



East Lothian
Council

PLANNING ENFORCEMENT CHARTER 2020



Foreword

“Planning enforcement is an essential part of the process of regulating development and it is important that the council sets out how it will deal with unauthorised development, for those carrying it out and especially for those affected by it. This Charter sets out the standards the public should expect of the council in dealing with enforcement complaints and is an essential part of understanding how the planning process works”.



Councillor Norman Hampshire
Convener of Planning Committee

Contents

INTRODUCTION 2

LEGISLATIVE CONTEXT 3

TIME LIMITS 4

BREACHES OF PLANNING CONTROL 5

REPORT A BREACH OF PLANNING CONTROL 6

ENFORCEMENT PROCEDURES AND SERVICE STANDARDS 7

ENFORCEMENT POWERS 10-14

Introduction

East Lothian Council's (ELC) Planning Enforcement Charter 2020 outlines how the planning enforcement process operates, in addition to setting out the standards of service to which ELC strives to achieve when enforcement enquires are made.

Planning enforcement forms one of the most complex aspects of the Planning System and often has long timescales associated with it. The enforcement procedures which ELC has adopted are in line with Scottish planning legislation and are considered to be fair, reasonable, consistent and transparent.

This Planning Enforcement Charter 2020 sets out the following:

- Legislative Context;
- Breaches of Planning Control;
- How to Reporting a Breach;
- ELC's Enforcement Procedures and Standards of Service; and
- Enforcement Powers - Notice Types.

Taking formal enforcement action is a discretionary power issued by the Scottish Government to each respective local authority/national park in Scotland. Where a satisfactory outcome cannot be achieved through negotiation, formal enforcement action may be exercised.

A planning authority is not required to take formal enforcement action on a breach of planning control. Any action taken must be reasonable and

proportionate to the breach and expedient to do so, having regard to the Development Plan and to any other material planning considerations.

By publishing our standards and targets, we aim to improve our enforcement service and make it as responsive as possible to the needs of our customers.

We will monitor the contents of this Charter to ensure that standards and targets are being met.

It is our hope that you will find this Charter useful and that you will let us know if you think we could improve this service in any way.

Legislative Context

This Charter sets out the current powers available to ELC as planning authority. Such powers include:

Enforcement

Enforcement powers are set out in the [Town and Country Planning \(Scotland\) Act 1997](#) as amended by the [Planning etc. \(Scotland\) Act 2006](#) and the [Planning \(Scotland\) Act 2019](#).

Listed Building

Listed Building Enforcement Notices are covered by the [Planning \(Listed Buildings and Conservation Areas\) \(Scotland\) Act 1997](#).

Advertisement

The display of advertisements is covered by the [Town and Country Planning \(Control of Advertisements\) \(Scotland\) Regulations 1984](#).

Scottish Government Circular

Other relevant guidance and legislation can be found within the Scottish Government's [Planning Enforcement Circular 2009/10](#).

All legislation as listed above, is available online or can be viewed in person by visiting The Stationery Office (TSO), located at: 26 Rutland Square, Edinburgh, EH1 2BW.





Time Limits

In line with the Town and Country Planning (Scotland) Act 1997 (as amended), enforcement action must be undertaken within strict time limits:

4-Year Limit

Applicable to: 'Unauthorised operational development' (i.e. the carrying out of building, engineering, mining or other operations in, on, over or under land); and

The change of use of a building, specifically to a single dwellinghouse.

After four years following the breach of planning control, the development becomes lawful and no enforcement action may be taken.

10-Year Limit

Applicable to: All other development including the changes of use (other than of buildings to a single dwellinghouse) and breaches of condition.

After ten years, development becomes lawful if no enforcement action has been undertaken within this period.

Time restrictions **do not** apply to unauthorised development to a listed buildings or the display of unauthorised advertisements.

Breaches of Planning Control

What constitutes as a breach of planning control?

ELC has statutory powers to investigate:

- Unauthorised works being carried out without the grant of Planning Permission, Listed Building Consent, Advertisement Consent or any other relevant planning related consent;
- Unauthorised change of use;
- A breach of condition/conditions as attached to any relevant permission or consent; and
- Development not in accordance with plans as approved as part of any permission or consent.

ELC grant a large number of permissions per year and whilst development is monitored within the county, it is not practical to monitor all development, at all times.

