

Agenda Item	10
Report No	EDI 45/19

HIGHLAND COUNCIL

Committee: Environment, Development and Infrastructure

Date: 15 August 2019

Report Title: Planning Enforcement Charter

Report By: Director of Development and Infrastructure

1. Purpose/Executive Summary

- 1.1 Under the terms of Section 27 of the Planning Etc. (Scotland) Act 2006, the Council is required to have in place a Planning Enforcement Charter, to advise its customers of the powers available to the Planning service when dealing with planning enforcement matters, the processes to be followed, contact points and how a complaint can be made. The Charter requires to be reviewed every two years.
- 1.2 This report provides background on the requirement for an enforcement charter, a short summary on previous amendments and, reflecting on experience over the last two years, makes recommendations on changes to reflect current practice.

2. Recommendations

- 2.1 Members are asked to adopt the Charter as set out in **Appendix 1** to the report as the Council's statement of planning enforcement policy and procedure.

3. Implications

- 3.1 Resource: The cost in delivering the enforcement service is met by existing resources. There may be costs for the Council in compensation through unsuccessful enforcement action.
- 3.2 Legal: There are legal implications in the service of Statutory Notices and referrals to the Procurator Fiscal and the Sheriff.
- 3.3 Community (Equality, Poverty and Rural): The Charter is available in a format for customers with special requirements, and contains advice in other languages on how to obtain information.
- 3.4 Climate Change / Carbon Clever: None

3.5 Risk: None

3.6 Gaelic: None

4. Background and Introduction

4.1 The Planning etc. (Scotland) Act 2006 introduced a requirement for each planning authority to prepare and publish an Enforcement Charter. The Act requires the Authority's Enforcement Charter to set out:

- a statement of the authority's policies covering enforcement action;
- an account of how members of the public can bring a possible breach of planning control to the attention of the authority;
- an account of how any complaint to the authority in respect of the taking of enforcement action is to be made; and
- the authority's procedure for dealing with such a complaint.

4.2 Authorities are required to review, update, and re-publish the Charter regularly; at intervals not exceeding two years.

4.3 The Scottish Government has issued guidance on the form and content of the Charter. This guidance, together with the Highland Council's existing adopted Enforcement Charter and the learning outcomes from implementing the existing charter, has been taken into account in preparing this latest version of the Charter, which can be found within **Appendix 1**.

5. Revised Charter

5.1 The Council first implemented an Enforcement Charter in August 2010. This was subsequently reviewed in May 2013, June 2015 and August 2017. Since the last review of the Enforcement Charter, the structure of the Enforcement Team has been amended with a dedicated resource assigned to both the North and South Operational Areas. In addition a revised 'Case Review' process has been implemented. This means that when each new case is received, it is reviewed by the Enforcement Team to identify:

- whether the potential breach is a planning matter;
- if it is, what is the best approach to take to the case;
- what is the likely end point of any enforcement action; and
- what priority the case should be given (based upon the priorities set out in the Charter).

5.2 It is considered that the key elements of the 2017 Charter continue to be relevant. In the previous review, the 4 week target in which to provide a complainant with an update on any action proposed was extended to 6 weeks. The update was also stipulated to be required in writing (letter or email) so that there is a clear audit trail. Experience indicates that for most cases it is possible to progress an investigation within this timescale to a point where we are able to update the original complainant. This timescale therefore appears to be more realistic and reflective of the time taken to investigate and negotiate an appropriate outcome, or determine whether a notice requires to be served. It is therefore proposed to retain the commitments contained within the August 2017 Charter.

5.3 The only significant change required is considered to be in relation to the need to reference the General Data Protection Regulation 2018 (GDPR) on page 8 of the document.

