

To: Communities, Housing and Planning Policy Board

On: 29 August 2017

Report by: Director of Development and Housing Services

Heading: REVIEW OF PLANNING ENFORCEMENT CHARTER

1. Summary

- 1.1 The Planning etc.(Scotland) Act 2006 requires Planning Authorities to prepare an Enforcement Charter which sets out the Planning Authority's policies and procedures regarding:
- i. Taking enforcement action under the Planning Acts;
 - ii. Explaining how the public can report a breach of planning control;
 - iii. The procedures for dealing with complaints raised in relation to Land Use Planning matters.
- 1.2 Renfrewshire Council's first Enforcement Charter was approved in 2007, and subsequently reviewed in 2011, 2013 and 2015 as legislation requires that planning authorities undertake a review of their Charter every two years.
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2. Recommendations

- 2.1 It is recommended that Members:
- (i) Approve the Renfrewshire Council's Enforcement Charter 2017 as set out in Appendix 1, in terms of Section 158A of the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc. (Scotland) Act 2006.
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3. **Background**

- 3.1 An Enforcement Charter sets out the Council's policies and procedures and how and when it will deal with enforcement action and how members of the public can bring a suspected breach of planning control to the attention of the Authority. It also provides advice on how to complain about the standard of enforcement service and how such complaints will be handled by the Planning Authority.
- 3.2 Previous reviews of the Charter included adding specific timescales for dealing with breaches of planning control, a commitment to recording progress, and improved communication with interested parties. These revisions also included making it clear that the Council would only act in the wider public interest and not act as an arbiter in neighbour disputes and clearly set out the circumstances when no action will be taken.
- 3.3 More recent reviews considered particular emerging issues such as businesses operating from domestic premises, certain forms of unauthorised advertisements, and the condition of vacant or partially developed sites. The Charter is based on a proportionate, reasonable and pragmatic approach where the Council will only exercise its formal enforcement powers in circumstances where it is clearly necessary and expedient to do so.
- 3.4 The Charter continues to provide a sound basis, and functions as a practical working tool, for dealing with all types of planning and related enforcement investigations, assessment and decision making. It still remains relevant and robust as an over-arching framework for guiding enforcement activity and in explaining the Council's approach to both members of the public affected by unauthorised development; and those who consciously or unwittingly carry it out.
- 3.5 It is not considered necessary to alter or re-draft the terms of the Charter to any significant extent as it remains 'fit for purpose' as a relevant and usable document which reflects the current requirements facing the Planning Enforcement Service of Renfrewshire Council.
- 3.6 It is proposed to keep the effectiveness of the Enforcement Charter under review and should other issues emerge during the lifetime of the Charter which warrants specific approaches, these would be brought back to the Board.

Implications of the Report

1. **Financial** – None.
2. **HR & Organisational Development** – None.
3. **Community Planning** –
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 and each enforcement action would be considered against these specific impacts. 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** – Not applicable.

List of Background Papers

- (a) Background Paper 1 : The Planning etc.(Scotland) Act 2006
Background Paper 2 : Circular 10/2009 'Planning Enforcement'

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Planning Enforcement Charter

A guide to enforcing planning controls



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1 Introduction

Planning permission is required for most development that takes place in Scotland, with the exception of some minor works. Sometimes, however, 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 such cases, if they consider it is in the public interest to do so. Councils monitor developments to ensure planning controls are being followed but there is also a role for the public in alerting the Council to any problems of which they become aware.

This Charter explains how the enforcement process works, the role of Renfrewshire Council, the current powers available to the Council and the service standards it sets itself. It also explains what happens at each stage of what can be a lengthy process.

Enforcement is one of the most complex parts of the planning system. The aim of this Charter is to ensure that adopted procedures are fair and reasonable, and that interested parties are kept informed and are made aware of what is required.

This is an issue that concerns many members of the public. We hope you will find this Charter useful and will let us know if you think we could improve the service further.



2 Key points on planning enforcement

A breach of planning control is not a criminal offence. The purpose of planning enforcement is to resolve the problem rather than to punish the mistake. In addition, any action taken has to be appropriate to the scale of the breach.

