

Planning and Economic Development Services

Planning Enforcement Charter

A guide to enforcing planning controls

March 2018



Moray Council Enforcement Charter



MORAY COUNCIL PLANNING ENFORCEMENT CHARTER

A guide to planning enforcement

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Introduction

Planning permission is required for the majority of development that takes place in Scotland, with the exception of development that is permitted under the Town and Country Planning (General Permitted Development)(Scotland) Amendment Order 1992. Sometimes, however, developers or householders undertake work without planning permission or fail to implement the consent they have been granted in accordance with the approved plans and conditions.

Councils have powers to enforce planning controls in such cases, if they consider it is expedient and in the public interest to do so. We monitor developments to ensure planning controls are being followed, but there is also a role for the public in the Council to any breaches of Planning Control they become aware of.

This charter explains how the enforcement process works, the role of the Council and the service standards it sets itself. It also details what happens at each stage of what can sometimes be a lengthy process.

Enforcement can, in some cases, be one of the most complex parts of the planning system and can affect many members of the community. The aim of this charter is to ensure that adopted procedures are fair, reasonable, consistent and accountable, and that interested parties are fully aware of the procedures involved in the process, the powers available to the Council, and the limits of those powers.

We hope you will find this charter useful and will let us know if you think we could improve the service further.

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Key points on planning enforcement

Breaches of planning control do not, in most cases, constitute a criminal offence; however, unauthorised works to a listed building, or to a tree protected by a Tree Preservation Order, both of which are investigated by the enforcement team, do. The purpose of planning enforcement is to try and resolve the breach of planning control in the first instance where appropriate. However, enforcement action will be taken when it is deemed necessary to control the breach and to prevent further breaches occurring. Any action taken has to be proportionate to the scale of the breach and to the effect that it has on local amenity. In addition not complying with any formal notice that is served will result in a criminal offence being committed.

Moray Council has statutory powers to investigate development carried out without planning permission, the breach of conditions attached to planning consents and other environmental matters which give rise to concern over general amenity. This can include land which has been allowed to deteriorate to such an extent that it affects the appearance of a wider area. We will take formal action where a satisfactory outcome cannot be achieved through negotiation. This means that the Council has to consider whether it is in the public interest to take enforcement action, and may decide that no action is necessary.

Where development has taken place without planning permission the Council would normally seek a retrospective application to consider the proposal or development before considering formal enforcement action unless it was considered expedient to cease the breach of planning control to prevent further injury or harm to amenity, road safety etc.

The Council's authority to take enforcement action comes from government legislation. Further information on the use of enforcement powers can be found in the Scottish Government publication *Planning Circular 10/2009: Planning Enforcement* - <http://www.gov.scot/Publications/2009/09/16092848/0>

In relation to listed buildings and Conservation Areas guidance can be found in the Managing Change Series (Historic Environment Scotland): Intervention by Planning Authorities.

Planning enforcement also covers the 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 Charter. The actual text and images on an advertisement are not covered by planning control.

Any complaints about the content of an advertisement should be made to the:

**Advertising Standards Authority, Mid City Place, 71 High Holborn, London
WC1V 6QT, tel. 020 7492 2222, e-mail enquiries@asa.org.uk**

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Planning Enforcement similarly covers the monitoring of planning conditions attached to Planning Consent Decision Notices.

Planning conditions can enhance the quality of development and enable development proposals to proceed where it would otherwise have been necessary to refuse planning permission, by mitigating the adverse effects of the development. The objectives of planning are best served when the power to attach conditions to a planning permission is exercised in a way that is clearly seen to be fair, reasonable and practicable. It is important to ensure that conditions are tailored to tackle specific problems, rather than standardised or used to impose broad unnecessary controls. See link to circular 4/1998 on the use of planning conditions below:

<http://www.gov.scot/Publications/1998/02/circular-4-1998/circular-4-1998-circular>

The Council will monitor the discharge of planning conditions to ensure that confidence and credibility is retained in the planning system and work in partnership with developers to achieve compliance in an effective and timeous manner.

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Main issues

The main objective of planning enforcement is to remedy the undesirable effects of unauthorised development and to bring unauthorised activities under control, ensuring that the amenity of neighbours or a community is not adversely affected.

The Council follows guiding principles in relation to planning enforcement:

Consistency: to ensure that similar enforcement activities are dealt with in the same manner;

Fairness: to ensure equitable and fair treatment of people;

Proportionality: to ensure that any enforcement action taken is proportionate to the breach that has occurred;

Clarity: to ensure that any enforcement action taken by the council is easily understood by its customers, organisations and businesses; and

Equality: to ensure that any decision is not influenced by the ethnic origin, gender, religious or political beliefs or sexual orientation of the contravener or interested parties.