Designation: Director of Development and Infrastructure

Date: 29 July 2019

Author: David Mudie, Area Planning Manager (South)

Background Papers: Enforcement Charter 2019 - Draft

The Highland Council

Planning Enforcement Charter (2019)

A guide to enforcing planning controls

Comhairle na Gàidhealtachd

Cairt Cur an Gnìomh Dealbhaidh (2019)

Iùl a thaobh a bhith a' cur smachdan dealbhaidh an gnìomh

Table of Contents

Introduction	3
Breaches of Planning Control.....	4
Guiding principles of planning enforcement.....	6
How breaches of planning control are brought to our attention.....	7
Investigating breaches of planning control	9
Acting on breaches of planning control	10
What we will not investigate	12
Powers available.....	13
Complaints.....	16

Introduction

Ro-ràdh

Building work, engineering works or the use of buildings or land for an alternative use, in planning legislation, is known as 'development'. Some smaller scale development does not require planning permission however, most does. Sometimes, "**developers**" (which can be a company or individual and includes householders) undertake work without the benefit of planning permission or fail to keep to the terms of the permission they have been given.

Where this happens, the Council has powers to take enforcement action against such unauthorised development, if it considers it is in the public interest to do so.

The Council regularly monitors progress of development to ensure planning controls are being followed. Given the size of the Council area, there is also a role for the public in alerting the Council to any problems that they become aware of.

This charter explains how the enforcement process works, our roles and responsibilities and the service standard that we have set ourselves.

It also aims to set out what happens at each stage of what can be a lengthy process and highlights the role that the public play in reporting unauthorised development and assisting us to investigate breaches of planning control.

Planning enforcement is one of the more complex parts of the planning system. The aim of this Charter is to ensure that our procedures are fair, reasonable, consistently applied and transparent. This will mean that interested parties are fully aware of the procedures involved in the process, the powers available to the Council and equally importantly the limits of those powers.

Breaches of Planning Control

Brisidhean Smachd Dealbhaidh

What is a Breach of Planning Control?

A breach of planning control is defined as:

- Development being carried out without the benefit of planning permission
- The carrying out of development or alterations to a listed building without the required consent
- A failure to comply with any condition, agreement or limitation attached to any planning permission or related consent
- Unauthorised works to protected trees
- An unauthorised change of use to land or a building
- Departure from approved plans or consent
- Unauthorised display of advertisements, such as advertising signs or roadside advertising
- A site or building which is in such a poor state that it affects amenity

The Council has statutory powers to investigate a breach of planning control. Any action taken has to be appropriate to the scale of the breach and will take into account the effect of the breach on the environment or residential amenity.

Breaches of planning control do not in most cases constitute a criminal offence. The exception to this includes:

- unauthorised works to a listed building;
- unauthorised works within a European Designated Site or affecting protected species
- unauthorised works to a tree protected by a Tree Preservation Order; or,
- the erection of an advertisement without consent;
- where there is a risk to human safety.

Formal action is likely to be an immediate response in such cases. Other breaches of planning control may constitute a criminal offence if required actions are not followed.

Enforcement action has to be taken within strict time limits:

- **A four year limit** - 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 dwellinghouse. After four years following the breach of planning control, the development becomes lawful and no enforcement action can be taken.
- **A ten year limit** - applies to all other development including change of use (other than to a single dwellinghouse) and breaches of condition. After ten years, the development becomes lawful if no enforcement action has begun. There is no limit

with regard to enforcement action being taken against unauthorised works on a listed building.

Key Points

The purpose of planning enforcement is to mitigate any adverse effects caused by unauthorised development

Where no, or limited, harm has been identified we may decide that no action is necessary or that we would require the development to be regulated.

Any action taken has to be proportionate to the scale of the breach

The Council's preferred approach is to work with developers/householders to resolve the breach of planning control. 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. In such cases we would normally seek to regulate the unauthorised development through a retrospective planning application rather than asking for the entire development to be removed/activity ceased.

Enforcement action is discretionary

This means that, even where there is a breach of planning control, we need to consider whether it is in the public interest to take enforcement action. We are not required to take any particular action on a specific breach of planning control, and we can decide that no action is necessary.

The Council's authority to take enforcement action comes from national legislation. Further information on the use of enforcement powers can be found in the Scottish Government publication *Planning Circular 10/2009: Planning Enforcement*.

Enforcement of Advertisements

Planning enforcement also covers the display of advertisements, such as billboards and advertisement hoardings.

It is important to note that the wording and images on an advertisement are not covered by planning control and the Council has no power to act on these matters.

