a retrospective planning application is submitted and determined.
4. an appeal against a formal notice is determined (and may be upheld).
5. direct action by the Council is undertaken to rectify a breach
6. a case is reported to the Procurator Fiscal and prosecuted through the Courts.

The Council appreciates that delay can be a cause of frustration and annoyance for those who have reported the breach. However, more often than not the causes of delay are likely to be procedural or involve other factors outside its direct control.

What Legal Notices can be served?

There are several types of Legal Notice that can be served under the Planning Acts, each dependent on the nature, extent and severity of the unauthorised building works or activity.

1. Planning Contravention Notice

This is normally used at the start of an investigation and requires the person(s) on whom it is served to provide details of any operations or works which have been carried out, and of anyone with a legal interest in the site. A response must be made within 21 days, otherwise a legal offence has been committed and prosecution is a possibility.

2. Breach Of Condition Notice

This Notice requires the person receiving it to comply with a previously approved condition which was attached to a planning permission. There is no right of appeal against this notice.

3. Enforcement Notice

An Enforcement Notice lays down steps which must be taken within a set time-scale, to ensure that the terms specified in the Notice are complied with. The terms of the Notice take effect on a specific date (normally after a minimum of 28 days). There is a right of appeal and the terms of the Notice are suspended until a decision on the appeal has been reached by a Reporter appointed by the Scottish Government. There are separate Enforcement Notices for service in relation to Listed Buildings, Trees and Advertisements but the legal procedure is exactly the same as for an ordinary Enforcement Notice.

4. Temporary Stop Notice

These Notices are valid for up to 28 days and are effective from the time they are served, without requiring that an Enforcement Notice be served first. This allows the Council 28 days before a formal Enforcement Notice and Stop Notice, if still necessary, require to be served. There is no right of appeal.

5. Stop Notice

A Stop Notice is only used in particularly urgent or serious cases where public safety and related issues are of immediate concern. This is served at the same time as an Enforcement Notice and takes immediate effect. Whereas an Enforcement Notice takes 28 days to come into effect, the Stop Notice will state the steps which must be taken immediately to comply with the Notice. The use of this particular power will, in each case, be carefully considered by the Council before it is used. If a Stop Notice is served without due cause, or a subsequent appeal against a parallel Enforcement Notice is upheld, the Council may be liable to claims for compensation.

6. Amenity Notice (under Section 179 of the Planning Act)

This requires the person receiving this Notice to tidy up a piece of land which has become untidy or unkempt. This does not normally relate to garden ground which has become overgrown. The impact on the amenity of the surrounding area needs to be significant to justify such a notice being served.

7. Interdicts

Interdicts and Interim Interdicts are applications made direct by the Council to the Sheriff Court in order to stop an alleged unauthorised development or activity and are used in cases of extreme urgency or importance.

8. Direct Action

In certain circumstances the Council may decide to undertake the works necessary to rectify a breach of planning control themselves and seek to recover the costs involved from the owner(s) of the land / buildings. The Council has an annual budget specifically for this purpose.

9. Fixed Penalty Notice

This may be served as an alternative to seeking prosecution where the terms of a formal notice have not been complied with. The penalties are £2,000 (£1,500 if paid within 15 days) for non-compliance with an Enforcement Notice and £300 (£225 if paid within 15 days) for non-compliance with a Breach of Condition Notice. Failure to pay a Fixed Penalty fine may result in the case being referred to the Procurator Fiscal for possible prosecution. There is no right of appeal against a Fixed Penalty Notice.

What happens if a formal Notice is ignored?

If a person receiving a Notice either ignores it or fails to comply with its terms, the Council has two options. Firstly, it can carry out the works stated in the Notice (i.e. direct action) and thereafter send a bill for costs to the person who received the Notice. Alternatively, it can report the circumstances to the Procurator Fiscal, and if the 'developer' is subsequently found guilty of an offence in court, they may receive a fine of up to £20,000, or imprisonment in the most serious of cases.

Can the Notices be appealed?

Yes, certain types of Notice can be appealed, as specified above. Information on the appeals procedure is contained within the Notices, i.e. details of how and when an appeal may be made to Scottish Ministers. Appeals are dealt with by an independent Reporter on behalf of the Ministers, normally following an exchange of written submissions. In rare cases a public inquiry is deemed necessary. The decision of the Reporter is final, except where there is a challenge to the Courts on a point of law.

How can I complain about planning enforcement?

We will respond within 15 working days of receiving a suggestion about our Planning Enforcement service or a formal complaint. We will monitor all complaints and suggestions made and use them to review and improve the service we provide. Any formal complaint will be dealt with in accordance with the Council's Complaints Procedure. A copy of this can be viewed on the Council's website at <http://www.pkc.gov.uk> or obtained from Council offices.

If you are not satisfied with the initial response to a formal complaint, you can take the complaint further, to the Council's Stage 2 process as explained in our guidance on Complaints. Lastly, if you are unsatisfied with the Council's complaints process after completing the Stage 2 process, then you have the right to take your complaint (generally within 12 months) to the Scottish Public Services Ombudsman, at:

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

Our Contact Details

**The Environment Service
Development Management
Perth & Kinross Council
35 Kinnoull Street
Perth
PH1 5GD**

Telephone (01738) 475300

Email DevelopmentManagement@pkc.gov.uk

If you or someone you know would like a copy of this document in another language or format, (On occasion only, a summary of the document will be provided in translation), this can be arranged by contacting the Environment Service's Equalities Assistant on 01738 476558 or TESEqualities@pkc.gov.uk



Council Text Phone Number 01738 442573

If you or someone you know would like a copy of this document in another language or format, (on occasion only a summary of the document will be provided in translation), this can be arranged by contacting
Customer Service Centre 01738 475000

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