



ORKNEY
ISLANDS COUNCIL

Planning Enforcement Charter

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Development Management

Planning and Community Protection

Neighbourhood Services and Infrastructure

Planning Enforcement Charter

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1. Introduction

1.1.

Under Scottish legislation primary responsibility for planning issues rests with the Planning Authority. In Orkney this is Orkney Islands Council (“the Council”).

1.2.

Building work, engineering operations or the use of buildings or land for an alternative use, in planning legislation, is described as ‘development’. Some minor development is defined as ‘permitted development’ and does not require a planning application; however, most does. The principal role of Development Management is to assess proposed development and approve/grant or refuse applications in accordance with relevant policies and guidance. However, the planning authority is also responsible, where necessary, for taking enforcement action where planning legislation has not been followed.

1.3.

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

1.4.

However, sometimes developers (which can include a company or an individual householder) either undertake work without the benefit of planning permission or

other relevant consent or fail to accord with the terms of permission they have been given. Where this happens, the Council has powers to investigate breaches of planning control and take enforcement action, if it considers it in the public interest to do so.

1.5.

Planning enforcement is a discretionary power. This means that, even where there is a breach of planning control, the planning authority must 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 and close a case.

1.6.

This Charter explains the planning enforcement process, and the roles and responsibilities of the planning authority. It sets 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 with investigations regarding breaches of planning control. It should be noted that a 'planning enforcement complaint' is not a complaint against the Council, which would instead be processed under the Council's Complaints Handling Procedure.

1.7.

Enforcement is one of the most complex parts of the planning system, and often has long and unpredictable timescales. The aim of this Charter is to ensure that adopted procedures are fair, reasonable, 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.

1.8.

Copies of this Charter are available on the Council's website and at the Council Offices, School Place, Kirkwall.

2. The Service

Planning enforcement is administered by Development Management. The key officer undertaking this role is the Planning Control Officer. Formal enforcement action is in accordance with the Council's Scheme of Delegation.

3. Identifying Possible Breaches of Planning Control

3.1.

Possible breaches of planning control can include:

- Development being carried out without the benefit of the relevant permission.
- The carrying out of alterations to a listed building without the required consent.
- 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.
- A site or building which is in such a poor state that it affects amenity.

3.2.

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

3.3. Reporting an Alleged Breach

Preliminary enquiries can be made by telephone but should be followed up in writing by post or email. Correspondence should be provided to the Planning Control Officer, Orkney Islands Council, Development Management, Council Offices, School Place, Kirkwall, KW15 1NY, or email planning@orkney.gov.uk

3.4.

To be considered a planning enforcement complaint, and therefore to guarantee this is investigated by the Planning Authority, the representation must be in writing. Whether by post or email, the following information is essential:

- The address (or detailed description if no address) of the property concerned.
- Details of the suspected breach of planning control, with times and dates if relevant.
- A contact name and registered postal address for the complainant.
- An email address if available or if the complaint is submitted electronically.
- How the breach affects the complainant.
- Whether the enquiry is to be treated confidentially.

3.5.

Wherever possible we will honour requests for confidentiality regarding any planning enforcement complaint made or information supplied, however it should be noted that it may not be possible to respect such a request in all cases, and the effects of the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004, must be taken into consideration. Requests for total confidentiality limit the ability of the authority to take formal action and cannot be guaranteed if the case were to be considered at Appeal or in the Courts.

3.6.

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 an explanation provided to the complainant. If a breach has occurred, the planning authority will decide on an early course of further investigation and any necessary action.

3.7. Monitoring Planning Conditions

Monitoring of planning conditions is required to ensure that development is carried out in compliance with the relevant permission. Conditions are attached to most decision notices. Monitoring of conditions is undertaken regularly by the Planning Control Officer supported by other officers in Development Management.

3.8.

When breaches of conditions are identified or reported by the public, they are investigated in the same way as other breaches of planning control.