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
Telephone: 020 7492 2222

Guiding principles of planning enforcement

Prionnsapalan stiùiridh a thaobh a bhith a' cur smachdan dealbhaidh an gnìomh

It is clearly undesirable that development should be carried out without the necessary permissions being in place. The main objective of planning enforcement is to remedy the undesirable effects of unauthorised development on the environment and the amenity of our communities. Bringing unauthorised activity under control ensures that the credibility of the planning system is not undermined.

In considering any enforcement action, we need to be satisfied whether the breach of planning control or the condition of a site would unacceptably affect:

- wider public amenity,
- the environment; or
- the existing use of the land or buildings meriting protection in the public interest.

The Council follows the following guiding principles in relation to planning enforcement:

Consistency

The enforcement process shall be followed in the same manner for each similar case.

Fairness

Making decisions based on a fair, impartial and objective assessment of what is in the public interest and assessing the level of harm caused by the breach.

Proportionality

Enforcement action shall relate directly to the scale, type and nature of breach of planning control.

Clarity

Any enforcement action taken by the Council should be capable of being easily understood by members of the public, organisations and businesses.

Equality

Every individual or group shall be treated with respect and in accordance with their individual rights, beliefs or circumstances. The decision will not be influenced by any of these matters.

How breaches of planning control are brought to our attention

Mar a tha brisidhean smachd dealbhaidh air an toirt gu ar n-aire

Monitoring

An important aspect of enforcement is monitoring of development. Planning permission is normally granted subject to a number of conditions. These fall into two main types:

1. conditions which require further details to be submitted and approved before development can begin; and
2. conditions which manage the development once it has been built/is operational.

It is the responsibility of the developer to inform us of when they intend to commence their development. In doing so the planning case officer will then check that any conditions which have to be approved before work begins have been agreed, and where resources allow will monitor the development to check that it proceeds in accordance with the approved plans.

However given the large number of planning permissions granted every year, it is not always possible, for the Council to monitor every case.

The responsibility for complying with conditions and carrying out the development in accordance with the approved plans lies with the owner/developer.

Decision notices and approved plans can be inspected on our website (<http://wam.highland.gov.uk/wam/>).

Complaints and Reports from Members of the Public

Members of the public and Community Councils have a vital role to play in reporting breaches of planning control and provide valued support by reporting possible breaches of planning control, particularly given the extent of the geographical area we cover. Any concerns should be raised with us at the earliest opportunity.

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

- Contact details of the complainant, including name, telephone number, address and email address if available;
- Details of the type and nature of the potential breach of planning control, including when you became aware of it;
- Where possible, the name and address of the person(s)/organisation(s) responsible for the alleged breach, include contact details where known;
- The address or location of the site where the potential breach of planning control has occurred;
- Any other relevant information e.g. any documents or photographs.

It should be noted that all information received by us is subject to the requirements of the current Data Protection legislation. This means that the Council has a duty to protect the personal information of complainants.

Under the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004, we may need to disclose information relating to the substance of complaints.

Notwithstanding the above, requests for total confidentiality may limit our ability to take formal action and cannot be guaranteed if the case leads to court proceedings.

Even though we will do our best to protect the identity of complainants, the person undertaking the unauthorised works may still be aware of the identity of the complainant, especially if you have previously spoken with them regarding the unauthorised works.

Investigating breaches of planning control

A' sgrùdadh bhrisidhean smachd dealbhaidh

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

- unauthorised development causing immediate or potentially serious harm;
- unauthorised works to listed buildings;
- unauthorised felling of protected trees;
- breaches of condition for major developments;
- breaches of planning conditions adversely affecting amenity and/or resulting in continuing harm.

When we receive a report of a potential breach it will be registered on our system and given a reference number.

The first action undertaken is to establish whether the reported potential breach relates to planning matters and whether a breach of planning control has indeed occurred. If the case is not related to planning matters and / or a breach of planning control has not occurred, it will be closed and a letter or email sent to the complainant explaining why.

If a breach has occurred we will decide on an early course of further investigation and any necessary action.

Where a breach of planning control has been identified, we will establish an appropriate course of investigation and action at the earliest possible opportunity. The first option will be to attempt to resolve breaches through negotiation. In cases where a breach is serious or must be brought under control and/or cannot be resolved informally, we will take formal action.

