



Item: 4

Enterprise and Infrastructure Committee: 31 March 2026.

Planning Enforcement Charter.

Report by Director of Infrastructure and Organisational Development.

1. Overview

- 1.1. This report presents the biennial review of the Council's Planning Enforcement Charter (the Enforcement Charter) for members' approval.
- 1.2. The Enforcement Charter sets protocol for investigating alleged breaches of planning control and for conducting enforcement procedures, including to meet the statutory requirements.
- 1.3. Section 158A of the Town and Country Planning (Scotland) Act 1997, as amended, requires the Planning Authority to prepare and publish an Enforcement Charter which must be kept under review, updating and re-publishing it whenever required to do so by Scottish Ministers or within two years of last publishing it.
- 1.4. The current Enforcement Charter was adopted in March 2024.
- 1.5. The existing Enforcement Charter is current with respect to legislation and only minor changes are proposed, to clarify the process on initial receipt of an enforcement complaint, to clarify the sequence of actions in terms of Direct Action, and other minor technical and layout changes. The proposed updated Enforcement Charter is attached as Appendix 1 to this report.
- 1.6. When re-publishing its Enforcement Charter, the Planning Authority is required to send two copies to the Scottish Ministers, place a copy in each public library in its district and to publish the Charter on the internet.

2. Recommendation

- 2.1 It is recommended that members of the Committee:
 - i. Approve the Planning Enforcement Charter, attached as Appendix 1 to this report.

3. Resources and Caseload

- 3.1. Planning enforcement matters are dealt with principally by the Planning Control Officer. Following previous spells of vacancy in the post in previous years, the post has been occupied since January 2023.
- 3.2. In terms of caseload, the figures for new enforcement cases registered and investigated, by financial year as reported to the Scottish Government, are as follows:
- 2017/18 – 113 cases.
 - 2018/19 – 60 cases.
 - 2019/20 – 11 cases.
 - 2020/21 – 57 cases.
 - 2021/22 – 83 cases.
 - 2022/23 – 60 cases.
 - 2023/24 – 137 cases.
 - 2024/25 – 109 cases.
 - 2025/26 (to end of February 2026) – 84 cases.
- 3.3. Enforcement complaints result from various sources including being raised by Elected Members or other agencies or raised directly by the public. They can also arise if works are noted by a planning officer or are raised by another Service (a common example would be an access reported to Development Management by Roads Services) following submission of documentation by an applicant (for example, notification of initiation of development, but where pre-commencement conditions have not been discharged).
- 3.4. Whilst public awareness of effective planning control and active planning enforcement can reduce the likelihood of unauthorised works being carried out in some instances, anecdotally, the number of new enforcement complaints received increases when planning control is active, as the public can observe the benefits of appropriate planning control being exercised on various sites.
- 3.5. An enforcement case can be closed in various circumstances, including where:
- a breach of planning control is remedied (for example, an unauthorised access stopped up);
 - information is submitted which is adequate to discharge a planning condition;
 - it is not considered expedient to take action; or

- a retrospective planning application is submitted for unauthorised development.
- 3.6. In the latter scenario of a retrospective application submitted, whilst the enforcement case is closed, that is without prejudice to any decision subsequently taken on that planning application. In any case, but particularly in cases where unauthorised development is not acceptable from a planning perspective (and would be unlikely to be approved if a retrospective planning application was submitted), the enforcement process can take months or years to conclude. Therefore, there is rarely correlation between cases received and cases closed during any annual or other period.
- 3.7. Six enforcement cases were closed during 2022 when the Planning Control Officer post was vacant. By contrast, enforcement cases closed in subsequent years are:
- 103 in 2023.
 - 88 in 2024.
 - 77 in 2025.
- 3.8. As of the end of February 2026, there are 336 active enforcement cases. This is a significant caseload for the Planning Control Officer post, including with Planning Officer input. A triage system has operated in recent years, so that the most urgent cases are prioritised in terms of ongoing investigation. Naturally this results in some enforcement cases not being pursued immediately, which is often viewed unfavourably by members of the public who have reported breaches of planning control, noting that the enforcement function is critical in protecting the integrity of the planning service. Given the enforcement workload, additional officer and/or technical staffing resource would be required to act on/investigate all new cases without delay, or to proactively pursue all active enforcement cases at any given time.
- 3.9. The purpose of the enforcement process is to ensure that development is carried out in accordance with the development specification approved by the Council and in most cases this can be resolved through dialogue with the Planning Control Officer. This informal stage of the enforcement process is key to our overall approach in attempting to resolve matters as efficiently and proportionately as possible. However, in some instances where the informal stages do not result in the necessary action being undertaken, an enforcement case progresses to the service of a formal notice. Generally, the number of notices served is low relative to the total number of enforcement cases, due to cases being able to be closed for the reasons set out above.

