

DUMFRIES AND GALLOWAY COUNCIL

# PLANNING ENFORCEMENT CHARTER

Updated April 2025

## *A Guide To Enforcing Planning Controls*





## INTRODUCTION

Planning permission is required for most development that takes place in Scotland, with the exception of some minor works which are considered to be “permitted development” and require no formal permission. Sometimes, however, developers or householders undertake work without planning permission or fail to comply with the permission they have been given.

Councils have powers to enforce planning controls in such cases but only if they consider that it is in the wider public interest to do so. The Council receives information about breaches of planning control from a variety of sources including the general public who provide valuable information to the Council’s Planning Inspectors.

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

Enforcement is one of the most complex parts of the planning system. The aim of this Charter is to ensure that adopted procedures are fair and reasonable, and that interested parties are kept informed and are made aware of what is required.

This is an issue that concerns many members of the public. We hope you will find this Charter useful and will let us know if you think we could improve the service further.

**This Charter sets out the current powers available to planning authorities. These powers are set out in the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc. (Scotland) Act 2006 and the Planning (Scotland) Act 2019.**

## KEY POINTS ON PLANNING ENFORCEMENT

A breach of planning control is **not** a criminal offence and the Council’s Planning Inspectors do not have the powers that Police Scotland officers enjoy. The purpose of planning enforcement is to resolve the problem rather than to punish the mistake. In addition, any action taken has to be appropriate and proportionate to the scale of the breach.

Your Council has statutory powers to investigate breaches of planning control and the conditions attached to planning permissions, and to take formal action where a satisfactory outcome cannot be achieved by negotiation. **However, enforcement is a discretionary power.** That means that, even where there is a breach of planning control, the Council has to consider if it is in the wider public interest to take enforcement action. **The Council is not required to take any particular action on a specific breach of planning control, and indeed, can decide that no action is necessary. There is no right to appeal the decision made by the Council, although you will be advised in writing when a decision has been made.**

Fuller information on the use of enforcement powers can be found in the ***Scottish Government’s Planning Circular 10/2009: Planning Enforcement.***

Planning enforcement also covers the physical display of advertisements such as billboards and advertisement hoardings, although slightly different procedures apply. These are set out in a separate section at the end of the document. The actual content of an advertisement is not covered by planning control. Any complaints about the content of an advertisement should be made to the Advertising Standards Authority.

## SERVICE STANDARD

By publishing our standards and targets, we aim to improve our enforcement service and make it responsive to the needs of our customers. We will monitor the contents of this Charter to ensure that standards and targets are being met.

## SERVICE STANDARD

Further copies of this Charter are available on the Council's website at [www.dumgal.gov.uk](http://www.dumgal.gov.uk)



Gatehouse of Fleet

## IDENTIFYING POSSIBLE BREACHES OF PLANNING CONTROL

Possible breaches of planning control can include:

- work being carried out without planning permission or other consent;
- an unauthorised change of use;
- failure to comply with conditions attached to a permission or consent;
- departures from approved plans or consent.

Members of the public have a vital role in reporting breaches of control. Any concerns should be raised with the Council. You can make preliminary enquiries by telephone, but these must be followed up in writing by e-mail or using the online ***"report an alleged breach of planning" form***.

A Planning Inspector will not be available to speak to at the Council offices. **Potential breaches of planning control will not be** investigated until they are received in writing by e-mail or by using the online ***"report an alleged breach of planning" form*** available on the Council website. Anonymously made complaints will not be investigated unless the planning authority considers public safety to be at risk, or where the breach affects a protected site or building.

The following information is essential when reporting a suspected breach:

- the address of the property or land concerned with the name of person involved (if available);
- details of the suspected breach of planning control, with times and dates of when you became aware of the potential breach;
- your name, telephone number and address;
- an e-mail address;
- information on how the breach affects you;
- Any other relevant information which the Planning Enforcement Team considers relevant to carry out an investigation;
- whether or not you wish the enquiry to be treated confidentially.

In the absence of sufficient information as detailed above, you will be advised in writing of the required additional information. The timescales outlined will not commence unless and until the required information has been received.

While the Council will do its best to honour requests for confidentiality, it may be required to reveal the source of the alleged breach of planning control if the case leads to court proceedings. It is possible that you may be required to be a witness to the events under investigation.

Members of the public can play an important role in monitoring the conditions that are placed on certain planning permissions or consents. Details of the conditions attached to a grant of planning permission are included within the decision notice attached to the permission. However, there are a large number of permissions granted each year and it is not possible for the Council to actively monitor all planning conditions.

Your involvement is therefore invaluable in providing information where it is believed that conditions attached to a planning permission are not being complied with. Breaches of conditions are investigated in the same way as other breaches of planning control.

Information received by the Council's Planning Enforcement Team is checked to ensure that it involves a possible breach of control and includes all the detail required for an investigation. After preliminary checking and compliance with the requirements for investigation, the alleged breach of planning will be registered. Once registered, a written or e-mail acknowledgement will be sent by email to the person who reported the matter.

Some complaints, such as neighbour disputes over boundaries, relate to matters over which the planning service has no control and cannot be investigated by Planning Inspectors. In such cases, you will be advised of this. Where an enquiry needs

to be investigated by a different Council service (e.g. Environmental Health), you will be signposted on how to contact that service and report the issue.

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;
- Dangerous buildings;
- Matters relating to the management of a building site or behaviour of builders and contractors;
- Parking disputes, unless parking provision is required by way of a planning condition;
- Fly tipping;
- Creation of an access onto an unclassified road where it is associated with a development;
- Felling of Ancient Woodlands;
- Disturbing Archaeological sites where development is not occurring;
- Any other matters covered by other substantive legislation such as noise, smells, operating hours, works within a road boundary which are not restricted through a planning condition.