For minor breaches, where the principle of the development is acceptable, or those not causing significant harm, this will usually involve a request for the submission of a planning application seeking retrospective permission for the development already carried out. For more complicated breaches, or those that may have a detrimental impact on the environment or community, this may involve the serving of a formal notice to rectify the breach.

Acting on breaches of planning control

A' dol an gnìomh a thaobh bhrisidhean smachd dealbhaidh

We will consider each enforcement case on its planning merits and decide on the best outcome bearing in mind the public interest test. The Council is unlikely to take formal action, for example, over developments which, in planning terms, are seen as acceptable. It may be more appropriate, in such cases, to seek the submission of a planning application seeking retrospective permission.

Formal enforcement action involves the issue of a notice to all interested parties including the landowner, developer, the person carrying out the works and any tenants. This may be a notice requiring submission of a planning application, an enforcement notice requiring the unauthorised development to stop or to make changes to the development which has been undertaken, or a breach of condition notice.

A notice requiring a submission of a planning application alerts the landowner or developer to the fact that the development described in the notice does not have the requisite planning permission. This type of notice requires the landowner or developer to address the situation by submitting a planning application. We will consider this as we would any application made to us under planning legislation and may grant or refuse permission, depending on the planning merits of the application. Permission may be granted subject to conditions or limitations which we consider is required to make the development acceptable. The serving of a notice requiring the submission of an application is without prejudice of any future decision of the Council.

Enforcement Notices and Breach of Condition 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.

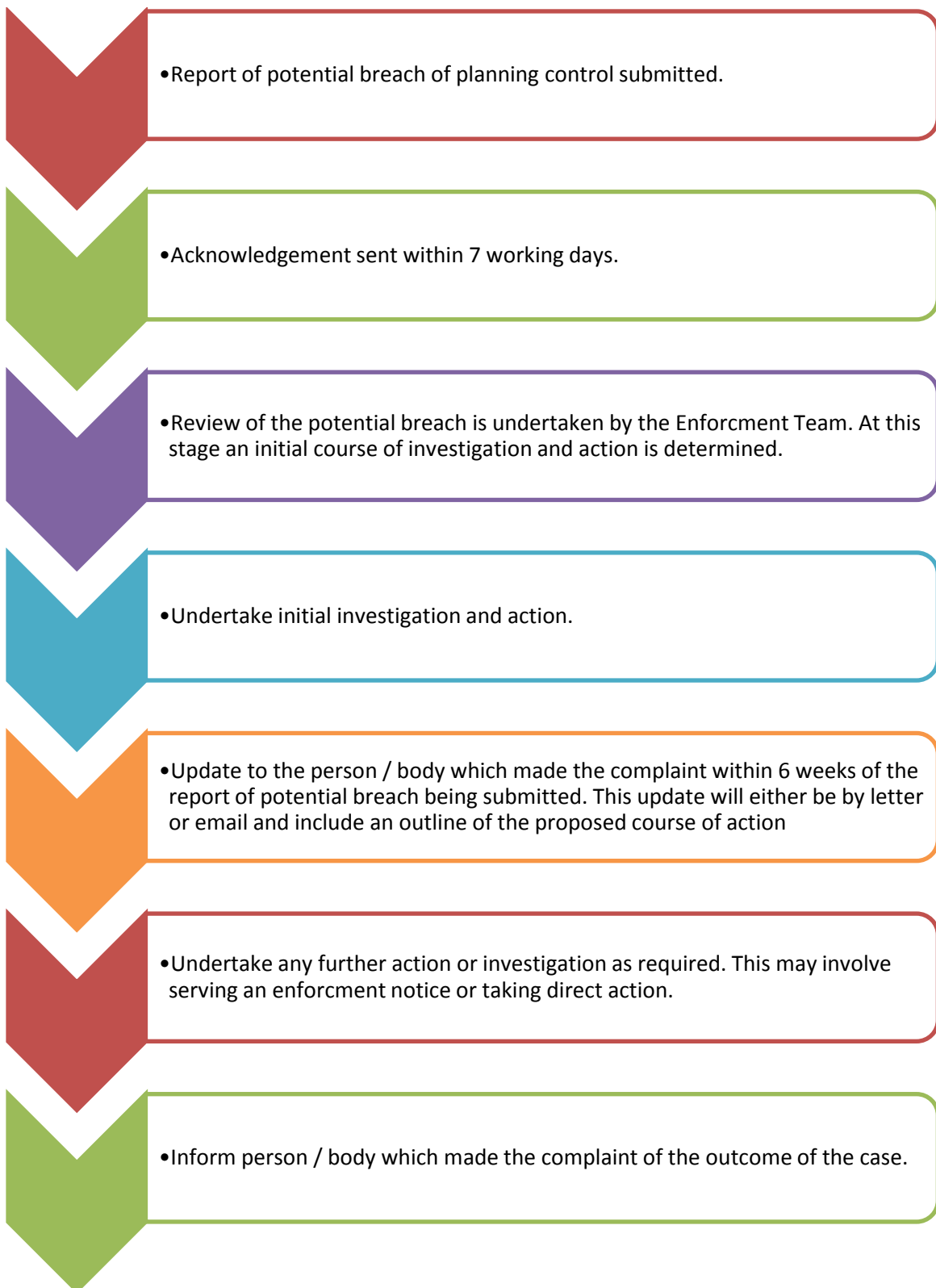
Appeals against enforcement notices are considered by Scottish Ministers and dealt with, in most cases, by Reporters from the Scottish Government's Directorate for Planning and Environmental Appeals (DPEA). Anyone who has submitted information on a breach of planning control is advised of the appeal.

