

To: Communities, Housing and Planning Policy Board

On: 10 March 2020

Report by: Director of Communities, Housing and Planning Services

Heading: Renfrewshire Planning Enforcement Charter

1. Summary

- 1.1 This report presents the updated Renfrewshire Planning Enforcement Charter.
 - 1.2 The Planning etc. (Scotland) Act 2006 requires the Planning Authority to review the Enforcement Charter every two years and this sets out the process and procedures to address a breach of planning control.
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2. Recommendations

- 2.1 It is recommended that the Board:
 - (i) approves the Renfrewshire Planning Enforcement Charter 2020 as presented in Appendix 1.
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3. Background

- 3.1. The Renfrewshire Planning Enforcement Charter sets out the process and procedures in relation to any breach of planning control. It also provides information and advice as to how a suspected breach of planning control can be brought to the attention of the Planning Authority.
- 3.2. Service standards and timescales are highlighted in the charter with a commitment to dealing with breaches of planning control through prioritisation of action depending on the seriousness of the breach.

4. **Renfrewshire Planning Enforcement Charter 2020**

- 4.1. The updated Planning Enforcement Charter outlines the importance of a Planning System which delivers good places along with enforcing planning controls that are fair and reasonable.
- 4.2. The document also stresses that an important element of enforcement is ensuring that everyone involved is kept informed and updated. In this context there are a range of Service Standards set out in the Charter to ensure that individuals are fully aware of Enforcement processes, procedures and timescales.
- 4.3. The use of Enforcement Powers is a discretionary function for Planning Authorities and their implementation is determined to a great extent on the nature of the breach of Planning control and the potential negative impact or damage that an activity or development could generate.
- 4.4. This is particularly relevant in relation to public safety or the impact on Listed Buildings and Conservation Areas. Within this context the updated Enforcement Charter aims to highlight the importance of these matters.

5. **Next Steps**

- 5.1. If approved, the updated Planning Enforcement Charter will replace the current Enforcement Charter on the Council web pages.
- 5.2. The Planning Service will continue to keep the effectiveness of the Enforcement Charter under review and future updates will be presented to the Board when required.

Implications of the Report

- 1. **Financial** - None
- 2. **HR & Organisational Development** - None
- 3. **Community Planning** –

Reshaping our place, our economy and our future – The Charter assist in promoting Renfrewshire as a place to live, work and visit.

- 4. **Legal** - None
- 5. **Property/Assets** - None
- 6. **Information Technology** - None

7. **Equality & Human Rights -**

The Recommendations contained within this report have been assessed in relation to their impact on equalities and human rights. No negative impacts on equality groups or potential for infringement of individuals' human rights have been identified arising from the recommendations contained in the report. If required following implementation, the actual impact of the recommendations and the mitigating actions will be reviewed and monitored, and the results of the assessment will be published on the Council's website.

