



UPDATE REPORT ON PLANNING ENFORCEMENT ACTIVITY AND NEW MIDLOTHIAN PLANNING ENFORCEMENT CHARTER FOR APPROVAL

Report by Chief Officer Place

1 PURPOSE OF REPORT

- 1.1 The purpose of this report is to advise the Committee of the Scottish Planning Enforcement regime, provide statistical details of complaints received, closed and notices served in the period 2019-2022 and to seek approval of an updated Planning Enforcement Charter which identifies priorities and targets for planning enforcement activity.

2 BACKGROUND

- 2.1 The Town and Country Planning (Scotland) Act 1997 as amended by the 2006 and 2019 Acts and associated regulations provide the legislative basis for the various forms of planning enforcement activity. Scottish Government guidance on the approach to be taken to enforcement work is contained in Circular 10/2009 – Planning Enforcement. Paragraphs 7-10 of the Circular provides a good overall summary of the framework that local planning authorities are operating within in relation to planning enforcement matters.

- 2.2 Paragraphs 7-10 of Circular 10/2009 – Planning Enforcement are as follows:

7. Nothing in this guidance should be taken as condoning any breach of planning law. Planning authorities have a general discretion to take enforcement action against any breach of planning control if they consider such action to be expedient, having regard to the provisions of the development plan and any other material considerations. When they are considering whether any particular formal enforcement action is an expedient remedy for unauthorised development, planning authorities should be guided by the following considerations: planning authorities, under the provisions of the 1997 Act, have primary responsibility for taking whatever enforcement action may be necessary in the public interest, in their administrative area.

Decisions in such cases, and any resulting action, should be taken without undue delay. Failure to do so could constitute grounds for a finding of maladministration by the Scottish Public Services Ombudsman. In considering any enforcement action, the planning

authority, with regard to the development plan, should consider whether the breach of control would affect unacceptably either public amenity or the use of land and buildings meriting protection in the public interest. Enforcement action should always be commensurate with the breach of planning control to which it relates. For example, it is usually inappropriate to take formal enforcement action against a trivial or technical breach of planning control which has no material adverse planning implications (but see paragraph 8 below). However, planning authorities should be aware that failure to take enforcement action against a breach of planning control could be subject to a referral to the Scottish Public Services Ombudsman

8. While it is the case that it may be possible to resolve a breach of planning control through informal negotiations, particularly where the breach is relatively minor and/or unintentional, where such an approach is initially unsuccessful, further negotiations should not be allowed to hamper or delay whatever formal enforcement action may be required to make the development acceptable on planning grounds, or to compel it to stop. Planning authorities should bear in mind the statutory time limits for taking enforcement action and, in particular, the possibility that a referral to the Procurator Fiscal to determine whether to initiate a criminal prosecution may need to be made promptly in those cases where breaches have to be prosecuted within 6 months of the date on which the offence was committed. This is not the date of the alleged breach of planning control but the last date of failure to comply with the Notice requiring the breach to be remedied.

9. The integrity of the development management process depends upon the planning authority's readiness to take effective enforcement action when necessary. Public respect for the development management system is undermined if unauthorised development, which is unacceptable on its planning merits, is allowed to proceed without any apparent attempt by the planning authority to intervene before serious harm to amenity results from the breach.

10. Planning authorities have a wide choice of available options for taking enforcement action, whenever they consider it appropriate. Authorities need to assess, in each case, which power (or mix of powers) is best suited to dealing with any particular suspected or actual breach of control to achieve a satisfactory, lasting and cost-effective remedy. Rapid initiation of enforcement action is usually vital to prevent a breach of planning control becoming well established and more difficult to remedy.

2.3 The time limits on taking enforcement action are identified at paragraphs 10-12 of the Circular:

10. Where a breach of planning control consists of the carrying out of any form of 'operational development' without planning permission, section 124(1) provides that enforcement action may only be taken

within 4 years of the date on which the operations were 'substantially completed'. This provision extends to building, engineering, mining and other operations in, on, over or under the land.

11. Where a breach of planning control consists of a change of use of any building (which, for the purposes of the 1997 Act, includes part of a building) to 'use as a single dwellinghouse', section 124(2) provides that enforcement action may only be taken within 4 years of the date of the breach. This time limit applies both where the change to use as a single dwellinghouse involves development without planning permission, and where it involves a failure to comply with a condition or limitation to which a planning permission is subject.