There is therefore an important role for the public in alerting ELC's Planning Enforcement Team to any concerns (i.e. alleged unauthorised development/alleged breach of condition).

It is important to remember that a breach of planning control does not constitute as a criminal offence. ELC aim to amicably resolve breaches, rather than punish those who carried out the unauthorised breach of planning control.

You can check if works have consent by visiting ELC's [Planning Portal](#).

What likely **does not** constitute as a breach of planning control?

The Planning Service can only investigate matters relating to planning enforcement. Where the complaint/enquiry falls under different legislative powers or cannot be controlled through the planning process, it will be forwarded onto the relevant local authority department to investigate (e.g. Environmental Health & Protection, Community Wardens, and Roads etc).

The following matters cannot be controlled through the planning enforcement process:

- Anti-social behavior complaints;
- Disputes over land ownership/boundaries;
- Drainage/structural issues;
- Loss of private view;
- Business competition;
- Fire hazards; and
- On-street parking / allocation of parking spaces.

Report a Breach of Planning Control

ELC recognise that members of the public have a vital role in reporting breaches of planning control. Any concerns should be raised with the ELC's Planning Enforcement Team.

Preliminary enquiries can be made by telephone or in person at John Muir House in Haddington. Written confirmation of the alleged breach of planning control is however essential.

Any report of an alleged breach of planning control must be made to ELC in writing and must include the following:

- Address of the property to which the breach relates;
- Details of the suspected breach of planning control (i.e. times & dates, if applicable);
- Contact details of the person providing the information;
- Details on whether the complainant wishes the matter to be treated confidentially.

Whilst ELC will do its very best to honour requests for confidentiality, requests will be subject to the requirements of 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.

Anonymous complaints will not be accepted.



Any report of an alleged breach of planning control should be sent to:

Planning Enforcement

John Muir House

Haddington

East Lothian

EH41 3HA

Email: environment@eastlothian.gov.uk

Enforcement Procedures and Service Standards

Enforcement Complaint Registration

Information received by the ELC's planning enforcement service is checked to ensure that it involves a possible breach of control and includes the required details for a possible investigation. If all details are present and correct, the complaint will be registered and a written acknowledgement will be sent via post or email.

Service Standard

Registered complaints will receive a written or e-mail acknowledgement within 10 working days, including a complaint reference number and the investigating officer's contact details.

Priority

Priority for a complaint investigation is based on considerations such as the effect of the breach on the public, the immediate impact of it and the significance of the site as part of the built or natural heritage.

Service Standard

Priority will be given to breaches of planning control including:

- Breaches of condition for major developments;
- Irreversible damage to Listed Buildings;
- Unauthorised felling of trees and matters affecting trees protected by Tree Protection Orders (TPO); and
- Significant detrimental impact on public amenity.

Investigation Process

Once a complaint is registered and prioritised, an Enforcement Officer will visit the site. Following a site visit, the person(s) making the complaint will be informed of the findings and what action, if any, is proposed. In some cases, additional investigation or monitoring may be needed.

Service Standard

Person(s) making the complaint will be advised of the findings and any proposed action to be taken within 30 working days of the complaint being registered. This may include the need for additional investigation prior to deciding on a course of action. They will be advised if the matter does not involve a breach of planning control.

Resolution

The time required to resolve a case or take action can depend on a number of factors. Further evidence or monitoring may be required, negotiations may need to be made or other formal procedures concluded.

Similarly, where a householder or developer submits a retrospective planning application for the development which breaches planning control, or submits an appeal against a decision of the planning authority this may add to the length of time it takes to resolve the case.

We recognise that delays can be a source of frustration to those submitting information, particularly if they consider that their amenity is affected, so we will try to keep interested parties informed of significant stages in the progress of a case but they may wish to contact the case officer for a more regular update.

Service Standard

If there has been no progress for a period of 30 working days, we will write to complainants to explain the delay.

Enforcement Action

In some cases, action may not be appropriate, even though planning control has been breached. The planning authority has to consider each case on its own individual merits and decide on the best solution.

ELC is unlikely to take formal action, for example, over developments which, in planning terms, are seen as acceptable. It may be more appropriate, in such cases, to seek the submission of a retrospective planning application.

Only a relatively small number of cases require formal enforcement action. Formal enforcement action involves the issuing of a notice to the landowner or developer. This may be an Enforcement Notice, or a Breach of Condition Notice.

