

EAST RENFREWSHIRE COUNCIL PLANNING ENFORCEMENT CHARTER

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इस सूचना-पत्र में उल्लेखित सूचना यदि आप हिन्दी अनुवाद में चाहे तो कृपया सम्पर्क करें।

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ਜੇ ਤੁਸੀਂ ਇਸ ਲੀਫਲੈਟ ਵਿਚ ਦਿੱਤੀ ਜਾਣਕਾਰੀ ਦਾ ਅਨੁਵਾਦ ਚਾਹੁੰਦੇ ਹੋ ਇਥੇ ਸੰਪਰਕ ਕਰੋ।

اگر آپ اس لیف لیٹ میں درج معلومات کا ترجمہ اپنی زبان میں چاہتے ہیں تو ہم سے رابطہ کریں

1. INTRODUCTION

- 1.1 With the exception of some minor works planning permission is required for most development that takes place in Scotland. Sometimes, however, developers or householders undertake work without planning permission or fail to keep to the permission they have been given. The Council has been given powers to enforce planning controls in such cases.
- 1.2 Planning officers may monitor developments in an attempt to ensure planning controls are adhered to but appreciate the significant role played by members of the public in making them aware of potential breaches of planning control. This charter describes how members of the public should report possible breaches of planning control and how the powers made available to the Council are enforced in this area.

2. THE PLANNING ENFORCEMENT SYSTEM

- 2.1 The Council has statutory powers to investigate breaches of planning control and breaches of conditions imposed on planning permissions. Formal action can be taken where a satisfactory outcome cannot otherwise be achieved.
- 2.2 A breach of planning control is not a criminal offence. The purpose of planning enforcement is to try to resolve planning concerns rather than punish individuals. Planning enforcement is also a discretionary power and must only be taken if it is in the public interest. The Council can thus choose to take no action to rectify a breach of planning control. In addition, where the Council considers it is appropriate to take action, it must be reasonable and proportionate to the breach itself.
- 2.3 Further information on the use of enforcement powers can be found in the Scottish Government's Planning Circular 10/2009: Planning Enforcement.

3. IDENTIFYING POSSIBLE BREACHES OF PLANNING CONTROL

- 3.1 Possible breaches of planning control can include:-
- Work being carried out without planning permission
 - An unauthorised change of use
 - Failure to comply with conditions attached to a permission
 - Departures from approved plans or permissions.
- 3.2 Members of the public play a vital role in reporting potential breaches of planning control. When a member of the public suspects there has been a breach of planning control preliminary contact can be made by telephone or in person at the Council's offices. Unless however thought to be in the wider public interest the circumstances will not generally be investigated unless subsequently made in writing or by email. Letters should be sent to Planning Enforcement, Development Management, 2 Spiersbridge Way, Spiersbridge Business Park, Thornliebank, G46 6NG. Enquiries by email can be made using the 'Planning Enforcement Breach Form' on the Development Management pages of the Planning and the Environment Portal on the Council website at www.eastrenfrewshire.gov.uk/planning-enforcement or by e-mail direct to enforcement@eastrenfrewshire.gov.uk.
- 3.3 All enquiries, whether by letter or email, should include the following information:-
- Your name, address and telephone number and/or email address (anonymous complaints will not necessarily be investigated)
 - The address of the property concerned
 - Details of the suspected breach with times and dates (if relevant)
 - How the breach affects you
 - Whether you wish the enquiry to be treated confidentially.

3.4 In accordance with the **Data Protection Act 2018** any information you supply to us will be used by East Renfrewshire Council to process your enquiry or comments. We may also use your information to verify your identity where required, contact you by post, email or telephone and to maintain our records. The council will use this information because we need to do so to perform a task carried out in the public interest. You can find out more about how we handle this information and your rights in respect of it by going to www.eastrenfrewshire.gov.uk/dataprotection

3.5 The Development Management Service can monitor the progress of all planning consents however given the large number of applications processed must give priority to monitoring of large scale developments, developments in sensitive areas (Conservation Areas, Listed Buildings, and areas with Protection Designations such as Sites of Special Scientific Interest (SSSIs) etc.) and developments which could potentially have significant adverse affect on amenity.