3.9. Initial Acknowledgement of Complaints

Written enforcement complaints will be acknowledged within 20 working days. You should be aware that some complaints relate to matters over which Development Management has no control, for example neighbour disputes relating to the position of boundaries, land ownership, rights of access or matters associated with superior's consent. These matters are not normally investigated by the Planning Control Officer.

4. Investigating Breaches of Planning Control

4.1. Prioritisation of Reported Breaches

Following registration of a possible breach of planning control, the Planning Control Officer will visit the site. Priority for site visits and dealing with each case is based on the relative significance of the site, and the nature and effect(s) of the breach of planning control. Cases are prioritised as below.

4.1.1. High Priority

Breaches of planning control of the following **specific** types:

- The demolition of a listed building or the demolition of a building within a conservation area.
- Works to trees protected by a Tree Preservation Order, or to trees in a conservation area.

Breaches of planning control of the following **general** types:

- Development that may represent a risk to public safety.
- Alteration to a listed building.
- Breaches of conditions attached to either listed building or conservation area consents.
- Works being undertaken in contravention of the requirements of a formal notice, or any continuing breach of planning control where enforcement action has previously been authorised or is currently being considered for action.
- Development that may affect designated sites of international or national importance, for example European sites, Sites of Special Scientific Interest or Scheduled Monuments.

- Unauthorised development normally falling within Medium Priority, but where the relevant 4 or 10 year period for immunity from the taking of enforcement action is approaching.
- Any other matter, including breaches of conditions, causing, or likely to cause, significant harm to natural or cultural heritage or to residential amenity, for example by reason of noise, smell or other forms of environmental pollution.

4.1.2. Medium Priority

Breaches of planning control of the following **specific** types:

- Any breach of planning control in a conservation area, other than those of a minor or technical nature.
- The unauthorised residential occupation of land, including siting and occupation of caravans.
- Development leading to the obstruction of a Public Right of Way.
- The tipping of waste materials, the 'dumping' of scrap vehicles and untidy land.
- The formation or significant alteration of an access to a public road.
- The formation of new access tracks and hardstandings.
- The use of land or buildings for business/commercial purposes.
- Unauthorised display of any advertisement causing significant harm to amenity and/or public safety.

Breaches of planning control of the following **general** type:

- Any other matter having or causing a moderate level of harm to visual or residential amenity, biodiversity interests, the historic environment, or public safety.

4.1.3. Low Priority

Breaches of planning control of the following **specific** types:

- Disputes between neighbours which relate to householder or similar development, and where there is limited public impact or interest (for example the erection of a fence or the construction of a shed).
- Unauthorised display of an advertisement not falling within Medium Priority.

Breaches of planning control of the following **general** types:

- Minor or technical breaches of planning control where limited harm to amenity is caused.
- Any other alleged breach of planning control not falling into High or Medium Priority.

4.2. Initial Investigation Timescales

The initial inspection of the site of a potential enforcement issue will very often be crucial for determining the continuing priority to be afforded to the investigation, and the likely subsequent course of action. The following are the initial response times,

which are considered both appropriate and reasonable in respect of each category of priority. These are intended as maximum response times and individual circumstances may dictate some more immediate initial inspections.

Officers will aim to inspect 80% of sites within the following timescales:

- High Priority – 7 working days.
- Medium Priority – 21 working days.
- Low Priority – 2 months.

4.3.

It is common that, following the site inspection, additional investigation is required to establish if a breach has occurred, and this may lengthen the process involved in commencement of action. Priority provided to initial inspection of any particular case does not necessarily lead to the same priority in the context of the wider enforcement caseload.

4.4. Correspondence with Persons at Affected Site

Initial correspondence with persons at the property concerned, other than in exceptional cases, will be in writing only to provide a record. Where necessary to establish details of ownership, activities that are alleged to have taken place, or other details, the initial correspondence may include service of a requisition for information notice in the form of a Planning Contravention Notice or Notice under Section 272. For more detail, see Section 7 'Powers Available to the Planning Authority'.