There is no right of appeal against a breach of condition notice.

Due to the length of time often required for successful negotiation, the determination of a planning application seeking to resolve the breach, or undertaking formal enforcement action, it is not always possible to provide a timescale on the conclusion of cases where such action is recommended.

However, we recognise that delays can be a source of frustration to those reporting a breach, especially where they consider their amenity to be affected. Consequently, we will endeavour to keep interested parties updated of significant progress made on the case.

Outline of Enforcement Procedure



What we will not investigate **Na rudan air nach dèan sinn sgrùdadh**

Complaints are often received regarding matters that are not breaches of planning control. We will advise you if it is not appropriate to take any action.

Complaints may sometimes involve matters that are more appropriately dealt with by other Council Services such as Environmental Health (for example noise or odour nuisance), or external agencies such as the Scottish Environment Protection Agency. In these instances we will pass it to the relevant service / agency and we will inform you who we have contacted on the matter.

The following are examples of matters that we are unable to address:

- Neighbour nuisance, boundary disputes or disputes over the ownership or control of land. These are issues are civil matters and should be dealt with by the parties involved or referred to a solicitor, or, if the property is owned by the Council, the Council's Community Services;
- A dangerous building or technical building issue relating to building standard regulations;
- A matter relating to the management of a building site or behaviour of builders or contractors;
- Parking disputes, including with contractor vehicles, unless parking provision is addressed through a planning condition;
- Fly tipping;
- Any other matter covered by other substantive legislation such as noise, smells or operating hours, which are not controlled by a planning condition.

We will not investigate anonymous complaints. An exception would be where public safety is considered to be at risk, or where the breach affects a protected site or building.

Powers available

Cumhachdan rim faotainn

Where formal enforcement action is considered to be appropriate, there are a range of powers available to us. These have been summarised below. More information on the purpose and effect of these notices and actions can be found in *Planning Circular 10/2009 - Planning Enforcement* available from the Scottish Government's website.

Types of Notices

Enforcement notice

If development is carried out without planning permission, or a condition or limitation subject to which planning permission has been granted is not complied with, an enforcement notice can be served on all parties with an interest in the land requiring remedial works to be carried out to deal with any harm caused by the breach. There is a right of appeal against an enforcement notice to the Directorate for Planning and Environmental Appeals (DPEA) and the notice has no effect until the appeal is determined and the notice upheld. It is an offence not to comply with the terms of an enforcement notice.

Stop notice

Where a breach of planning control consists of an activity considered to be causing serious harm, a stop notice, in conjunction with an enforcement notice, can be served. The notice usually takes effect within three days of service and it is an offence to fail to comply with its requirements. There is no right of appeal against a stop notice.

Temporary stop notice

This can be issued where a breach of planning control comprises an activity and when we consider that it is important that the activity should cease immediately. It must be displayed on the land to which it relates and ceases to have effect after 28 days. It is an offence to fail to comply with its requirements.