In considering any enforcement action, the main issue for the Council will be whether the breach of planning control or the condition of a site would unacceptably affect amenity or safety. The Council will need to be satisfied that the breach of planning control is causing harm and will not take enforcement action solely to regularise development unless necessary.

Section 1 - How we investigate possible breaches of planning control – Priorities for Enforcement

Whilst all complaints will be investigated, our priorities and resources for enforcement will be linked to significant breaches of planning control including the following:

The three main priorities for investigating enquires are as follows:

Priority 1 – Unauthorised works to listed buildings, unauthorised works to trees in a Conservation Area and those subject to a Tree Preservation Order and where road safety issues are identified.

Priority 2 – Works in progress and breaches where there have been community concerns which have an adverse impact on residential and public visual amenity.

Priority 3 - All other cases.

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If full contact details are provided by the complainant, an acknowledgement letter or email will be sent advising of these in line with our published standards (see below). We encourage people who contact us to give full contact details, which we will treat as confidential wherever possible.

Section 2 – Our Approach to Enforcement

There is a general discretion to take enforcement action against any breach of planning control where such action is considered to be expedient, having regard to the provisions of the development plan and any other material considerations. When considering whether any particular formal enforcement action is an expedient remedy for unauthorised development, the following considerations should be used to guide the decision making process:

- Decisions in deciding whether or not there should be any resulting action should be taken without undue delay.
- In considering any enforcement action, regard should be had to the relevant Development Plan, and should consider whether the breach of control would unacceptably affect either public amenity or the use of land and buildings meriting protection in the public interest.
- Enforcement action should always be commensurate with the breach of planning control to which it relates. It is usually inappropriate to take formal enforcement action against a trivial or technical breach of planning control which has no material adverse planning implications
- While it is the case that it may be possible to resolve a breach of planning control through informal negotiations, particularly where the breach is relatively minor and/or unintentional, where such an approach is initially unsuccessful, further negotiations should not be allowed to hamper or delay whatever formal enforcement action may be required to make the development acceptable on planning grounds, or to compel it to stop.

The integrity of the planning system process depends on our readiness to take effective enforcement action where necessary. Public respect for planning would be undermined if unauthorised development, which is unacceptable on its planning merits, is allowed to proceed without any intervention. Planning Enforcement will continue to be a high priority of the Development Management Section and will strive to deliver a high quality effective and efficient service where decisions on enforcement action are taken timeously.

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Section 3 – Our Customer Service Standards

Service Standard – Acknowledging Enquiries

- We will acknowledge an initial telephone, written or email complaint within five working days of receipt and will include a reference number and contact details for the investigating officer/assistant.

Service Standard – Replying to Enquiries

- If you make an enforcement enquiry, you will receive a written response within 21 days of receipt of the letter or email. This will advise you of the proposed action to be taken. In some cases there may be need for additional research/investigation/consultation with other key internal or external agencies before deciding on a course of action and this will be explained. You will also be notified if the matter does not involve a breach of planning control and if there has been a breach but no action is proposed, you will be informed of this and the reasons.

Service Standard - Keeping you Informed

- Where an initial letter/e-mail explains that we have not been able to resolve the issue by the date of that letter, we will write again when the issue has been resolved. If there has been no resolution after two months we will write to explain the delay, providing an outline of the likely future time-table of action and when we will write again to provide an update. If at any point we decide that further action is not justified we will write to inform you of this and the reasons for the decision.

Service Standard – Timescales for resolving enquires

- 75% of all new enquiries shall be assessed within a period of 10 weeks up to the point of taking formal enforcement action or no further action.

Service Standard - Formal Enforcement Notices

- Where a breach cannot be resolved and action is justified a formal notice will be served. There are a variety of notices that can be used depending on the specific nature of the breach of planning control. We will write to the recipient of the notice to explain what is required, the timescales involved and the available options to resolve the breach. Where a Notice is served and not complied with, the Council will usually take further formal steps which can include:
 - ***The issue of a fixed penalty notice; or***
 - ***Referral to the Procurator Fiscal for possible prosecution; and/or***
 - ***Direct action by the Council, including the recovery of costs.***

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Section 4 – How to comment on a Breach of Planning Control

Possible breaches of planning control can include:

- Work being carried out without the necessary planning permission or a related consent.
- An unauthorised change of use of land or buildings.
- Failure to comply with conditions attached to a permission.
- Departures from approved plans or consents.
- A site or building which is in such a poor condition that it affects residential amenity.

Planning and related consents, any conditions and also the approved plans can be viewed online at [Public Access](#).