8. **Health & Safety - None**

9. **Procurement - None**

10. **Risk - None**

11. **Privacy Impact – None**

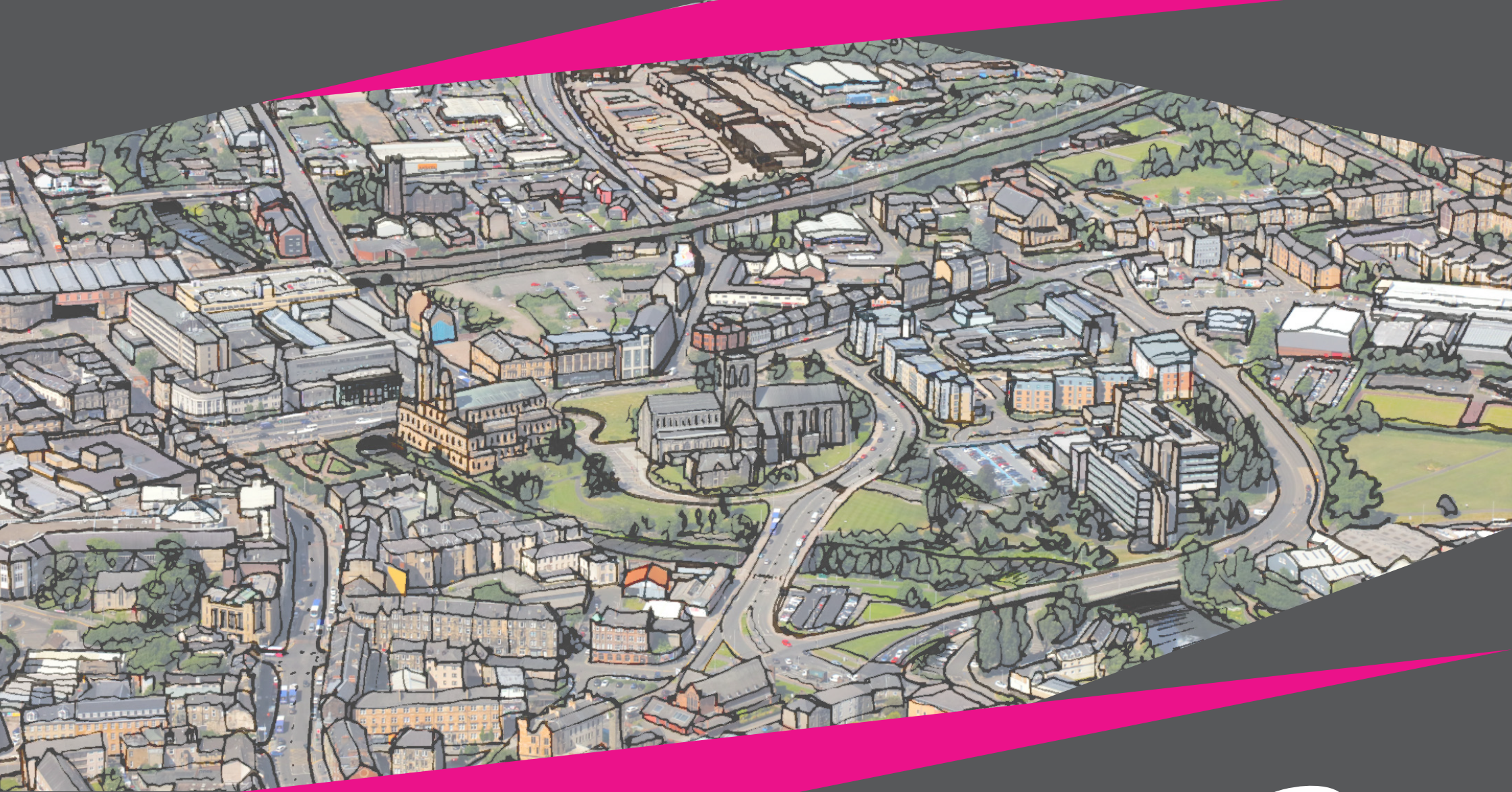
12. **COSLA Policy Position – None.**

13. **Climate Risk – None.**

List of Background Papers

(a) None

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Renfrewshire Council Planning Enforcement Charter 2020



Enforcement Of Planning Control

A high quality planning system is essential in delivering good places and sustainable communities.

Public confidence in an efficient and effective planning service is also key to this delivery.

Input from the public and other stakeholders is central to assisting in delivery of a high quality planning system.

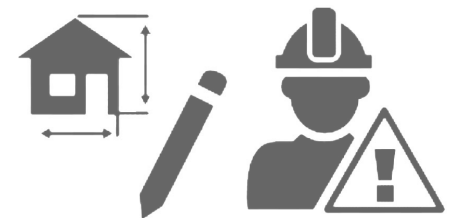
Enforcing planning control interests many members of the public. There is a role for the public in letting Planning know when there is a potential breach of planning control.

The aim of this charter is to make sure the procedures set out are fair and reasonable and that we keep everyone involved and informed when planning enforcement issues arise.

This Charter explains;

- How the enforcement process works,
- The role of Renfrewshire Council,
- The current powers available to the Council and,
- The Service Standards that are set out.

It also explains what happens at each stage of what can be a lengthy process.



Planning permission is required for certain types of development. There are occasions however, when developers or householders undertake work without planning permission or fail to keep to the permission they have been given.

Councils have powers to enforce planning controls in cases where they consider it is in the wider public interest to do so.

A breach of planning control is not a criminal offence.