12. Where there is any other breach of planning control - i.e. a breach involving any material change in the use of land (other than a change to use as a single dwellinghouse) either without planning permission, or in breach of a condition or limitation to which a planning permission is subject - section 124(3) provides for the 10 year time limit on enforcement action to apply.

- 2.4 It should be noted that there are no time limits for taking enforcement action in relation to unauthorised works to listed buildings.
- 2.5 In Midlothian all valid planning enforcement complaints received are investigated. Investigations will take different time period depending on the nature of the issue involved and the complexity of the case. Typically an enforcement complaint will be closed for one of the following five reasons:
- Investigations identify that there is no breach of planning control;
 - There is a breach of planning control but it is considered to be a minor/technical breach and not harmful and therefore not expedient to take further action;
 - The breach has been resolved informally;
 - Retrospective planning permission has been granted for the previously unauthorised development; or
 - Formal enforcement action has been taken and the notice served has been complied with.
- 2.6 The details of the different enforcement powers open to the Council are set out in the attached Planning Enforcement Charter.

3 MIDLOTHIAN PLANNING ENFORCEMENT CHARTER

- 3.1 Section 158A of the Town and Country Planning (Scotland) Act 1997 as amended requires a planning authority to prepare an enforcement charter. This is a publicly available document setting out how the enforcement system works, in particular, the role of the planning authority and the service standards it sets itself.
- 3.2 The proposed updated charter sets out:

- the background to planning enforcement;
- the different types of notice available to local planning authorities;
- the considerations the local planning authority must have in contemplating enforcement action including expediency;
- service standard and priorities; and
- the new requirement from the Planning (Scotland) Act 2019 for Scottish local authorities to proactively monitor major development sites.

3.3 Once the Enforcement Charter is approved it will be published on the Council's website. Furthermore, the intention is to transfer the attached word document into a more attractive version with visual representations in line with the suite of other planning documents on the Council's website.

4 ENFORCEMENT ACTIVITY

4.1 The below tables sets out the number of enforcement complaints received and closed and enforcement notices served for the period 2019-2022.

Table 1- Enforcement Complaints Received and Closed 2019-2022

	2018/19	2019/20	2020/21	2021/22	2022/23*
Complaints received	157	135	127	71	23
Cases closed	133	80	80	172	46

*Q1 2022/2023 – 1 April -30 June 2022

Table 2- Notices Served by Midlothian Council 2019-2022

	2019	2020	2021	2022**
Planning Contravention Notice	6	0	9	9
Enforcement Notice	2	3	1	8
Breach of Condition Notice	3	0	1	0
Section 179 (Amenity Notice)	0	0	0	1
Section 33A – Submission of a Planning Application	0	0	1	9

**to date

5 RECOMMENDATION

- 5.1 It is recommended that the Committee:
- a) Note the report on Planning Enforcement Matters;
 - b) Approve the attached Midlothian Planning Enforcement Charter 2022 and agree to its publication; and
 - c) Delegate to the Planning, Sustainable Growth and Investment Manager any formatting matters to enable the Planning Enforcement Charter to be uploaded onto the Council's website in a more attractive format with visual representations in line with the suite of other planning documents on the Council's website.

Peter Arnsdorf
Planning, Sustainable Growth and Investment Manager

Date: 30 September 2022
Contact Person: Matthew Atkins Lead Officer Planning Obligations and Enforcement
matthew.atkins@midlothian.gov.uk

Midlothian Council

Planning Enforcement Charter 2022

To ensure an effective, consistent and clear approach to carrying out enforcement with regards to breaches in planning control

The Scottish Government’s Circular 10/2009 Planning Enforcement recognises that: “The integrity of the development management process depends upon the planning authority’s readiness to take effective enforcement action when necessary. Public respect for the development management system is undermined if unauthorised development, which is unacceptable on its planning merits, is allowed to proceed without any apparent attempt by the planning authority to intervene before serious harm to amenity results from the breach.”

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1 Introduction to Planning Enforcement

The vision defined within the Local Outcomes Improvement Plan (LOIP) for Midlothian is:

“By 2030 Midlothian will be a carbon neutral area with a sustainable green economy, built and natural environment; where working in partnership with residents, community organisations, public service agencies and businesses we will have reduced inequalities in learning, health and economic circumstances over life; both between Midlothian residents locally, and between Midlothian residents and Scottish averages.”