Members of the public have a vital role in reporting breaches of planning control. Any concerns should be raised with us at the earliest opportunity. You can make preliminary enquiries by telephone or in person at the Council offices. There is a Planning Enforcement enquiry form on the Council website which can be completed. This allows us to have a clear record of the complaint and to keep you informed about any action we take. Full contact details are provided at the end of the Charter.

We need the following information when a suspected breach is reported:

- The address of the property concerned;
- The name of the owner of the property, or of the person responsible for the suspected breach; (if known)
- Details of the suspected breach of planning control, with times and dates if relevant;
- Your name, telephone number and address and email address ;
- Information on how the breach affects you; and
- Whether you wish the enquiry to be treated confidentially.

While the Council will do its best to honour requests for confidentiality, all correspondence with the Council is subject to the requirements of the Freedom of Information (Scotland) Act 2002 so we might not be able to guarantee confidentiality particularly if the case leads to court proceedings.

Sometimes the Council receives complaints involving neighbour disputes over boundaries and land ownership. These are not matters falling under planning control and cannot be investigated by the enforcement team, but should be referred to a solicitor, or, if the property is owned by the Council, the Estates Service should be contacted on **0300 123 4566**.

Complaints can sometimes involve matters that are more appropriately dealt with by other Council services such as Environmental Health, or external agencies such as the Scottish Environment Protection Agency. If we receive a complaint which involves another Council service this will be passed to the relevant service and you will be provided with the contact details. If it involves an organisation outwith the Council we will advise you who to contact.

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Section 5 - Our Contact Details

In person at: Moray Council Access Points in Elgin, Buckie, Forres and Keith

Email to: planning.enforcement@moray.gov.uk

By telephone to: 03001234561

Planning Enforcement enquiry form at <http://www.moray.gov.uk/downloads/file112048.pdf>

Or alternatively in writing to:

Manager (Development Management)
Development Management
Moray Council Office
High Street
Elgin
Moray
IV30 1BX

Further copies of this Charter are available on the Council's website at [Enforcement Charter](#), in local Libraries, local Council offices and from the address above.

Section 6 – How to make a suggestion or complain about lack of Planning Enforcement

The Council tries hard to meet people's expectations and we hope that you will be satisfied with the planning enforcement service. We are committed to improving our service and dealing promptly with any failures or shortcomings. However, if you have any concerns or difficulties, we want to hear from you.

We will respond to you within 5 working days of receiving a formal complaint about our Planning Enforcement Service where possible. If we feel that we need more time to investigate the matters raised you will receive an acknowledgement within five working days and a full response within 28 working days in accordance with the Council's Complaints Procedure. A copy of this can be viewed on the Council's website, see hyperlink - [Complaints](#).

Lastly, if you are dissatisfied with the Council's complaints process, you have the right to take your complaint to the *Scottish Public Services Ombudsman*, at:

SPSO, FREEPOST EH641, Edinburgh EH3 0BR

Telephone: **0800 377 7330**, or e-mail: ask@spso.org.uk

Generally, you must contact the Ombudsman within 12 months of the date of the complaint. Attached to this charter for your information is Appendix 1 which explains the powers available to deal with breaches of planning control.

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Appendix 1

Powers available to deal with breaches of planning control

Enforcement powers

The enforcement powers available to a planning authority are set out in Part VI of the Town and Country Planning (Scotland) Act 1997, Chapter IV of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and Part IV of the Planning etc. (Scotland) Act 2006. The Planning Acts are available from:

TSO Scotland

26 Rutland Square

Edinburgh

EH1 2BW

Or can be viewed at: www.legislation.hmso.gov.uk

Government policy on enforcement is set out in Planning Circular 10/2009: *Planning Enforcement*. This document can be viewed
<http://www.gov.scot/Publications/2009/09/16092848/0>

Planning legislation is complex and therefore if you are served with a statutory notice from Moray Council planning authority, we advise you seek legal or independent professional planning advice.

Types of Notices

Enforcement Notice (Section 123 & 127 – 129)

This generally deals with unauthorised development, but can also apply to breach of planning conditions. This must be served on the current owner, occupier and anyone else with an interest in the property or land in question. There are similar notices and powers to deal with listed buildings (see below), and advertisements. An Enforcement Notice will specify a time period for the notice coming into effect (a minimum of 28 days), 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 Directorate of Planning & Environmental Appeals (DPEA) up to the date the notice takes effect at which time the notice is suspended until a decision is reached. Failure to comply with an Enforcement Notice within time is an offence, and may lead to a fine of up to £20,000 in the Sheriff Court or Moray Council considering direct action to remedy the breach.