3.6 Members of the public can provide information to the Council if they believe that planning conditions are not being complied with. Information can be passed to the Council in letter or email form as detailed above. Alleged breaches of conditions are in general dealt with in the same way as alleged breaches of planning control.

3.7 Some complaints such as neighbour disputes that do not involve development or breaches of planning control, boundary and other legal disputes such as feu superiors or local authority housing matters are not subject to planning control and will not be investigated. Other matters such as road closures as a result of development, the provision and/or diversion of services by statutory undertakers in relation to development sites and the conduct of development site personnel are also not matters that can be dealt with by the Development Management Service.

4. INVESTIGATING POSSIBLE BREACHES OF PLANNING CONTROL

4.1 After initial checks complaints are registered and an acknowledgement should be sent to the complainant as soon as possible.

4.2 The next step is generally a site visit to allow a Planning officer to assess the situation. Priority for dealing with complaints is established by means of an initial assessment of the specific breach of planning control and its effect on amenity. The Council will however endeavour to investigate all complaints of unauthorised development timeously, and thereafter provide an assessment of the circumstances or advice to the effect that the matter does not constitute a breach of planning control.

4.3 The length of time taken to resolve a case or take action can be affected by a number of factors such as the gathering of evidence, discussions with interested parties and delays consistent with the service of formal notices. A reasonable timescale is generally offered to rectify the breach of planning control and further delay may be occasioned as a result of any appeals made to the Scottish Government. The Council will keep complainants informed at what they consider to be significant stages in the progress of a case. Complainants are, however, invited to contact the Case Officer should they require more regular updates.

5 ACTING ON BREACHES OF PLANNING CONTROL

5.1 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. The planning authority has to consider each case on its merits and decide on the best solution. In many instances negotiated solutions will be sought and achieved and formal enforcement action not required. The extent to which enforcement measures will be pursued will depend, for example, on whether or not the development complies with accepted policies (the Local Plan can be viewed on the Council's website) and how significant its impact is or is likely to be on the wider community. The outcome of many enforcement cases is simply the submission of a retrospective planning application.

5.2 An officer duly authorised by the Council has powers to enter any land 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 and may involve planning officers entering land adjacent to the site in question.

5.3 Only a relatively small number of cases require formal enforcement action. This normally involves the service of either an enforcement notice or breach of condition notice. 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

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

5.4 Where the terms of any enforcement notice are not complied with options available to the Council include:

- Referring the case to the Procurator Fiscal for possible prosecution
- Carrying out necessary remedial work and recovering the costs involved
- Seeking a Court interdict to stop or prevent a breach of planning control.

5.5 Appeals against enforcement notices are submitted to the Scottish Ministers and considered, in most cases, by Reporters from the Directorate for Planning and Environmental Appeals. Anyone who has reported a breach of planning control is advised of any related appeal. There is no right of appeal against a breach of condition notice.

5.6 Details of enforcement notices, breach of condition notices, stop notices and notices requiring application for planning permission for development already carried out are entered into an Enforcement Register. The Register can be inspected at the Planning Service offices at 2 Spiersbridge Way, Spiersbridge Business Park, Thornliebank, G46 6NG, between 8.45am to 1pm Monday to Friday. Notices served since 2010 can also be seen online using our online planning system at www.eastrenfrewshire.gov.uk/planningonline and selecting the button 'enforcements'.

5.7 It should be pointed out that Enforcement Action has to be taken within strict time limits. Generally, work carried out more than four years ago or a change of use that took place more than 10 years ago is considered lawful and immune from action if no formal enforcement action has been instigated

6 ENFORCEMENT POWERS

6.1 The Planning Enforcement powers available to your local Council are set out in the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006. Listed building enforcement notices are covered by the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997(as amended).The Planning Acts are available from HMSO, 71 Lothian Road, Edinburgh and can be viewed online at the Office of Public Sector Information (OPSI) website;<http://www.opsi.gov.uk/>

Government policy on planning enforcement is set out in Circular 10/2009: Planning Enforcement. The circular is published on the Scottish Government's website and can be viewed at www.scotland.gov.uk/Topics/Built-Environment/planning/publications/circulars.