Enforcement Notices and Breach of Condition Notices include the following information:

- A description of the breach of control that has taken place; and
- Seeking a Court interdict to stop or prevent a breach of planning controls;
- The steps that should be taken to remedy the breach;
- The timescale for taking these steps;
- The consequences of failure to comply with the notice; and

- In the case of an enforcement notice, any rights of appeal the recipient has and how to lodge an appeal.

For more detail, see the 'Enforcement Powers – Notices Types' section at the end of the Charter.

Service Standard

Where a planning breach cannot be resolved and action is required, a formal notice will be served. This will be either: a notice requiring a retrospective planning application; 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.

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

Service Standard

Where the terms of any formal notice are not complied with, every effort will be made to resolve the case to the satisfaction of the Council.

Options include:

- In the case of an Enforcement Notice, direct action by the Council; or
- For either an Enforcement Notice or a Breach of Condition Notice, the matter being referred to the Procurator Fiscal for possible prosecution or alternatively offering the opportunity to pay a fixed penalty (issue of a Fixed Penalty Notice).

Suggestions and/or Complaints

ELC hopes the public will be satisfied with the planning enforcement service offered. If however, you have any suggestions, concerns, or difficulties, we would really like 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, please note that this should not form grounds for a complaint.

As noted above there is a separate appeals' procedure for a recipient of an Enforcement Notice.

In the first instance, complaints should be discussed with the member of staff involved. If you are still dissatisfied, please contact the Planning Service Manager.

Non-Compliance

Failure to comply with a notice may result in the planning authority taking further action. This can include a range of possible options including:

- Referral to the Procurator Fiscal for possible prosecution;
- Carrying out any work required by an Enforcement Notice and charging the person for the costs involved; and
- Seeking a court interdict to stop or prevent a breach of planning control.

Service Standard

We will get in touch with you within 30 working days of receiving a complaint or suggestion to let you know what is happening. We will monitor all complaints and suggestions made and use them to review and improve the service we provide.

Enforcement Powers - Types of Notices

Breach of Condition Notice

This is used to enforce the conditions applied to any planning permission. It comes into effect 28 days after being 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.

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 a 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.

Enforcement Notice

This is generally used to deal with unauthorised development, but can also apply to a breach of planning conditions. There are similar notices and powers to deal with Listed Buildings and advertisements.

An Enforcement Notice will specify:

- A notification period before it comes into effect (a minimum of 28 days);
- The steps that must be taken to remedy the breach; and,
- A further period (known as the compliance period) which is set by the planning authority and gives the recipient time to carry out any work required to comply with the notice.

There is no minimum or maximum period, so long as the amount of time allowed is reasonable and reflects the amount of work that may need to be undertaken. There are limited rights of appeal against an Enforcement Notice and, if an appeal is made, 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).

Stop Notice

This is used in urgent or serious cases where an unauthorised activity must be stopped, usually on the 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.

If a Stop Notice is served without due cause, or an appeal against the Enforcement Notice is successful, the Stop Notice may be quashed and 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 time they expire. They may, however, be followed by further enforcement action such as the issuing of an Enforcement Notice and Stop Notice. There is no provision to appeal against a TSN.

Fixed Penalty Notice (FPN)

This provides planning authorities with 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 Enforcement Notice or Breach of Conditions Notice and the planning authority will retain the power to take direct action to remedy the breach and recover the costs of such work from that person. The planning authority is not required to offer the option of paying a fixed penalty. Any decision to do so would be dependent on considerations such as the scale of the breach and its impact on local amenity.

Other Enforcement Powers

Planning Contravention Notice (PCN)

A PCN 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 this Notice within 21 days of it being served is an offence and can lead to a fine being issued by the Procurator Fiscal.

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. Local authorities therefore usually only seek interdicts in serious cases or where Enforcement Notices have been ignored in the past. A Planning Authority 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.

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.

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.

Notification of Initiation and Completion of Development (NID/NCD) and Display of Notices While Development is Carried Out

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

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

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



Advertisements and Enforcement

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 planning permission 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 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 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 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.





Versions of this leaflet can be supplied in Braille, large print, audiotape or in your own language. Please phone Customer Services if you require assistance on 01620 827199

To make a comment, suggestion or complaint about a council service, download a feedback form online at www.eastlothian.gov.uk or pick one up at your local area council office.

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To request a printed version, please contact reception at the above address.