Planning Enforcement plays an important role in achieving these goals and improving the quality of life and civic pride amongst our communities. The Midlothian Planning Enforcement Charter is focused on ensuring that Midlothian continues to be a place of choice to live and work because of the good quality of life it provides. It will ensure that Midlothian maintains a high quality built environment and fosters civic pride amongst residents who are proud to call Midlothian their home.

The Council is responsible for dealing with issues of Planning Enforcement across Midlothian. This is important to ensure that all development accords with both national and local planning policies while at the same time achieving the Council's spatial vision for Midlothian.

Development without planning consent can cause upset and distress for residents, businesses and visitors to Midlothian. Most breaches of planning control are not a criminal offence although there are some notable exceptions, such as unauthorised works to listed buildings, unauthorised works to protected trees and demolition in conservation areas without consent.

All complaints regarding a potential breach of planning regulations are subject to an initial investigation and the Council has discretion over what action will be taken and when. This will be based on the particular merits of each individual case and enforcement action will be taken where and when it is considered fair, reasonable, proportionate and expedient to do so.

The Planning Enforcement Charter sets out how the Council will deal with breaches of the planning regulations. It provides information and guidance to residents, developers and those with other interests, regarding how the Council will deal with developments which do not accord with national and local policies. It seeks to balance the concerns of local people with the rights of land and property owners, and sets out the nature and timescales associated with taking timely enforcement action where appropriate.

The enforcement process followed by the Council is in accordance with the national approach set out in the Scottish Government's Circular 10/2009 Planning Enforcement <https://www.gov.scot/publications/planning-circular-10-2009-planning-enforcement/>

2 Planning Enforcement – The Basic Principles

The Definitions - The Planning Enforcement system can only take action against **development** that does not have planning permission and is a **breach of planning control**:

So what is Development?

The meaning of “development” is defined with the Town and Country Planning (Scotland) Act 1997 (“the 1997 Act”) Section 26(1) as:

...“development” means 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”

What is a breach in planning control?

A breach of planning control is defined under Section 123(1) of the 1997 Act:

- a) Carrying out development without the required planning permission, or
- b) Failing to comply with any condition or limitation subject to which planning permission has been granted,
- c) Initiating development without giving notice in accordance with Section 27A(1) of this Act, or
- d) Carrying out development without displaying a notice in accordance with Section 27C(1) of this Act.

Considering these definitions what can the Council investigate and not investigate under its Planning Enforcement function:

The Council’s Planning Enforcement Service can investigate the following:

- ~ Development consisting of the change of use of land/buildings without planning consent;
- ~ Works to listed buildings without consent;
- ~ Any activity giving rise to direct or indirect damage to protected trees or qualifying trees in conservation areas;
- ~ Non-compliance with conditions attached to a grant of planning permissions;
- ~ Unauthorised building works and/or engineering works; and
- ~ The display of unlawful advertisements.

The Council’s Planning Enforcement Service cannot investigate:

- ~ Boundary disputes and other land ownership issues (including servitudes, wayleaves and title conditions) which are civil matters outwith the remit of planning legislation;
- ~ Devaluation of property, including that caused by damage from the development process;
- ~ Obstructions, parking and traffic enforcement;

- ~ Graffiti and anti-social behaviour;
- ~ Dangerous structures; and
- ~ Noise nuisance

Before taking enforcement action consideration will be given to the Human Rights Act 1998 and to the Equalities Act 2010.

3 Time Limits for Taking Enforcement Action

The Council may take enforcement action against unacceptable unauthorised operational development (building and engineering works) for up to four years from the date the breach commences. Operational development includes, for example:

- ~ Alterations and/or extensions to residential properties;
- ~ Alterations and/or extensions to commercial properties;
- ~ Alterations to shop fronts;
- ~ The erection of boundary fencing;
- ~ Engineering operations comprising the changing the level of land or the formation of a hardstanding;
- ~ The erection of a new building.

For any other development involving a change of use of land and/or building/s or a breach of a planning condition the Council may take action up to **ten** years from the commencement of the breach.