Renfrewshire Council has statutory powers to investigate breaches of planning control and the conditions attached to planning consents, and to take formal action, where it is proportionate and necessary, and where a satisfactory outcome cannot be achieved by negotiation. However, 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 public interest to take enforcement action. The Council is not required to take any particular action on a specific breach of planning control, and indeed can decide that no action is necessary. The Council will not act as an arbiter between parties where there is no wider public interest involved.

The Council has the legal power to safeguard trees and woodlands by creating tree preservation orders. Tree preservation orders are used to protect trees, groups of trees or woodlands that add to the character and appearance of an area. If you want to carry out work on any tree, or trees covered by an order, approval should be sought from the Council through the submission of a tree works application. In addition, trees in a Conservation Area are also protected and approval should be sought from the Council through the submission of a letter.

Planning enforcement also covers the physical display of advertisements such as billboards and advertisement hoardings, although slightly different procedures apply. These are set out in a separate section at the end of this document. The actual content of an advertisement is not covered by planning control. Any complaints about this should be made to the Advertising Standards Authority.

By publishing our standards and targets, we aim to improve our enforcement service and make it responsive to the needs of our customers. We will monitor the contents of this charter to ensure that standards and targets are being met.

Further copies of this Charter are available on the Council's website www.renfrewshire.gov.uk, in local libraries and at the Customer Service Centre, Renfrewshire House, Cotton Street, Paisley.

Fuller information on the use of enforcement powers can be found in the Scottish Government publication Circular 10/2009: Planning Enforcement which can be viewed online at www.scotland.gov.uk/planning.

Parties who fail to gain planning permission, listed building consent or advertisement consent before they carry out development or install an advertisement should be aware that their actions may have considerable financial or legal implications for them which could prove difficult to resolve. Individuals and developers should be aware that 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 not usually issue a "letter of comfort" or other similar statement on the likelihood of enforcement action being taken, but will expect the submission of the appropriate formal application to regularise matters. 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 an amended planning permission or listed building consent to be submitted to regularise the situation.



3 Identifying possible breaches of planning control

Possible breaches of planning control can include:

- work carried out or being carried out without planning permission or consent;
- an unauthorised change of use;
- failure to comply with conditions attached to a permission or consent;
- departures from approved plans or consent; and
- carrying out works to trees that are protected by a planning condition or a tree preservation order.

Members of the public have a role in reporting breaches of control. Any concerns should be raised with the Council. You can make preliminary enquiries by telephone or in person at the Council offices but these must be followed up in writing or by e-mail. See contact details below.

The following information is essential when reporting a suspected breach:

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

While the Council will do its best to honour requests for confidentiality, it is subject to the requirements of the Freedom of Information (Scotland) Act 2002 and the Council may be required to make details of your complaint available to any enquirer. However, in line with the Data Protection Act, your signature, email address and telephone number will not be divulged.

We can be contacted by writing to:

Development Standards, Development and Housing Services, Renfrewshire House, Cotton Street, Paisley PA1 1JD or by telephone on **0300 3000 144**.

Enquiries by e-mail can be made to **dc@renfrewshire.gov.uk**

4 The role of the public

Members of the public also have a role in monitoring the conditions that are placed on certain planning consents. The conditions are included within the decision notice attached to the permission. Monitoring is undertaken by the Council's Development Standards Section within the Development and Housing Services. However, there are a large number of permissions granted each year and it is not practical, nor is it expected, that Councils monitor all conditions at all times.

Your involvement is therefore valuable in providing information where it is believed that conditions attached to a consent are not being complied with or have not been discharged in a satisfactory way. Breaches of conditions are investigated in the same way as other breaches of planning control.

Information received by the Council is checked to ensure that it involves a possible breach of control and includes all the detail required for a possible investigation. After preliminary checking and compliance with the requirements for investigation, the complaint will be recorded. Once recorded, a written or e-mail acknowledgement will be sent to the person who made the complaint.

Some complaints, such as neighbour disputes over boundaries, relate to matters over which the planning service has no control and cannot be investigated. The Council will generally take action in the interests of wider public amenity or safety but will not act as an arbiter in neighbour or similar disputes.

Service standard

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

5 Investigating possible breaches of planning control

A priority system is used for investigating complaints based on matters such as the effect of the breach and the significance of the site.