6.2 Types of Notice

- **Breach of Condition Notice** - this is used to enforce the conditions applied to any planning permission. It comes into effect 28 days after being served. It may be used as an alternative to an Enforcement Notice (see below), and is served on any person carrying out the development and/or any person having control of the land. There is no right of appeal to this notice. Contravening a Breach of Condition Notice can result in the Council deciding to prosecute, with a fine of up to £5,000.
- **Notice Requiring Application for Planning Permission for Development Already Carried Out** - may be issued where development has taken place without planning permission and discussion with the land owner or developer has failed to result in the submission of a planning application. Applications received in response to a notice of this type are handled in exactly the same way as any other application. Failure to comply with this type of notice is not an offence however in certain circumstances can result in the issue of an Enforcement Notice. There is no right of appeal to this notice.
- **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 (in general 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 against service of an enforcement notice and if an appeal is made, the terms of the notice are suspended until a decision on the appeal 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 £50,000 in the Sheriff Court. Failure to comply with the notice may alternatively or additionally result in the Council taking Direct Action to correct the breach of planning control concerned (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 a right of appeal to the 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. N.B. There is no time limit for the investigation of unauthorised alterations to a listed building.
- **Stop Notice/Temporary Stop Notice** - are used in urgent or serious cases where unauthorised activity must be stopped, usually on grounds of public safety. There is no right of appeal and failure to comply is an offence. Someone served with a Stop Notice or Temporary Stop Notice can however appeal against any accompanying or subsequent Enforcement Notice. The Council may face claims for compensation

in certain circumstances where either form of stop notice is issued and their use needs to be carefully assessed.

- **Fixed Penalty Notices** - can be issued by the Council as an alternative to prosecution where someone has failed to comply with the requirements of an enforcement or breach of condition notice. Payment of the fixed penalty does not discharge the requirement to comply with the notice and the Council thus retains the power to take Direct Action to remedy the breach and recover any costs associated with such work. The Council is not required to offer the option of paying a fixed penalty. Any decision to do so would be dependant 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.

6.3 Other Powers

- **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, on a person with any other interest in the land or who is carrying out operations on the land. They are required to provide information about operations being carried out on the land and any conditions or limitations applying to any planning permission already granted. Failure to comply with the Notice within 21 days of it being served is an offence and can lead to a fine in the Courts.
- **Notice under Section 272** (of the Town and Country Planning (Scotland) Act 1997) - this provides limited powers to obtain information on interests in land and the use of land. Failure to provide the information required is an offence.
- **Notice under Section 179** (of the Town and Country Planning (Scotland) Act 1997) - this allows planning authorities to serve a notice on the owner, lessee or occupier of land which is adversely affecting the amenity of the area. This Notice sets out

the action that needs to be taken to resolve the problem within a specified period.

- **Interdict and Interim Interdict** - an interdict is imposed by the courts and is used to stop or prevent a breach of planning control. Court proceedings can prove costly and Councils normally only seek interdicts in serious cases or where enforcement notices have been ignored in the past. The Council can however 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 will seek to recover any costs incurred in undertaking this work.

7 ENFORCEMENT AND ADVERTISING

- 7.1 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 specific 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.
- 7.2 Displaying an advertisement in contravention of the regulations is an offence and any court proceedings can result in the offender being fined. The court can impose further fines for each day the breach of the regulations continues.
- 7.3 The Council has the power to serve an enforcement notice. This specifies a time period for compliance with the notice. 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.

- 7.4 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.
- 7.5 The Council also has powers to remove or destroy placards and posters that do not have planning permission or deemed consent. If the person who put up the poster can be identified, they have to be given at least two days notice that the Council intends to take the poster down. If they cannot be readily identified, then the advert can be removed immediately. (The Council's Roads Service has powers to remove adverts which have been attached to street furniture such as roadside railings or lamp standards and should be the first point of contact in such circumstances).
- 7.6 Council officials can enter unoccupied land, if necessary, to remove an advertisement however have no powers to remove advertisements displayed within a building to which there is no public access.

hedge notice. Guidance on the operation of the Act can be found at <http://www.eastrenfrewshire.gov.uk/index.aspx?articleid=4956>

8 TREES

- 8.1 The Planning Authority can exercise a level of control in respect of treeworks within Tree Preservation Areas and Conservation Areas. Instances of treeworks which have been undertaken without the necessary consent or notification will be investigated.
- 8.2 As with other forms of planning control formal action will only be taken where deemed to be in the wider public interest. Any action will additionally be proportionate to the breach itself.