There is an exception to this '*10 year rule*' - for any development involving a change of use to a residential use (Class 9 or Sui Generis flat) the Council has four years to take enforcement action.

For listed buildings there is no time limit to taking action as long as the breach of planning control happened after the building was listed.

4 Making an Enforcement Complaint

In order to investigate a potential breach of planning control the Council will require: the address of the specific property/s or premise/s at which the alleged breach is taking place;

- ~ Details of the alleged breach of planning control; including details of the location, scale and timings of the alleged breach;
- ~ The complainant's name, address and email/telephone contact details;
- ~ The Council will **not** accept any enquiries submitted anonymously or complaints that the Council consider to be vexatious.

Confidentiality - Any details submitted to the Council in relation to an enforcement complaint will be treated in the strictest confidence. The Council will not reveal the identity of the complainant to those parties responsible for the alleged breach of planning control.

Enforcement complaints can be made in the following ways:

Online via [Planning and building | Midlothian Council](#)

By email via planning.enforcement@midlothian.gov.uk

By Post

Planning Enforcement
Fairfield House
8 Lothian Road
Dalkeith
Midlothian
EH22 3AA

5 Priorities for Planning Enforcement

All enforcement complaints are important to us, however to manage the limited resource effectively we must prioritise complaints so that the breaches which have the potential to cause the most harm are dealt with quickly and efficiently. A breach of planning regulations will be assessed according to the following categories:

1. Significant Harm includes:

- ~ Development with serious and immediate implications upon the continued health and wellbeing of the public;
- ~ Loss of a protected tree/s;
- ~ Loss or damage to a listed building;
- ~ Breaches of Planning Obligations - non-payment of financial contribution.

2. Medium Harm includes:

- ~ Unauthorised development which would adversely affect the character and appearance of a conservation area or the setting of a listed building;
- ~ Unauthorised building and/or engineering works;
- ~ Unauthorised changes of use;
- ~ Breaches of planning conditions which result in harm to general amenity; and
- ~ Breaches of planning conditions in relation to major developments.

3. Low Harm includes:

- ~ Unauthorised signage and advertisements (unless the sign/advert seriously affects public safety);
- ~ Any breach of planning control which is of a temporary nature (unless public safety is compromised);
- ~ Unauthorised fences, walls and gates outside of a Conservation Area (unless as identified as being harmful to highway/pedestrian safety in which case it will be considered as Medium Harm);
- ~ Development that, based on the information provided and/or an initial consideration, is unlikely to be a breach of planning control;

- ~ Unauthorised telecommunications equipment or satellite dishes on residential dwellings; and
- ~ Untidy land

6 Midlothian Planning Enforcement – Objectives and Process

The Council aims to treat all service users in a fair manner and will deal with all cases where a breach is discovered in a transparent way.

Where a breach has occurred we will:

- ~ Communicate clearly to the responsible person/s by explaining what steps are required to resolve the breach and the possible consequences in the event that those steps are not taken;
- ~ Update the complainant about what actions are being taken - this means we will inform them at each key stage of the process, for example, during the progress of the investigation, whether an enforcement notice has been served or if an appeal against a notice has been received;
- ~ Show identification when we visit a site;
- ~ Take formal enforcement action where required in the event that attempts to negotiate a remedy appear to fail;
- ~ Explain the right of appeal against any notices issued;
- ~ Let the complainant know the final outcome of their complaint.

Although personal circumstances may be considered in some instances and each enforcement complaint received will be considered on a case by case basis, the Council will generally deal with enforcement complaints in line with process set out in Section 7 of this Charter.

7 What you can expect when making an enforcement complaint

When your complaint is received by the Council it will be subject to initial screening and categorised as Significant Harm, Medium Harm or Low Harm. You will receive an acknowledgment detailing how your case has been prioritised and details of the case officer who will be dealing with your complaint.

The site will be visited within:

- ~ 5 working days* for cases of **Significant Harm**
- ~ 10 working days for cases of **Medium Harm**
- ~ 20 working days for cases of **Low Harm**

*A breach causing immediate irreversible unacceptable harm will be visited within 48 hours.

Following this site visit an initial assessment will be carried out and if no breach is discovered the case will be closed. It is acknowledged that in some instances it may be that the level of harm won't be apparent until a site visit has been carried out and in some cases the priority level of the case adjusted.