The purpose of planning enforcement is to find a solution or deal with the issue rather than to punish for what is often a mistake. Any action taken has to be appropriate to the scale of the breach and the harm it may have caused.

Enforcement is a discretionary power. That means that, even where there is a breach of planning control, the Council

has to consider if it is in the wider public interest to take enforcement action. Taking formal enforcement action is a last resort when other ways of solving the problem have been exhausted.

Where a satisfactory outcome cannot be achieved by negotiation, the Council can take action where it is proportionate and necessary.

Planning have legal powers to take formal enforcement action if unfortunately we can not negotiate a satisfactory solution to problems that have arisen.

More detailed information on the use of enforcement powers can be found in the Scottish Government publication Circular 10/2009: Planning Enforcement which can be found online at:

www.scotland.gov.uk/planning

Service Standard 1

By publishing our standards and targets, the aim is to ensure the enforcement service is fit for purpose making it responsive to the needs of our stakeholders. We will continuously monitor the contents of this Charter to ensure that standards and targets are being met.

Enforcement Of Planning Control

Possible breaches of planning control include:

An unauthorised
change of use;

Work carried out or
being carried out
without planning
permission or listed
building consent;

Failure to comply with
conditions attached to
a permission or listed
building consent;

Departures from
approved plans
or consent;

Carrying out works to
trees that are protected
by a planning condition
or a tree preservation
order.

Householders



Planning permission is required for a range of developments including extensions to your house or building within the garden ground. Some minor works can be carried out without applying for permission (known as permitted development).

A link to the current permitted development rights for householders can be found at the link below to assist in confirming the requirement or otherwise for formal planning permission to have been sought prior to the commencement of any development works: <http://www.legislation.gov.uk/ssi/2011/357/schedule/made>

People sometimes carry out work without planning permission because they are unaware that permission is required. Contact should be made with Renfrewshire Council Planning for advice on what requires permission.



Advertisements

Planning enforcement also covers the physical display of advertisements such as billboards and advertisement hoardings:

https://www.legislation.gov.uk/ukxi/1984/467/pdfs/ukxi_19840467_en.pdf

The actual content of an advertisement is not covered by planning control. Any complaints relating to content should be made directly to the Advertising Standards Authority: <https://www.asa.org.uk/>

Where the display relates to ad hoc banners and signs being displayed remotely from the business premises or activity to which they relate, and only where individual site-specific circumstances merit (e.g. either due to traffic safety or site sensitivity) limited opportunity will be given to the party responsible for the display to remedy the matter voluntarily if they can be readily identified. Direct action will be contemplated as the first response.

Trees



Trees are an important component of the landscape and make a contribution to the attractiveness of an area. Tree Preservation Orders (TPO) are used to protect trees, groups of trees or woodlands that add to the character and appearance of the area.

Trees in a Conservation Area are also protected and subject to TPO Controls. Further details on the Council's Tree Protection measures can be found at following link: <http://www.renfrewshire.gov.uk/article/2876/Trees-information-and-advice>

If you want to carry out work to any tree, or trees covered by a Tree Preservation Order or Trees in a Conservation Area, approval requires to be sought from the Council through the submission of a treeworks application.

High Hedge Legislation came into force in 2014. The purpose of the legislation is to consider issues in relation to high hedges which have an impact on the reasonable enjoyment of a property and when the issue has not been able to resolved amicably between neighbours. Scottish government guidance can be found at the following the link.

Implications Of Potential Breach

What are the legal implications of not complying with planning legislation?

Failure to gain planning permission, listed building consent, advertisement consent or treeworks consent, before development or works are carried out or an advertisement is displayed may have financial or legal implications which could prove problematic to resolve.

Not observing the regulatory requirements may significantly delay or impede the conveyancing transaction for the sale of a house, or letting of commercial premises.

In circumstances where works have been carried out without consent, the Council will usually expect the submission of

the appropriate formal application to regularise matters. However there is no guarantee that consent will be granted.

The failure to comply with conditions to which permission or consents are subject, prior to, during or following development can have similar implications and may require amended Planning Permission or Listed Building Consent application to be submitted to regularise the situation.

What are the time limits on Enforcement Action?