9 High Hedges

- 9.1 The procedures introduced by the High Hedges (Scotland) Act 2013 came into effect on 1 April 2014. If you consider that there is a high hedge on nearby land that is blocking light to your property you can apply for a high

9 A SUMMARY GUIDE TO PLANNING ENFORCEMENT

9.1 Planning permission is required for most development that takes place in Scotland. Sometimes, however, developers or householders undertake work without planning permission or fail to keep to the permission they have been given. Local Councils have powers to act in such cases.

9.2 The Council will investigate breaches of planning control. These can include:

- Work being carried out without planning permission
- An unauthorised change of use
- Not following conditions imposed by a planning consent
- Not following plans approved by a planning consent

9.3 The public can play a vital role in reporting such incidents to their Council. This must include:

- The address of the property concerned
- Details of the suspected breach of planning control, (with times and dates if relevant)
- Contact details for the person providing the information
- Whether that person wishes the matter to be treated confidentially. (Councils will do their best to honour such requests but anonymity cannot be guaranteed where statutory enforcement action is undertaken; particularly where court action is required and that person may be called as a witness.)

9.4 The purpose of planning enforcement is to resolve the problem rather than to punish. Action can involve negotiating a solution, requiring that a retrospective planning application be made, or formal action such as the issue of an enforcement notice or a breach of condition notice. Formal action may require the agreement of the Council's Planning Applications Committee.

9.5 Enforcement notices detail the action the recipients are required to take. Notices can be challenged through an appeal to Scottish Ministers. If challenged, enforcement action is suspended until a decision is issued. Failure to comply with an enforcement notice can result in prosecution.

9.6 In some cases, the Council is time-barred from taking action. Generally, work carried out more than four years ago or a change of use that took place more than 10 years ago is considered lawful and immune from action.

9.7 It is not always possible to anticipate how a particular case will develop, nor how long it will take. The Council will try to keep people informed of progress. The Council has set down its procedures and contact details in this Charter. The Charter is available on the Council's website at <https://www.eastrenfrewshire.gov.uk/planning-enforcement>

10 LET US KNOW

- 10.1 The Council has a 'Complaining to East Renfrewshire Council' procedure for dealing with complaints suggestions and compliments, the details can be found on the Council's website at www.eastrenfrewshire.gov.uk/complaints
This procedure should be used for complaints about the service received and not for reporting breaches of planning control; these should be reported as per the procedure set out in this document.
- 10.2 A disagreement with the outcome of an investigation is not in itself grounds for complaint as it is up to the Council to determine an appropriate course of action in relation to its enforcement powers.
- 10.3 If you are dissatisfied with the Council's response, having exhausted all stages in the procedure, you have the right to take your service complaint to the Scottish Public Services Ombudsman at: SPSO Freepost EH641, Edinburgh EH3 0BR.

11 CONTACT DETAILS

Suspected breaches of planning control should be reported in writing to

Planning Enforcement,
2 Spiersbridge Way
Spiersbridge Business Park,
Thornliebank,
East Renfrewshire,
G46 8NG

or to enforcement@eastrenfrewshire.gov.uk

The address for the submission of complaints regarding the handling of planning enforcement matters is

Customer Services,
East Renfrewshire Council,
Eastwood Park,
Rouken Glen Road,
Giffnock,
G46 6UG.

For enquiries about the planning and enforcement system in Scotland, contact the Scottish Government on 0131 244 7825 or contact DMprocedures@gov.scot or visit the website <http://www.gov.scot/Topics/Built-Environment/planning/Development-Management/Enforcement>

The Scottish Government Planning Circular *10/2009:Planning Enforcement* can be seen at <http://www.gov.scot/Publications/2009/09/16092848/0>

Complaints regarding the content of advertisements should be made to The Advertising Standards Authority via its website www.asa.org.uk/asa/