4.5. Overall Investigation Timescales

It is not possible to anticipate the length of time required for decisions or actions, or for a case to be concluded, and every case is unique. Progress may be delayed if evidence must be collected and verified over a period, for example, or if negotiations take place. An application may be submitted retrospectively for an unauthorised development, which leads to an application determination period and, if refused, potentially an appeal/review process. These are amongst a long list of factors that can affect the timescale for resolution of a case.

4.6. Correspondence with Complainants

The Council recognises that delays can cause considerable frustration to complainants, particularly if it is considered that amenity is being affected. To ensure complainants are kept informed of progress, updates will be provided by the planning authority at key stages, as follows:

- 20 working days – the initial acknowledgement (as confirmed in paragraph 3.9 above).
- 6 months from receipt of the complaint – an update on the status of the case (if not 'Case closed' as below).
- Case closed – the outcome of the investigation, including the outcome of any informal agreements or formal action.

- 5 working days from receipt of a valid planning application – confirmation if a planning application is submitted, which seeks to regularise the unauthorised development under investigation. This provides opportunity to submit a valid representation in relation to the planning application.

If you have submitted a planning enforcement complaint in writing, the planning authority will also provide an update on request at other stages of investigations.

4.7. Closing a case without formal action

In some instances, even though a breach of control has occurred, further action may not be taken. The planning authority must consider, having regard to the local development plan and material considerations, and to the circumstances of each case, whether it is expedient and proportionate to take formal action including issuing a notice. Most enforcement cases are resolved without formal action.

4.8.

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. In these cases, where a valid planning application is submitted, the enforcement case will be closed or suspended, pending the decision on the application.

4.9.

For the relatively small number of more complicated breaches, or those that may have a detrimental impact on the environment or community, this may involve serving of a formal notice to remedy the breach.

5. Formal Action

5.1.

Formal enforcement action involves the issue of a notice to all interested parties which can include the landowner, developer, the person carrying out the works and/or 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.

5.2.

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 assess this as we would any application made to us under planning legislation and may approve or refuse permission, depending on the planning merits of the application. Permission may be approved subject to conditions or limitations which we consider are 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.

5.3.

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(s) have and how to lodge an appeal.

5.4.

Appeals against enforcement notices are considered by Scottish Ministers and dealt with, in most cases, by a Reporter from the Scottish Government's Planning and Environmental Appeals Division (DPEA). There is no right of appeal against a breach of condition notice.

5.5.

It is an offence to fail to comply with the requirements of an enforcement notice or a breach of condition notice.

5.6.

The planning authority has additional powers, including the use of Interdicts, which complement the serving of notices. For more detail, see Section 7 'Powers Available to the Planning Authority'.

5.7. Enforcement Register

Details of Enforcement Notices, Breach of Condition Notices, Notices under Section 33A, Stop Notices and Temporary Stop Notices which have been served in relation to land in the planning authority area are entered on the Enforcement Register, which is published on the Council's website for inspection by the public at all reasonable hours.

6. Powers of Entry

Where the planning authority considers that entering the land is an appropriate means of obtaining the information it requires to fulfil its obligations regarding planning enforcement, planning authorities have a right of entry to land without a warrant, at a reasonable hour, for any of the following purposes:

- to ascertain whether there is, or has been, any breach of planning control on the land, or on any other land;
- to determine whether any of the planning authority's enforcement powers should be exercised in relation to the land, or any other land;

- to determine how any such power should be exercised; and
- to ascertain whether there has been compliance with any requirement arising from earlier enforcement action in relation to the land, or any other land.

7. Time Limits

Enforcement action must be taken within strict time limits:

7.1.

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 dwelling house. After four years following the breach of planning control, the development becomes immune from enforcement action.

7.2.

A **ten-year limit** 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 immune from enforcement if no formal enforcement action has begun.

7.3.

There is **no time limit** affecting enforcement action being taken against unlawful works to a listed building.

8. Complaints Procedure

Disagreement with the outcome of an investigation by the planning authority is not a ground for complaint. We will consider all complaints made about the way in which a planning enforcement complaint was dealt with in accordance with the Council's Complaints Handling Procedure.

9. Powers Available to the Planning Authority

9.1.