It should be noted that Enforcement action has to be taken within time limits:

The 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 a change of use to a single dwellinghouse. After four years following this type of breach, the development becomes lawful, and no enforcement action can be taken.

The 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; and no enforcement action can be taken.

There is no time limit for breaches of Listed Building Control (works undertaken to a Listed Building).

How To Report A Potential Breach Of Planning Control

If you are concerned that there has been a potential breach of planning control, please contact us as follows:

By email: dc@renfrewshire.gov.uk

In writing: Development Management, Communities,
Housing & Planning Services, Renfrewshire
House, Cotton Street, Paisley, PA1 1JD

By Phone: 0300 3000 144

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 and contact details; and
- Information on how the breach affects you and others.*

The Council will do its best to ensure confidentiality of those alerting Planning to potential breaches of Planning Control. We aim to do our best to honour requests for confidentiality, this may limit our ability to take formal action.

* In line with the Data Protection Act, your signature, email address and telephone number will not be given out. We do not accept anonymous complaints in relation to breaches of planning control.

Contacting Your Local Councillor

In some instances, a councillor may be the first person made aware of a breach of planning control. In line with the Standards Commission Councils Code of Conduct** reporting the breach of planning control should be made by the complaint using the contact details opposite to enable direct contact with the relevant officers. Councillors being involved in cases may prevent them from making decisions on any potential application associated with the case and being involved in formal action.

** <https://www.standardscommissionscotland.org.uk/>

What Happens Next

Information received by the Council is checked to see if it involves a possible breach of control and includes all the detail required for a possible investigation.

Some complaints, such as neighbour disputes over boundaries and ownership, relate to legal matters over which Planning has no control and these matters cannot be investigated.

The Council will generally take action in the interests of the wider public amenity or safety.

Where enquiries relate to an area of the Council function other than Planning, the matter will be referred to the relevant Council Service, and the enquirer notified.

Service Standard 2

After preliminary checking and compliance with the requirements for investigation, the complaint will be recorded. Once recorded, a written or email 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 of the investigating officer.

Timescale

Any action that is taken has to be appropriate to the scale of the problem and also importantly the harm that it may be causing.

A priority system is used for investigating complaints based on matters such as the effect of the breach. Priority will be given to breaches of planning control, including:-

- Significant detrimental impact on public safety; and
- Irreversible damage to listed buildings;
- Significant detrimental impact on amenity;
- Protected by Tree Preservation Orders/in Conservation Areas.
- Unauthorised felling of trees and matters affecting trees

Service Standard 3

An investigation begins with the Planning officer visiting the site. 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 needed.

Members of the public who provide information will receive a formal response within 10 working days of receipt of their letter or email. They will also be advised of the proposed action to be taken. 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 or if it is not intended to take further action.

Timeframes for Action

The length of time required to investigate and resolve a case can be affected by a number of factors, including gathering evidence, negotiations between parties or for formal action to be initiated and concluded.

Similarly, an application to regularise the breach of control or an appeal against a decision of Planning can also delay resolution of the case.

The Council recognises that delays can be a source of considerable frustration to those submitting information, particularly if they consider that their amenity is affected.

Consequently, it is appreciated that there is a need to keep interested parties informed of significant stages in the progress of a case. If you want and require regular updates you should contact the case officer for an update.

Please note that the preferred method of communicating with all parties is electronically, if this is possible, and where there is no legal or procedural need for letters.

Service Standard 4

The Council aim to keep people informed about significant stages in the progress of the case.

If there has been no progress for a period of 28 working days, the Council will write to complainants to provide an update.

Processes & Procedures

Planning has discretion on whether to take enforcement action in any given situation and various options are open to Planning.

Planning is unlikely to take formal action for developments which in planning terms, are deemed to be acceptable.

Planning has to consider each case on its merits and decide on the most appropriate solution.

Where possible, there will be a focus on trying to sort out a situation by negotiating with the person responsible for breaching planning control.

We will give the person responsible for the breach in planning control a specific amount of time to meet the requirements. The length of time will depend on how serious the issue is and the harm it may be causing.

In some cases action may not be appropriate, even though planning controls have been breached.

There may be cases where it is appropriate to ask the person in breach of planning control to make a retrospective planning application. Until we make a decision on the retrospective application, we will not take formal action. If a retrospective application planning application is submitted, the normal neighbour notification and publicity will be carried out and we will fully consider any comments before a decision is made.