Priority will be given to significant breaches of planning control including:

- breaches of condition for major development;
- irreversible damage to listed buildings;
- unauthorised felling of trees and matters affecting trees protected by Tree Preservation Orders;
- significant detrimental impact on amenity; and
- significant detrimental impact on public safety.

An investigation begins with a Development Standards 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.

Service standard

Members of the public who provide information will receive a formal response within 20 working days of receipt of their letter or e-mail. 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.

The length of time required to resolve a case or take action can be affected by a number of factors.

Progress can be delayed for the gathering of further evidence, to allow negotiations to take place or for formal procedures to be concluded. Similarly, an application to regularise the breach of control or an appeal against a decision of the planning authority 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 their amenity is affected. Consequently, it is acknowledged that there is a need for clear recording of progress at each stage and the decisions which have been reached, and to keep interested parties informed of significant stages in the progress of a case, but all parties should feel free to contact the case officer for an update.

If there has been no progress for a period of 6 weeks, the Council will write to complainants to explain the delay.

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 traditional letters.

6 Acting on breaches of planning control

In some cases action may not be appropriate, even though planning controls have been breached. As stated previously, the purpose of planning enforcement is to resolve problems, not punish mistakes. Enforcement action will only be taken when it is in the wider public interest and not to protect the interests of one party against another. The planning authority has to consider each case on its merits and decide on the most appropriate solution. The Council is unlikely to take formal action, for example, over developments which, in planning terms, are seen to be acceptable.

The Council has discretion on whether to take enforcement action in any given situation and various options are open to the Council. The following guidelines set out the basis on which the Council will make such decisions. However, it has to be noted that circumstances vary between cases. It is not possible to make a rigid set of procedures which will apply in all cases.

WHERE DEVELOPMENT IS CARRIED OUT WITHOUT PLANNING PERMISSION OR LISTED BUILDING CONSENT

Development has been carried out without permission or consent but it is considered that planning permission or listed building consent should be granted without conditions.

Action: a retrospective application will not usually be requested and the case will be closed. However, advice may be given as to the property implications of not obtaining the necessary permission at that time.

Development has been carried out without permission or consent and it is considered by the Council that though the development is currently unacceptable, it could be made acceptable by alterations or the imposition of conditions.

Action: discussion will take place with the developer to agree the terms of a retrospective application which will be invited and a period of 8 weeks allowed for submission. If the developer refuses to cooperate within that time the Council will then proceed to consider whether it is appropriate to take enforcement action within the statutory time limits. Usually, in the case of Planning Permission, the first action will be to serve a Section 33A Notice and require submission of an application within 28 days of the serving of the Notice. Failure to submit an application may result in the serving of an Enforcement Notice requiring the removal or dismantling of the development within a period of time appropriate to the circumstances.

Development has been carried out for business purposes and it is considered by the Council that it is unacceptable in its current position but would be acceptable in an alternative location.

Action: Discussion and negotiation will take place and an application will be invited for an alternative site and any enforcement action will be held in abeyance for a period of not less than 28 days to allow relocation. If the developer refuses to cooperate then the Council will proceed to take enforcement action if it is appropriate in the circumstances. The period for compliance with any notice will vary with the circumstances of the business, its impact on wider amenity and the need to preserve employment.

Development has been carried out without permission or consent and it is considered by the Council that it is unacceptable and has no potential to be made acceptable by alteration or the use of conditions.

Action: The developer will be requested to remove the development or cease the unauthorised use and agree a timetable for this to take place which will normally be no more than 28 days for changes of use or the siting of temporary buildings or caravans, or no more than 12 weeks for operational development. The submission of

a retrospective application will be discouraged. If the developer refuses to cooperate within the prescribed period, the Council will then proceed to consider whether it is appropriate to take enforcement action within statutory time limits.

Commercial activity in domestic premises.

Action: *Where these uses involve no more than a single room, do not involve callers or deliveries, and there is no associated commercial signage, it is unlikely that formal action will be undertaken. However, the operator will be required to make application for a Certificate of Lawfulness. In all other cases an application for planning permission will be sought and if not forthcoming, an enforcement notice will be issued.*

Partially developed sites.