If a breach of planning control has occurred the owner and/or relevant parties will be advised by the Council of the action that they need to take to remedy the breach.

This could include:

- ~ The cessation of the use of land and/or buildings or the removal of any unauthorised building/engineering works; or
- ~ Submit a retrospective planning application in an attempt to regularise the breach of planning control. The submission of a planning application does not automatically mean planning permission will be forthcoming.

The owner and/or relevant party will be given up to 28 days to comply with these requirements.

After the expiry of the 28 day period a second assessment will take place by the Planning, Sustainable Growth and Investment Service to determine if it is expedient to take further action. This will take into account the nature of the breach of planning control, the harm caused by the development and the intentions and actions of the owner and/or relevant parties to this point.

“Expedient”

Where it is considered expedient to pursue the case one of the following options is likely to be required:

- ~ Further negotiation/investigation is required to making a determination if formal action is required;
- ~ Further evidence needs to be secured - this can be achieved through the service of a formal Planning Contravention Notice (PCN) on land owners/occupiers; or
- ~ The service of a formal notice requiring action to be taken by a set deadline. A full list of notices and explanations is included in Section 8 of this Charter.

“Not expedient”

It is at the Council’s discretion whether to take formal enforcement action. Planning breaches may be unintentional or be considered technical or trivial. The Council will take action when it is considered fair and reasonable to do so and is proportionate to any harm caused. In some cases where there is a breach of planning control the harm caused is minor, meaning action is not justified, for example it is not expedient to pursue the case.

Each case will be determined on its own individual merits.

Expediency

There are no statutory definition of expediency although it has been considered in the Courts and relevant case law identifies that local authorities when determining whether it is expedient to take action should consider the following:

- ~ Is the proposed action in the public interest (not private interest);
- ~ The breach is sufficiently harmful to justify taking action;
- ~ The proposed action is reasonable and commensurate with the breach in planning control to which it relates;
- ~ The action undertaken would be cost effective; and
- ~ Or not take action if the development is in accordance with planning policies.

Timescales

It is important to remember that Planning Enforcement action can be a lengthy process and potentially frustrating process for all involved. The Enforcement Team aims to resolve breaches as quickly as possible.

~ We aim to close 60% of our cases within 16 weeks of receipt of a complaint; However, due to the nature of enforcement and the effects of external factors such as the timescales involved in appeals to the Scottish Ministers and prosecutions, some cases will take longer. We appreciate your patience.

8 Enforcement Controls – Notices and Other Powers

Breach of Condition Notice (Section 145 of the 1997 Act as amended)

Used for enforcing 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 against this notice. Contravening a breach of condition notice can result in the Council deciding to prosecute, with a fine of up to £5,000 per offence.

Enforcement Notice (Section 127 of the 1997 Act as amended)

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 time period to take effect (usually a minimum of 28 days) and will specify what steps that must be taken to remedy the breach and the time for this to be completed after the take effect period. There is a right of appeal against an Enforcement Notice, and the terms of the notice are suspended until a decision is reached. Failure to comply with the terms of an Enforcement Notice within the time specified is an offence and may lead to the imposition of a fine of up to £50,000 per offence.

Fixed Penalty Notice (Section 136A and 145A of the 1997 Act as amended)

Where there is non-compliance with an Enforcement Notice or Breach of Condition Notice, the Council can serve a fixed penalty notice. The fine has been set at £2,000 for non-compliance with an Enforcement Notice, and £300 for non-compliance 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. It should be noted however that this type of notice cannot be served where a person has already been prosecuted for non-compliance with the same Enforcement or Breach of Condition Notice.

Listed Building Enforcement Notice (Section 34 Planning (Listed Buildings and Conservation Areas) Act (Scotland) 1997)

This must be served on the current owner, occupier and anyone else with an interest in the property, and the procedures involved are similar to those outlined above in relation to Enforcement Notices. The notice must specify the steps to be taken to remedy the breach and specify 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 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, and this could, in certain circumstances, lead to a fine up to £50,000 or imprisonment.