Formal enforcement action will only be taken where, the breach of planning control is significant and would unacceptably affect public amenity, public safety or the use of land and buildings meriting protection in the public interest.

The action taken must be proportionate to the breach. We will not take action simply because someone does not have planning permission or refused to send us a retrospective planning application.

Service Standard 5

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

Formal Action

Only a small number of cases require formal action. This begins within either an Enforcement Notice 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, and
- Where appropriate, any rights of appeal the recipient has and how to lodge an appeal.

Appeals

Appeals against Enforcement Notices are considered by Scottish Ministers and dealt with, in most cases, by independent Reporters from the Scottish Government Directorate of Planning and Environmental Appeals.

Anyone who has submitted information on a breach of planning control will be advised of the appeal either by the Council or the Scottish Government. There is no right of appeal against a Breach of Condition Notice.

Penalties

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

- Referring the case to the Procurator Fiscal for possible prosecution,
- Carrying out work and charging the person for the costs involved,
- Seeking a Court interdict to stop or prevent a breach of planning controls.

Service Standard 6

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 usually write to the developer in advance of serving any notice warning of the intent to do so. Thereafter, the recipient of the notice will be advised as to what action is required, the timescales involved and the available options to resolve the issue.

Enforcement Process

1

Acknowledgement and initial investigation to determine if it constitutes development.

10 working days

2

Response to complaint following initial site investigation.

28 working days

3

If breach is identified invitation to make planning application or advise of potential implications for selling property / premises in future or if no enforcement action is to be taken interested parties will be advised of the decision.

4

If no progress is made contact will be maintained with the complainant to advise of key developments going forward.

5

If no submission is made Planning Authority will consider taking further action.

Types Of Enforcement Action

Section 33A Notice, Breach of Condition Notice, Stop Notice or Temporary Stop Notice

No appeal against the notice or its terms. If they are not complied with, the case may be referred to the Procurator Fiscal, or an interdict or interim interdict sought.

Enforcement Notice, Listed Building Enforcement Notice, Advertisement Enforcement Notice or Amenity Notice

The developer may lodge an appeal with the Scottish Ministers. Procedures are held in abeyance until the appeal is determined. The Ministers may vary the terms of the notice. Failure to comply with the notice can be reported to the Procurator Fiscal.

Details of Enforcement Notices, Breach of Conditions Notices, Stop Notices, Temporary Stop Notices and Notices under Section 33A (notice requiring the submission of a retrospective planning application) are entered into an Enforcement Register. You can inspect the register and these documents at the Customer Service Centre, Renfrewshire House, Cotton Street, Paisley.

Powers of Entry

Council officials have powers to enter land or buildings 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.

This power applies to any land or buildings and may involve officials entering land adjacent to the site of the breach.

Service Standard 7

Renfrewshire Council is committed to providing the highest standards of service to our community. If we do not meet these standards let us know as quickly as possible so that we can put things right.

Appendix - Enforcement Powers

The Planning Enforcement powers available to the Council are set out in Part IV of the Town and Country Planning (Scotland) Act 1997 and in Chapter IV of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. The Planning Acts are available from The Office of Public Sector Information (OPSI) at 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 Government and can be viewed electronically at www.scotland.gov.uk/planning.

Request for Application Notice (Section 33A of the Town and Country Planning (Scotland) Act 1997)

This may be served where the Council requires the submission of a planning application for development which has already taken place without the appropriate planning permission. Technically, this constitutes formal enforcement action and extends the period within which other enforcement action may be taken.

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, or 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.

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 referring the case to the Procurator Fiscal for possible prosecution, with a fine on conviction of up to £1,000.

Enforcement Notice

This is generally used to deal with unauthorised development, but can also apply to breach of planning conditions. There are similar notices and powers to deal with listed buildings (see below), and advertisements. An enforcement notice will specify a time period to take effect (a minimum of 28 days – but see the section below on advertisements), the steps that must be taken to remedy the breach and the time for this to be completed. There is a right 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 Notices

Takes effect immediately when it is issued and, unlike a stop notice, does not require the issue of an enforcement notice. It would be used to stop an activity that would, in the Planning Authority's view, cause damage to the environment and/or local amenity. The temporary stop notice might not prohibit the activity over the entire site. For example, it might instead restrict it to certain areas or times. The maximum period a temporary stop notice can be in effect for is 28 days.