3.10. Again, reflective of changes in vacancy in the post of Planning Control Officer in recent years, the number of formal enforcement notices served is as follows:

- 2017/18 – 5.
- 2018/19 – 10.
- 2019/20 – 2.
- 2020/21 – 10.
- 2021/22 – 6.
- 2022/23 – 1.
- 2023/24 – 18.
- 2024/25 – 36.
- 2025/26 (to end of February) – 40.

4. Proposed updates to the Enforcement Charter

- 4.1. Other than minor technical and layout changes, two proposed updates are included. The first is a clarification at paragraph 3.2. of process to be followed on initial receipt of an enforcement complaint, if made verbally. Currently, contact received under the heading of an ‘enforcement complaint’ is recorded as such; however, some matters are not related to planning, for example land ownership disputes. The proposed amendment would introduce an initial triage so that if matters raised verbally are not relevant to planning enforcement, the complainant would be informed of this at the outset and so avoid the use of resources to create an enforcement case on the database for that to be immediately closed as no remit.
- 4.2. The second proposed amendment is a description of the process of Direct Action at a new section 12. The provision of Direct Action is included within the Charter; however, the process for implementing this is not laid out. This amendment is therefore not a new provision or power but provides clarity and transparency on the sequence of action that the Council will take to implement this formal stage.
- 4.3. The Enforcement Chapter, attached as Appendix 1 to this report, incorporates the amendments outlined above.

For Further Information please contact:

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Implications of Report

1. **Financial** - Enforcement action can include the application of financial penalties or fines, and the recovery of costs in certain circumstances, as set out in Section 10 of the attached Charter.
2. **Legal** - In terms of Section 158A of the Town and Country Planning (Scotland) Act 1997, as amended, the planning authority must prepare an enforcement charter being a document which contains:
 - A statement of the authority's policies as regards their taking enforcement action for the purposes of the Act.
 - An account of how members of the public are to bring any ostensible breach of planning control to the attention of the authority.
 - An account of how any complaint to the authority as regards the taking by them of enforcement action is to be made.
 - An account of their procedures for dealing with any such complaint.

Approving the recommendation in this report will enable the Council to discharge this duty.

3. **Corporate Governance:** None.
4. **Human Resources:** None.
5. **Equalities** - An Equality Impact Assessment has been undertaken and is attached as Appendix 2 to this report.
6. **Island Communities Impact** - As the Enforcement Charter being reviewed in terms of this report has been assessed as being unlikely to have an effect on an island community which is significantly different from its effect on other communities (including other island communities) in Orkney, a full Island Communities Impact Assessment has not been undertaken.
7. **Links to Council Plan:** The proposals in this report support and contribute to improved outcomes for communities as outlined in the following Council Plan strategic priorities:
 - Growing our economy.
 - Strengthening our Communities.
 - Developing our Infrastructure.
 - Transforming our Council.
8. **Links to Local Outcomes Improvement Plan:** The proposals in this report support and contribute to improved outcomes for communities as outlined in the following Local Outcomes Improvement Plan priorities:
 - Cost of Living.
 - Sustainable Development.
 - Local Equality.
 - Improving Population Health.

- 9. Environmental and Climate Risk:** None.
- 10. Risk:** None.
- 11. Procurement:** None.
- 12. Health and Safety:** None.
- 13. Property and Assets:** None.
- 14. Information Technology:** None.
- 15. Cost of Living:** None.

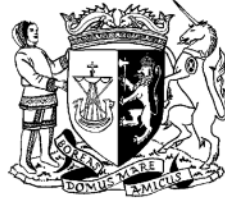
List of Background Papers

None.

Appendices

Appendix 1 – Planning Enforcement Charter.

Appendix 2 – Equality Impact Assessment.



ORKNEY
ISLANDS COUNCIL

Planning Enforcement Charter

March 2026

Development Management

Planning and Regulatory Services

Infrastructure and Organisational Development

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 defined as ‘development’. Some development can be 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, guidance and other material considerations. 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. There is no requirement to take any particular action on a specific breach of planning control, and the planning authority 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 executed 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, but not limited to:

- 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 the planning authority receives a verbal report of a potential breach, or a written report that does not meet the requirements of paragraph 3.4. below, it will be subject to initial triage. If the available evidence confirms there is no breach of planning control, or the matters are not relevant to planning enforcement, no formal enforcement case will be registered, and the complainant will be informed (where possible). If further investigation is merited based on available evidence, an enforcement case 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, Development Management, Orkney Islands Council, 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 complaint must be in writing. Whether by post or email, the following information is required:

- 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.