Stop Notice (Section 140 of the 1997 Act as amended)

This is only used in particularly urgent or serious cases where unauthorised activity must be stopped, usually on grounds of public safety or a significant impact on public amenity. A Stop Notice is served 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 the activity has been carried out for a period of more than four years. If a Stop Notice is served without due cause, or a subsequent appeal against a parallel Enforcement Notice is upheld, the Council may be open to claims 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 and may lead to the imposition of a fine of up to £50,000 per offence.

Temporary Stop Notice (Section 144A of the 1997 Act)

In certain cases where a breach of planning control is considered to have a severe impact on amenity, a Temporary Stop Notice can be served. These do not require to be accompanied by an Enforcement Notice and last for a maximum of 28 days. There is no right of appeal against a Temporary Stop Notice, and failure to comply with its terms is an offence and may lead to the imposition of a fine of up to £50,000 per offence.

Notice requiring application for planning permission for development already carried out (Section 33A of the 1997 Act as amended) – A Section 33A Notice.

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 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. In the event of non-submission - the Council has to assess whether it is expedient to take further enforcement action.

Planning Contravention Notice (Section 125 of the 1997 Act as amended)

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 which apply to any planning permission already granted. Supplementary information or representations on the matters raised in the notice may also be requested. There is no right of appeal against a Planning Contravention Notice, and failure to comply with its terms is an offence and may lead to the imposition of a fine of up to £5,000 per offence or £10,000 for knowingly providing false or misleading information.

Requisition of Information Notice (Section 272 of the 1997 Act as amended)

Provides limited powers to obtain information on interests in land and the use of land. There is no right of appeal against a Requisition of Information Notice, and failure to comply with its terms is an offence and may lead to the imposition of a fine of up to £1,000 per offence.

Amenity Notice (Section 179 of the 1997 Act)

Allows the Council to serve a notice on the owner, lessee or occupier of land which is adversely affecting the amenity of the area. The notice, which 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. If the notice is not complied with the Council can decide to undertake the required works (direct action) and then recover the costs.

Advertisement powers

The Council's powers are set out in the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984. The Council have powers to serve Advertisement Enforcement Notices in relation to advertisements that are unauthorised in terms of the above regulations. A notice of this type can specify a time period (normally 28 days) for compliance with its terms. 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. Displaying an advertisement in contravention of the regulations is an offence and, if convicted in court, an offender can be fined up to £5,000 per offence and £50 per day for continued display after conviction. 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 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 advertisements displayed within a building to which there is no public access. The content of an advertisement is not covered by planning control. Any complaints about advertisement content should be made to the Advertisement Standards Authority.

Interdict, Interim Interdict and Injunction

This is a court order used to stop or prevent a breach of planning control. Such applications are considered by the courts on their own merits. Before initiating proceedings, the Council will consider the likely outcome and the risk of incurring wasted expenditure.

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 then recover its costs from the landowner.

Power to Enter Land

The Council has powers to enter land to investigate alleged breaches of planning control, to check whether there has been compliance with a formal notice, or to check whether a breach has been satisfactorily resolved. This power applies to any land and may involve officials entering land owned by neighbours adjacent to the site of the breach or alleged breach.

Unauthorised Works to Protected Trees (Section 171 of the 1997 Act as amended)

S171 of the 1997 Act defines that it is an offence to carry out works to trees subject to statutory protection, which results in their uprooting, felling, lopping or wilful destruction, without the Council's prior consent. In addition to planning controls a Felling Permission from Scottish Forestry may be required to fell trees. Guidance can be found: <https://forestry.gov.scot/support-regulations/felling-permissions>

Formal action can be taken against persons who have carried out unauthorised works to trees that are subject to statutory protection by virtue of either a Tree Preservation Order (TPO) or a tree(s) being within a Conservation Area. Where protected trees have been removed or destroyed formal action can be taken through the service of a Tree Replacement Notice to secure replacement planting. In some cases, reports of offences may be submitted to the Procurator Fiscal and, if successful, can result in fines up to £20,000.

High Hedges

The High Hedges (Scotland) Act 2013 came into effect on 1 April 2014. It grants local authorities the power to act as independent adjudicators in disputes between neighbours with regard high hedges. Before that date there was no Scottish local government mechanism to resolve disputes between neighbours regarding overgrown hedges. The legislation was designed to provide a solution to the problem of high hedges if they interfere with people's right to 'reasonable enjoyment' of their property. In order for an application for a High Hedge Notice (HHN) to be considered, the applicant is required to produce formal evidence that attempts have been made to settle the issue with their neighbour beforehand. Following a full assessment of a HHN application, the Council can either decide to issue a HHN or dismiss the application. If a HHN is issued, it ordinarily requires the owner of the HH to take steps to reduce its height and to maintain the hedge thereafter at a reduced height. Non-compliance is enforced by direct action and recover of costs where possible.