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Breach of Condition Notice (Section 145)

This enforces the conditions applied to any planning permission if they have not been complied with and is effective from the date it is served. It may be used as an alternative to Enforcement Notice (see above), and is served on anyone carrying out development and/or any person having control of the land. Anyone contravening a Breach of Condition Notice can be fined up to £1,000 in the Sheriff Court. There is no right of appeal to this notice.

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 (DPEA) 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 (Section 140)

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, Moray Council may face claims for compensation. Therefore, the use of Stop Notices needs to be carefully assessed by the Council. It should be noted that a Stop Notice cannot prohibit the use of a building as a dwelling house.

Temporary Stop Notice (TSN)

This requires 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 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 an Enforcement Notice and associated Stop Notice. There is no provision to appeal against a TSN.

Fixed Penalty Notice (FPN)

This provides Moray Council with an alternative process, in addition to the option to seek prosecution, to address situations where a person has failed to comply with 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 EN or BCN, and Moray Council will

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retain the power to take direct action to remedy the breach and recover the costs of such from that person. Moray Council is not required to offer the option of 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. The fixed penalty amounts to £2,000 for each step not complied with in an enforcement notice and £300 for each step not complied with in a breach of condition notice.

Notice requiring application for planning permission (Section 33A)

Where Moray Council considers that a development which does not have planning permission may be acceptable, i.e. the Council considers that it might be granted planning permission, the Council may issue a S33A Notice requiring the landowner or developer to submit a retrospective planning application. This application will be considered on its planning merits and handled in the same way as any other planning application. Issuing a S33A Notice does not guarantee that permission will be granted; Moray Council may, on consideration of the application, decide instead to refuse planning permission, or grant permission subject to conditions or amendments to make the development acceptable. There is no right of appeal to this notice.

Notice requiring information as to interests in land (Section 272 Notice)

This provides limited powers for planning authorities to obtain information on interests in land and use of land. Failure to provide the information required is an offence.

Planning Contravention Notice (PCN) Section 125

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, 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 applied 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 Court.

Amenity Notice (Section 179)

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.

Interdict and Interim Interdict

Planning authorities can apply to the courts to grant an interdict to stop or prevent a breach of planning control. Court proceedings can be expensive and Moray Council would normally only seek interdicts in serious cases or where Enforcement Notices or Amenity Notices have previously been ignored.

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However, the 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 (Section 135)

Failure to comply with the terms of an Enforcement Notice or Amenity Notice within the time specified can result in Moray Council carrying out the specified work. Moray Council can recover any costs it incurs from the landowner.

Control of Advertisements

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 advertisement 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. It should be noted however, that where an advertisement with 'deemed consent' is considered to be affecting amenity or public safety then in these circumstances Moray Council can serve a Discontinuance Notice to have the offending advert removed.

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. Moray Council has the power to serve an advertisement 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 advertisement 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. Moray Council also has powers to remove or destroy placards and posters that do not have planning permission or deemed consent. If the person who put up the poster can be identified, they have to be given at least two days' notice that the Council intends to take the poster down. If they cannot be readily identified, then the advert can be removed immediately.

Council officials can enter unoccupied land, if necessary, to remove an advertisement. However they have no powers to remove advertisements displayed within a building to which there is no public access.

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Advertisement Discontinuance Notice

Where an advert enjoys deemed consent under the relevant advertisement regulations but the Council require it's removal for amenity or safety reasons, a discontinuance notice may be served. This can be appealed to the DPEA.

Other relevant miscellaneous matters

Notification of Initiation and Completion of Development (NID/NCD) and display of notices while development is carried out

These are not enforcement powers. They are intended to improve planning enforcement by requiring landowners, householders and developers confirm when development is due to commence or been completed, and in the case of on site notices, to raise community awareness of developments in the local area. Moray Council will then be made aware of active development in their areas, enabling then to prioritise resources with a view to monitoring development.

A Notice of Initiation of Development (NID) must be submitted to Moray Council for any development which has been granted permission and state when development will start. It must be submitted after planning permission has been granted and before development has commenced. Starting development without submitting an NID is a breach of planning control and Moray Council may consider enforcement action.

The Notice of Completion of Development (NCD) requires a developer to submit a further notice as soon as practicable after development has been completed.

Depending on the nature and 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 it is required to do so.

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High Hedges

The High Hedges Act came into force on 1 April 2014. The Act aims to provide a solution to the problem of high hedges, where neighbours have been unable to resolve the issue amicably. Should a high hedge notice be served it will specify initial action and any 'preventative action' required by the hedge owner. The notice will detail what action is required to be done to alleviate the problem and provide a timescale for compliance.

Please Note

This Charter does not comprise an authoritative interpretation of the Planning Acts. Planning legislation is complex and if you receive any notice from Moray Council, you are advised to seek legal or independent professional planning advice.



Moray Council
www.moray.gov.uk