Any complaint received are recorded securely, and normal practice is that a complainant's name and contact details will not be released externally, often in response to requests for confidentiality regarding any planning enforcement complaint made or information supplied. It should be noted that in this context, 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 after a breach is registered 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

Where leading to registration of a new enforcement case (under paragraph 3.2.), enforcement complaints will be acknowledged within 20 working days. 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 buildings / structures / 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

Initial inspection of the site of a potential enforcement issue will 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'. Given that interested parties may not be known at that stage, requisition for information notices may be served, with no details provided of the alleged breach.

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, as 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 planning authority 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.

Any party who has submitted a planning enforcement complaint in writing can be provided an update at other stages of investigations, on request.

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 landowner(s), 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. This would be assessed as any application made to the planning authority which may approve or refuse permission, depending on the planning merits of the application. Permission may be approved subject to conditions or limitations considered necessary 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 must be taken to remedy the breach.
- The timescale provided for compliance with those steps.
- The consequences of failure to comply with the notice.
- In the case of an enforcement notice, rights of 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.

Any person who fails to comply with the requirements of an Enforcement Notice or a Breach of Condition Notice may be guilty of an offence.

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 entering the land is an appropriate means of obtaining the information required to fulfil 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.

These powers are conferred by primary legislation.

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. Complaints made about the way in which a planning enforcement complaint was handled would be administered 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. Advertisement control powers are conferred by The Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984.

The legislation 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

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

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 execute works to demolish or

alter a listed building. In certain circumstances, this can lead either to an unlimited fine or imprisonment.

10.4. Stop Notice

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 Listed Building Stop Notice

Section 41A of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 provides powers to a planning authority to issue a stop notice specific to a listed building.

10.6. Temporary Stop Notice

This is used to require the **immediate** halt of an activity which breaches planning control. The provisions make an exception in that a Temporary Stop Notice cannot prohibit the use of a building or a caravan as a dwelling house. Temporary Stop Notices 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 Temporary Stop Notice.

10.7. Fixed Penalty Notice

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 or a Breach of Condition Notice. By paying the penalty imposed by the Fixed Penalty Notice, 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 Enforcement Notice or Breach of Condition Notice 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.

10.8. 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 approved; the planning authority may, on consideration of the application, decide instead to refuse permission, or to approve 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 complete and return the Planning Contravention 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 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 (Amenity Notice)

Section 179 of the Town and Country Planning (Scotland) Act 1997, as amended 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 remedy 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 formal enforcement action has 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. Notification of Initiation and Completion of Development 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 Notification of Initiation of Development 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 Notification of Initiation of Development is a breach of planning control and the planning authority may consider enforcement action. The Notification of Completion of Development requires a developer to submit a further notice as soon as practicable after development has been completed.

11.6.

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.

12. Direct Action

12.1.

Failure to comply with the terms of a formal notice within the time specified can result in the planning authority directly carrying out the specified work, including the use of an appointed contractor. For example, this may include:

- removal of scrap from land that has been assessed as harmful to the amenity of an area, and where there is non-compliance with an Amenity Notice; or
- upgrading an access to a development where a planning condition has been breached, and a lesser standard of access risks public safety, and where there is a failure to comply with an Enforcement Notice.

12.2.

The planning authority may recover any costs it incurs from executing Direct Action.

12.3. Legislation

Powers to take Direct Action are set out in primary legislation:

- The Town and Country Planning (Scotland) Act 1997, as amended.
- The Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, as amended.

12.4. Phased approach

The planning authority will write to all parties identified in the notice which had preceded the Direct Action – ‘the responsible person(s)’. This correspondence will inform them why Direct Action is commencing and set out the stages of that Direct Action, normally:

1. That the work required by the notice will be costed by contractors.

2. That any costs from step 1 and the planning authority administration of step 1 will be charged to the responsible person(s).

If a notice remains not complied with:

3. A contractor will be appointed, and a date will be provided in writing to the responsible person(s), confirming when the required work will commence.
4. When the work is completed, the costs from step 3 and planning authority administration will be charged to the responsible person(s).

When the notice has been complied with, the enforcement case can be closed. This is a separate matter to pursuing any costs unpaid by the responsible person(s).

12.5. Offence to Obstruct

As set out in legislation, it is an offence to obstruct anyone involved in carrying out the works required. If any such obstruction is suspected, the planning authority may involve Police Scotland to ensure the safety of all persons.

12.6. Last Resort

The planning authority acknowledges that direct action is escalatory and a decision to commence direct action will not normally be taken unless it is the only realistic prospect of successful remedy.



Equality Impact Assessment

The purpose of an Equality Impact Assessment (EqIA) is to improve the work of Orkney Islands Council by making sure it promotes equality and does not discriminate. This assessment records the likely impact of any changes to a proposal or changes by anticipating the consequences and making sure that any negative impacts are eliminated or minimised and positive impacts are maximised.