9 Direct Action Policy

In order to ensure the Council is able to resolve breaches of planning consent in a timely manner it has the power to instigate direct action where works have not been undertaken in compliance with an enforcement notice – the Council can then seek to recover the cost the remediation works.

Background

If the requirements of an enforcement notice are not met within the period of compliance specified in the notice, Section 135 of The 1997 Act as amended grants the Council additional powers to:

- ~ Enter the land and take the steps to satisfy the requirements of a notice; and
- ~ Recover from the person who is then the owner of the land any expenses reasonably incurred by them in doing so.

In light of the social, physical and financial issues surrounding the use of Direct Action, this Policy serves to provide details of the procedure/considerations for undertaking such action and the process by which the Council will seek to recover the costs of this action.

When will direct action be taken?

Direct action may be taken either in isolation of, or in conjunction with court remedies, including an interdict. The Council may choose to take action as follows:

- ~ Where the requirements of an enforcement notice have not been complied with by the compliance date; and
- ~ Where the Council considers that direct action is necessary to remedy the harm caused by a planning breach.

Direct action procedure

Once the date to comply with the requirements of an enforcement notice expires, Council officers will visit the site to check compliance. If following this site visit it is confirmed that the notice has not been complied with in full, the Council will assess whether it is expedient to take additional action, including prosecution, an injunction and/or direct action.

The Council will write to the owner/responsible parties to advise of the intention to take direct action, at least 28 days before works are due to take place.

In order to access the property, the Council may need to liaise with other services including the Police and/or Bailiffs.

In taking direct action the Council may appoint an officer to project manage the works on-site to ensure that the steps of the notice are complied with.

It should be noted that any materials, debris or other items that are removed from a premises throughout the course of undertaking direct action will be stored securely for a minimum of three days.

The Council will take steps to advise the owner(s) of these items and how to recover such possessions. After this time the Council may choose to dispose of this material or sell them to recover the expenses of taking direct action.

Process for recovery of costs

In accordance with the provisions of Section 135 of The 1997 Act as amended, the Council will undertake all reasonable endeavours to recover expenses incurred in undertaking direct action. A charge will be applied to the land and an invoice sent to owners/responsible parties; this charge is binding on successive owners of the land to which the original Enforcement Notices relates. This charge will take effect on the date that the Council undertakes direct action to comply with the Enforcement Notice.

The expenses recoverable will include such sums as the Council considers being reasonable in respect of its establishment charges. An establishment charge is the reasonable charge that a Local Authority incurs for administering the direct action procedure.

The Council will take all reasonable steps to recover the expenses as a debt and will raise an invoice in accordance with its existing practice and procedures and if the debt remains unpaid, the Council will take steps to register the charge for payment at the Land Register to be noted against the title of the property.

10 Planning Obligations

The Council proactively monitors compliance with planning agreements entered into pursuant to Section 75 of the 1997 Act as amended to ensure that financial contributions are paid in a timely manner and in accordance with the provisions of the agreement. If the Council identifies ongoing development taking place without the necessary contributions being paid or required infrastructure being provided, the Council reserves the right to seek arrestment of the developer's bank account(s) and/or interdict the development pursuant to Section 146 of The 1997 Act to ensure adherence to the terms of the planning agreement. As a standard requirement the Council requires that provision is made in planning agreements for late interest on unpaid sums to attract an interest rate of 8% above the Bank of England base rate.

11 Compliance

The Planning Acts require that Councils set out in their Enforcement Charters how they will monitor compliance with the planning permissions for major developments. The Council already proactively monitors commencement of major developments (and other developments that are subject to a Planning Obligation). From 1 April 2023 the Council will aim to visit each major development that is in the course of being implemented/constructed and undertake a check in relation to the approved plans and relevant conditions every two months. Relevant details will be recorded in a spreadsheet that will be updated and made available for public viewing online. Any specific issues brought to the Council's attention may lead to additional monitoring activity.