Action: *The Council will use its Completion Notice powers sparingly and will generally not intervene other than to work proactively with site owners to encourage the resumption of development either in its original form or as an amended scheme.*

WHERE DEVELOPMENT IS CARRIED OUT NOT IN ACCORDANCE WITH APPROVED PLANS OR DRAWINGS, CONTRARY TO THE TERMS OF A PLANNING PERMISSION OR LISTED BUILDING CONSENT OR IN BREACH OF CONDITIONS ATTACHED TO A PLANNING PERMISSION

If the deviation from the planning permission is non-material.

Action: *An application for a non material variation will be requested to regularise the situation but no action will be taken if no submission is made. Advice will be given as to the property implications of not obtaining the appropriate consent.*

If the deviation is significant but likely to be found acceptable.

Action: *A planning or listed building consent application will be requested to regularise the situation but no action taken if no submission is made. Advice will be given as to the property implications of not obtaining the appropriate consent.*

If the deviation is significant and unlikely to be found to be acceptable without alterations or new or modified conditions being imposed.

Action: *A planning or listed building consent application will be requested, to be submitted within 28 days. If the developer refuses to cooperate the Council will then proceed to consider whether it is appropriate to take enforcement action, and if so will take action normally within a further 28 days.*

The deviation is significant and does not have the potential to be made acceptable.

Action: *The developer will be instructed to carry out the development strictly in accordance with the planning permission or listed building consent and usually given a period of 28 days to comply. The submission of a retrospective application will be discouraged. If the developer refuses to cooperate by the stipulated deadline the Council will then determine whether it is appropriate to take enforcement action within a further 28 days. The period given for compliance with the planning permission, or listed building consent, or ceasing the activity will depend on the severity of impact on the environment and wider public interests.*



7 The decision to take enforcement action

Formal enforcement action will only be taken selectively and only where, in the opinion of the Council, 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. The Council will consider seeking an interdict or taking direct action where such actions are merited.

Only a relatively small number of cases require formal enforcement action. This begins with 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 against Enforcement Notices are considered by Scottish Ministers and dealt with, in most cases, by 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.

Service standard

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 intention 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.

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; and
- seeking a Court interdict to stop or prevent a breach of planning controls.

For more detail, see the “Enforcement Powers” section at the end of the Charter.

8 Amenity Notices

Section 179 of the Town and Country Planning (Scotland) Act 1997 enables the Council to serve a notice on the owner, lessee and occupier of land if it considers that the condition of the land is adversely affecting the amenity of any part of their area. The notice specifies the steps considered necessary to abate the adverse effect within a specified timescale. If no action is taken to respond, the Council can enter the land, undertake the steps necessary to comply with the Notice and recover the costs of carrying out the work. Those served with the Notice have the right of appeal to the Scottish Ministers.

The Council has discretion on whether to serve such a notice, but it is likely that the only circumstances which will warrant serving such a notice is where the condition of the land is a threat to health and/or safety.



9 Stages of the enforcement process

STAGE	SERVICE STANDARD
Receipt of initial complaint	
h acknowledgement and determination if constitutes development	10 working days
h response to complainant following initial investigation	20 working days
If no progress is made with the case	Inform interested parties every 6 weeks
If no enforcement action is to be taken	Inform interested parties when the decision is made
IF ENFORCEMENT ACTION IS TO BE TAKEN:	
UNAUTHORISED DEVELOPMENT	
h Invitation to make a planning application	8 weeks allowed for submission
If no submission made, consider serving Section 33A Notice	28 days allowed for submission
h Ask for relocation of development	Not less than 28 days allowed for search
If no progress made consider enforcement action	
h Seek removal or cessation of development	Give 28 days to 12 weeks to comply depending on circumstances
NOT IN ACCORDANCE WITH PLANS OR IN BREACH OF CONDITION	
either	
h Invitation to submit revised application	28 days allowed for submission
If no submission made consider enforcement action	28 days to make decision
or	
h Inform developer to adhere to approval	28 days to comply
If no progress made consider enforcement action	Time allowed depends on circumstances
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.

10 Information on valid enforcement notices

Details of Enforcement Notices, Breach of Condition 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.

Power 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.