Should you have any questions or wish for your draft EqIA to be reviewed by our Equality, Diversity and Inclusion Adviser, please contact OD@orkney.gov.uk.

1. Identification of the Proposal or Change

Name of proposal or change being assessed.	Planning Enforcement Charter.
Responsible Service and Directorate.	Development Management.
Date of assessment.	25 February 2026.
Is the proposal or change existing? (Please indicate if the service is to be deleted, reduced or changed significantly).	Updated version of existing Planning Enforcement Charter.

2. Primary Information

What are the intended outcomes of the proposal or change?	The Charter explains what planning control and enforcement means, what the planning authority can and cannot do and what happens at each stage of what can be a lengthy process. It outlines some of the procedures of the planning control system, and the standards of service that can be expected when enquiries are made about unauthorised development.
Is the proposal or change strategically important?	The Charter explains what planning control and enforcement means, what the planning authority can and cannot do and what happens at each stage of what can be a lengthy process. It outlines some of the procedures of the planning control system, and the standards of service that can be expected when enquiries are made about unauthorised development.
State who is or may be affected by this proposal or change, and how?	Potentially everybody in Orkney, but in particular developers and those affected by development. Sometimes developers or householders either undertake work without

	<p>planning permission or fail to accord with the terms of development that has been approved. The planning authority has the power to take action in cases like this and enforce planning control. While planning authorities monitor development, the number and size of new developments means there is also a role for the public in alerting the planning authority if they become aware of breaches.</p>
<p>How have stakeholders been involved in the development of this proposal or change?</p>	<p>The Charter was originally subject to public consultation, including presentation to a Planning Stakeholders forum which is made up agents and developers who have regular contact with Development Management. Enforcement complaints and investigations, and actions resulting from complaints considered under the Complaints Handling Procedure, in conjunction with monitoring of the Charter, have led to proposed amendments.</p>
<p>Is there any existing data and / or research relating to equalities issues in this policy area? Please summarise. E.g. consultations, national surveys, performance data, complaints, service user feedback, academic / consultants' reports, benchmarking.</p>	<p>There is little that is locally sourced. Relevant issues may be raised and disseminated by the Scottish Planning Enforcement Forum (SPEF).</p>
<p>Is there any existing evidence relating to socio-economic disadvantage and inequalities of outcome in this policy area? Please summarise. E.g. For people living in poverty or for people of low income. See The Fairer Scotland Duty Guidance for Public Bodies for further information.</p>	<p>N/A</p>
<p>Could the proposal or change have a differential impact on any of the following equality areas?</p>	<p>Yes. The Charter refers to the serving of notices, completion of forms and display of written information. There may therefore be an issue regarding accessibility to the information for people who do not speak English as a first language.</p>
<p>1. Race: this includes ethnic or national groups, colour and nationality.</p>	<p>No impact.</p>
<p>2. Sex: a man or a woman.</p>	<p>No impact.</p>
<p>3. Sexual Orientation: whether a person's sexual attraction is towards their own sex, the opposite sex or to both sexes.</p>	<p>No impact.</p>

4. Gender Reassignment: the process of transitioning from one gender to another.	No impact.
5. Pregnancy and maternity.	No impact.
6. Age: people of different ages.	No impact.
7. Religion or beliefs or none (atheists).	No impact.
8. Disability: people with disabilities (whether registered or not).	The Charter refers to the serving of notices, completion of forms and display of written information. There may therefore be an issue regarding accessibility to the information for people with reading difficulties or a visual impairment.
9. Marriage and Civil Partnerships.	No impact.
10. Caring responsibilities	No impact.
11. Socio-economic disadvantage.	No impact.
12. Care experienced	No impact.

3. Impact Assessment

Does the analysis above identify any differential impacts which need to be addressed?	<p>Yes. In the event that communication with someone with a visually impairment becomes an issue there are Council facilities to assist document 'reading' and documents can also be made in different formats such as large print. Officers are also available to assist.</p> <p>If someone who does not speak English as their first language has difficulty understanding the information the Council can provide documents in other languages upon request.</p>
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Does the analysis above identify any potential negative impacts?	No
Do you have enough information to make a judgement? If no, what information do you require?	Yes

4. Equality Impact Assessment Action Plan

Please complete the following action plan where you have identified any differential impacts or potential negative impacts in Section 3 of the Equality Impact Assessment.

Impact Identified	Action to be taken	Owner	How will it be monitored	Date Action to be completed
N/A	N/A	N/A	N/A	N/A

5. Sign and Date

Signature:	
Name:	Jamie Macvie
Date:	25 February 2026