Fixed Penalty Notices

Issued where Enforcement Notice or Breach of Condition Notice not complied with - this can be served where a person is in breach of an enforcement notice or a breach of condition notice where the notice is served within the six month period immediately following the compliance period stated in the enforcement notice; and that no prosecution proceedings have been started in respect of the breach. There is no right of appeal against a fixed penalty notice. The penalty for breach of an enforcement notice or a breach of condition notice is £2,000 and £300 respectively. The amount payable is reduced by 25% if paid within 15 days. Payment discharges any liability for prosecution but does not however discharge the requirements of the original enforcement or breach of condition notice and the Planning Authority retains the power to take direct action to remedy the breach and recover any costs associated with such work. There is no right of appeal against a fixed penalty notice.

Other Powers

Interdict and Interim Interdict (Section 146 of the Town and Country Planning (Scotland) Act 1997)

An interdict may be granted 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 seeks interdicts in very serious cases e.g. where public safety may be involved or unauthorised works are taking place to a listed building. The Council can seek an interdict, however, 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.

Contacts

Contact details for reporting
suspected breaches of planning control

Development Management Section, Communities, Housing & Planning Services,
Renfrewshire Council, Renfrewshire House, Cotton Street, PAISLEY PA1 1JD
or e-mail dc@renfrewshire.gov.uk.

Contact details for general
inquiries on planning issues

Telephone Development Management on 0300 3000 144.

Contact details regarding
customer service

Complaints Office, Renfrewshire Council, Renfrewshire House, Cotton Street, PAISLEY PA1 1WB
Email: complaints@renfrewshire.gov.uk

Other useful contacts – enquiries
regarding building warrants

Building Standards, Communities, Housing & Planning Services, Renfrewshire House, Cotton Street,
PAISLEY PA1 1JD.
Telephone 0300 3000 144 or email bc@renfrewshire.gov.uk.

Planning Aid for Scotland

If you need advice about a specific planning issue you can also contact Planning Aid for
Scotland which provides a free and independent advice service for individuals and
community groups across Scotland. They can be contacted at:-
<http://www.planning-aid-scotland.org.uk/> or by calling their helpline on 0300 323 7602.

Complaints Procedure

If you are unhappy about the way we have delivered a service, you can complain in person, by phone, in writing, by email or via our online form at www.renfrewshire.gov.uk. Please tell us your full name and address, as much as you can about the complaint, what has gone wrong, and how you want to resolve the matter.

Our complaints procedure has two stages:

Stage 1

Frontline Resolution

We aim to resolve complaints quickly. This could mean on-the-spot apology and explanation if something has clearly gone wrong and immediate action to resolve the problem.

We will give you our decision at Stage One in five working days or less, unless there are exceptional circumstances.

If we can't resolve your complaint at this stage, we'll explain and tell you what you can do next. We might suggest that you take your complaint to Stage Two.

Stage 2

Investigation

Stage Two deals with two types of complaint; those that have not been resolved at Stage One and those that are complex and need detailed investigation.

When using Stage two we will acknowledge receipt of your complaint within three working days; discuss your complaint with you to understand why you remain dissatisfied and what outcome you are looking for, and give you a full response to the complaint as soon as possible and within 20 working days.

If our investigation will take longer than 20 working days, we will tell you. We'll agree revised time limits with you and keep you updated on progress.

Who else can I contact?

We hope that by following our complaints procedure you will find that your problem is solved quickly and effectively. If however, after completing our complaints procedures you still remain dissatisfied, you may of course still refer the problem to the Scottish Public Services Ombudsman.

Generally, you must contact the Ombudsman within 12 months. You can contact the Scottish Public Services Ombudsman by:

Address : Bridgeside House, 99 McDonald
Road, Edinburgh, EH7 4NS or
Freepost SPSO

Email : ask@spsso.org.uk

Website: www.spsso.org.uk

Phone : 0800 377 7330

Fax : 0800 377 7331







Renfrewshire Council

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