Time limits for action

Enforcement action has to be taken within strict time limits.

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



11 Enforcement and advertising

The display of advertisements is covered by the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984. Many advertisements are displayed with 'deemed consent' which means they do not require express consent 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 development 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 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.

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.

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 it (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.

12 Making a suggestion or complaint

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.

How to make a complaint

You should follow this procedure if we have made a mistake and you are unhappy with the way we have delivered a service.

Do not follow this procedure to make routine enquiries about our planning enforcement service. Please make enquiries like these by phoning, writing to or visiting the Customer Service Centre at Renfrewshire House, Cotton Street, Paisley.

Complaints Procedure

You can complain in person, by phone, in writing, email or via our online form at www.renfrewshire.gov.uk. When contacting us please tell us your full name and address; as much as you can about the complaint; what has gone wrong, and how you want us to resolve the matter.

Our complaints procedure has two stages:

Stage One: 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. You may choose to do this immediately or sometime after you get our initial decision.

Stage Two: 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.

Contact us:

In person: **Customer Contact Centre, Renfrewshire House, Cotton Street, Paisley**

In writing: **Development Standards Section, Development & Housing Services, Renfrewshire House, Cotton Street, Paisley PA1 1JD**

By email: dc@renfrewshire.gov.uk

Online: www.renfrewshire.gov.uk

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. You can contact the Scottish Public Services Ombudsman by:

email: ask@spsso.org.uk

website: www.spsso.org.uk

phone: **0800 377 7330**

fax: **0800 377 7331**

address:

4 Melville Street, Edinburgh EH3 7NS

or

Freepost EH641, Edinburgh EH3 0BR

Generally, you must contact the Ombudsman within 12 months.

13 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.

Types of Notice

Notice Requiring Application for Planning Permission for Development Already Carried Out

– used to encourage the submission of a retrospective planning application, which would then allow the Planning Authority to consider the grant of Planning Permission subject to any conditions or limitations that would make the development acceptable in planning terms.

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 Notice – takes effect immediately 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 is for 28 days.

Fixed Penalty Notice: 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 requirement to comply with 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 – an interdict is imposed by the Courts and is used to stop or prevent a breach of planning control. Such proceedings can prove costly and Councils normally only seek interdicts in serious cases or where enforcement notices have been ignored in the past. However a Council can seek an interdict in relation to any breach without having to use other powers first. Breaching an interdict is treated as a contempt of Court and carries heavy penalties

Direct Action – failure to comply with the terms of an enforcement notice within the time specified can result in the Council carrying out the specified work. The Council may recover any costs it incurs from the landowner.

14 Enforcement contacts

Contact details for reporting suspected breaches of planning control: Development Standards Section, Development and Housing Services, Renfrewshire Council, Renfrewshire House, Cotton Street, PAISLEY PA1 1JD. Telephone **0300 3000 144** or e-mail dc@renfrewshire.gov.uk.

Contact details for general inquiries on planning issues:

Development and Housing Services, Renfrewshire Council, Renfrewshire House, Cotton Street, PAISLEY PA1 1JD. Telephone **0300 3000 144**.

Contact details for complaints regarding the level of service:

Customer Service Officer, Development and Housing Services, Renfrewshire Council, Renfrewshire House, Cotton Street, PAISLEY PA1 1JD.

Other useful contacts – enquiries regarding building warrants:

Development Standards Section, Development and Housing Services, Renfrewshire House, Cotton Street, PAISLEY PA1 1JD. Telephone **0300 3000 144** or email bc@renfrewshire.gov.uk.

For general enquiries regarding the planning system:

The Scottish Government – PLANNING HELPLINE
Tel: **08457 741741** (UK local rate) or **0131 244 7888**.

The office is open to telephone calls from 9.00am to 5.00pm Monday to Friday.

The Planning Helpline can provide you with advice and or information about planning issues which are the responsibility of the Scottish Government. The helpline enables you to speak with a member of the Scottish Government's Planning Division about their responsibilities regarding planning in Scotland, which are:

- to maintain and develop the law on planning;
- to provide policy guidance and advice;
- to approve strategic development plans; and
- to make decisions on some major planning applications and appeals.

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 **0845 603 7602**