Breach of condition notice

If planning permission has been granted subject to conditions and these have not been complied with, a breach of condition notice can be served on the person(s) responsible for carrying out the development to which it relates and on the owner of the land requiring compliance with the condition. There is no right of appeal against a breach of condition notice and it is an offence to fail to comply with its requirements.

Fixed penalty notice

Where an enforcement or breach of condition notice has not been complied with, we can issue a fixed penalty notice as an alternative to prosecution. 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

This can be issued on an owner of land requiring submission of a planning application where development has been carried out without planning permission. Whilst there are no penalty provisions for failing to comply with this notice it constitutes enforcement action under the relevant legislation and leaves it open to us to pursue further action in terms of an enforcement notice at any time we choose.

Notice requiring information as to interests in land

This can be issued on any occupier of land requiring them to confirm in writing their interest in the land along with details of any other party with an interest in the land. In addition it can require information on what the land is being used for, when that use began and the time when any activities being carried out began. It is often used to gather information prior to pursuing enforcement action. It is an offence to fail to comply with its requirements.

Planning contravention notice

This can be served on an owner of land or any person carrying out operations on land or who is using the land for any purpose. The notice requires recipients to confirm whether the use or activities alleged in the notice are being carried out, when they began, details of those engaged in the use/activities including their own and to provide any information as to any planning permission that may exist for the use/activities or any reason why permission is not required. It is an offence to fail to comply with its requirements.

Amenity notice

This can be served on anyone with an interest in land where the condition of any land is considered to have a significantly adverse impact on the amenity of an area. There is a right of appeal to the DPEA.

Listed building enforcement notice

This is similar to a standard enforcement notice but relates to unauthorised works affecting the character of a listed building. Any recipient of such a notice can appeal to the DPEA. It is an offence to fail to comply with the requirements of a listed building enforcement notice.

Advert enforcement notice

This is similar to an enforcement notice but relates to unauthorised advertisements. Such notices can be appealed to the DPEA.

Advert discontinuance notice

Where an advertisement benefits from deemed consent under the relevant advertisement regulations but we require its removal, a discontinuance notice may be served. This can be appealed to the DPEA. Whilst there are no penalty provisions for failing to comply with this notice it constitutes enforcement action under the relevant legislation and leaves it open to us to pursue further action in terms of an enforcement notice at any time we choose.

Replacement tree notice

Where a tree protected by a tree preservation order is removed, uprooted or destroyed in contravention of the order or any conditions of a consent given under a tree preservation order requiring the replacement of trees is not complied with, the Council can issue a replacement tree notice requiring the owner of the land to plant a tree or trees. Any notice served can be appealed to the DPEA.

Other Enforcement Powers

Prosecution

Non-compliance with certain notices as indicated above, as well as unauthorised works to listed buildings, the display of an advertisement in contravention of legislation or contravention of a tree preservation order constitutes a criminal offence under the relevant legislation and can result in the offence being reported to the Procurator Fiscal with a view to criminal proceedings being initiated against those involved. The decision whether or not to prosecute rests entirely with the Procurator Fiscal and will be based on the evidence submitted and whether or not it is in the public interest to prosecute.

Interdict

We can apply to the courts to restrain a breach of planning control and the court may grant an interdict if it is considered appropriate to restrain or prevent the breach.

Direct action

Non-compliance with certain notices (enforcement, amenity, advert and replacement trees) can result in the Council entering the land and carrying out the steps required to secure compliance with the notice. The costs involved in such actions are recoverable from the owner of the land concerned.

Complaints about the Enforcement Service

We are committed to providing high-quality customer services. We value complaints and use them to help improve our services. If you do have cause to complain about the service received by the Enforcement Team please follow the Council's complaints process as set out on our website:

highland.gov.uk

or in writing / telephone using the following details:

Complaints Officer

The Highland Council

Customer Services

PO Box 5773

Inverness

IV1 9EJ

Telephone: 01349 886606

Contact

Cuir fios gu

To report a potential breach of planning control please either go to our website and complete our eForm or contact the Service Centre.

Report a Breach of Planning Control

Website: www.highland.gov.uk/planningenforcement

Phone: 01349 886608