The planning enforcement powers available to the planning authority are set out in the Town and Country Planning (Scotland) Act 1997, as amended. Listed building enforcement is covered by the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, as amended. The Planning Acts can be viewed online:

<http://www.opsi.gov.uk/>

9.2.

Government advice on planning enforcement is set out in Planning Circular 10/2009: Planning Enforcement. The Circular can be viewed on the Scottish Government website: <http://www.gov.scot/Publications/2009/09/16092848/0>

10. Types of Notice

10.1. Breach of Condition Notice

This is used to enforce the conditions attached to a planning permission. It comes into effect not less than 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. Contravening a breach of condition notice can result in prosecution, with a fine of up to £1,000.

10.2. Enforcement Notice (EN)

10.2.1.

This is generally used to deal with unauthorised development but can also apply to a breach of planning conditions. There are similar notices and powers to deal with Tree Preservation Orders and advertisements.

10.2.2.

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 planning authority taking **Direct Action** to correct the breach (see other powers below).

10.3. Listed Building Enforcement Notice (LBEN)

This must be served on the current owner, occupier and anyone else with an interest in the property. The procedures are like 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 Scottish Ministers against the notice. Breaches of listed building control are a serious matter. It is a criminal offence to undertake works to demolish or extend a listed building or to alter a listed building in any way that would affect its character. In certain circumstances, this can lead either to an unlimited fine or imprisonment.

10.4. Stop Notice (SN)

This is used in urgent or serious cases where an 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 Stop Notice may be quashed and the Council as planning authority may face claims for compensation. The use of Stop Notices therefore needs to be carefully assessed by the planning authority.

10.5. Temporary Stop Notice (TSN)

This is used to require 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 a caravan as a dwelling house. 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 Stop Notice. There is no right of appeal against a TSN.

10.6. Fixed Penalty Notice (FPN)

This provides planning authorities with an alternative process, in addition to the option to seek prosecution, to address situations where a person has failed to comply with the requirements of 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 the planning authority will retain the power to take direct action to remedy the breach and recover the costs of such work from that person. The planning authority is not required to offer the option of paying 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.

10.7. Notice Requiring Application for Planning Permission for Development Already Carried out (Notice under Section 33A)

Where the planning authority considers that a development which does not have planning permission may be acceptable (i.e., they consider that it might be granted planning permission) they may issue a 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 such a notice does **not** guarantee that permission will be granted; the planning authority may, on consideration of the application, decide instead to refuse permission, or to grant permission subject to conditions or alterations to make the development acceptable.

11. Other Powers

11.1. 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.

11.2. Notice under Section 272

(Section 272 of the Town and Country Planning (Scotland) Act 1997, as amended.) 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.

11.3. Notice under Section 179

(Section 179 of the Town and Country Planning (Scotland) Act 1997, as amended.) This allows the planning authority 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.

11.4. 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 planning authorities normally only seek interdicts in serious cases or where enforcement notices have been ignored in the past. However, a planning authority can seek an interdict in relation to any breach without having to use other powers first. Breaching an interdict can carry heavy penalties.

11.5. Direct Action

Failure to comply with the terms of an Enforcement, Listed Building or Amenity Notice within the time specified can result in the planning authority carrying out the specified work. The planning authority may recover any costs it incurs from the landowner.

11.6. Notification of Initiation and Completion of Development (NID/NCD) and Display of Notices While Development is Carried Out

Whilst not in themselves planning enforcement powers, these notices are intended to improve delivery of planning enforcement by requiring positive confirmation that development has commenced and been completed, and, in the case of on-site notices, to raise community awareness of developments in the local area. Planning authorities will be made aware of active development in their areas, enabling them to prioritise resources with a view to monitoring development. For any development for which permission has been granted, a NID must be submitted to inform the planning authority of the date on which development will commence. It is to be submitted after planning permission has been granted and before development has commenced. Initiating development without submitting a NID is a breach of planning control and the planning authority may consider enforcement action. The NCD requires a developer to submit a further notice as soon as practicable after development has been completed.

11.7.

Depending on the nature or 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 required to do so.