### SERVICE STANDARD

If preliminary checking of an enquiry suggests a breach of planning control, the enquiry will be registered. Once registered, an e-mail acknowledgement will be sent from the Planning Enforcement Team to the person who made the enquiry within 10 working days. The acknowledgement will include a reference number and contact details for the investigating officer.

## INVESTIGATING POSSIBLE BREACHES OF PLANNING CONTROL

Following acknowledgement, the case will then be passed to the Enforcement Team who will undertake an investigation. This will normally require a site visit and a determination as to whether or not there has been a breach of planning control. Please note that the opening of a case does not necessarily mean that a breach has occurred.

A priority system is used for investigating enquiries based on matters such as the effect of the breach and the significance of the site.

An investigation normally begins with a Planning Inspector visiting the site although in some cases this is not always necessary. It is not normally possible to attend a site at short notice.

Following this initial visit and investigation, the individual who has made the enquiry will be informed of what action, if any, is proposed. In some cases, additional investigation may be needed.

Timescales are provided below; the timescales outlined are to provide an initial update on the case and **does not indicate the date the investigation will be concluded.**

Those cases that have been allocated to Group D have not been allocated a timescale. These cases are low priority cases and will be attended to when we are next in the area. You will be given updates when a site visit has been undertaken and given an update on any intended action.

## SERVICE STANDARD

The list is not exhaustive and may be subject to amendment by the appropriate officer. The priority groups of alleged breaches of planning control are outlined below:

### Group A (An update in writing will be provided within 40 working days)

- Demolition of Listed Buildings / entire buildings within Conservation Areas
- Erection of dwelling/s
- Alterations to a Category A Listed Building which are currently being undertaken
- Works to trees covered by a Tree Preservation Order
- Undertaking of mining / mineral developments
- Unauthorised development of wind farms
- Creation of vehicular access onto a trunk road

### Group B (An update in writing will be provided within 60 working days)

- Alterations to Category B and C Listed Buildings which are currently being undertaken
- Alterations to a Category A Listed Building which have been completed
- Erection of individual wind turbines
- Changes of Use, with residential properties within 50 metres
- Static caravans which are occupied
- Industrial development
- Commercial development, with residential properties within 50 metres
- Non-residential development within a Conservation Area
- Works to trees within a Conservation Area
- Creation of vehicular access onto classified road

**Group C (If an update in writing has not been received within 60 working days, a response in writing will be provided detailing the timescales for investigating the matter)**

- Alterations to Category B and C Listed Buildings which have been completed
- Changes of Use, with residential properties over 50 metres
- Non-compliance with a planning permission
- Breach of conditions
- Advertisements
- Condition of land / buildings
- Agricultural buildings / structures
- Telecommunication Masts

**Group D (No timescale)**

- Development within the curtilage of a domestic property
- Domestic development within the curtilage of a Listed Building
- Domestic development in a conservation area
- Works to protected trees already been undertaken
- Unoccupied Static Caravans
- Polytunnels

The length of time required to resolve a case or take action can be affected by a number of factors.

The number of current cases being investigated by the Team, especially high priority cases, can increase the length of time that it may take to bring a case to a resolution.

Allowance has to be made for the gathering of further evidence, to allow negotiations to take place or for formal procedures to be concluded. Similarly, where the landowner submits a retrospective planning application to regularise the breach of control or an appeal against a decision of the planning authority, this may add to the length of time it takes to resolve the case. Interested parties may wish to contact the individual planning case officer (not the Planning Inspector) for a more regular update if a retrospective application is being processed. Once an application is made valid, the details of the development will appear on Dumfries and Galloway Council website.

**<https://eaccess.dumgal.gov.uk/online-applications/>**

Interested parties should check regularly as there may be a delay in the Planning Inspector providing notification of an application being submitted.

The Council recognises that delays can be a source of considerable frustration to those submitting information, particularly if they consider their amenity is affected. Consequently, we will try to keep interested parties informed at significant stages in the progress of a case.

Where a third party wishes to raise specific issues about an alleged breach of planning control, this should be done as part of the original correspondence with the Planning Enforcement Team.

To deliver an effective service to the public, evidence is crucial. The Planning Enforcement Service aims to be both effective and relevant, assessing the impact of developments on the broader community. Evidence is essential for supporting or challenging arguments, aiding the Planning Authority in making informed decisions. Before any enforcement action can be taken, the evidence collected and presented by the Planning Authority must prove a breach of planning control has occurred **beyond reasonable doubt.**



Planning Inspectors will consider comments fully in their investigations, but they will not be available to discuss the alleged breach of planning in detail, nor will they be able to enter into ongoing correspondence with third parties. Any correspondence received by third parties will be addressed once the investigation has been concluded within a decision letter which will be sent to the third parties involved. This letter is the final decision of the planning authority and no further engagement with third parties will occur. The Planning Enforcement Team will not respond to enquiries regarding the progress of an investigation where the timescales set out above are not exceeded.

Officers will always try to be helpful, courteous and polite, but they are not expected to tolerate abusive language or behaviour.

## **ACTING ON BREACHES OF PLANNING CONTROL**

In some cases, action may not be appropriate, even though planning controls have been breached. As stated previously, the purpose of planning enforcement is to resolve problems, not punish mistakes. The planning authority has to consider each case on its merits and decide on the best solution. The Council is unlikely to take formal action, for example, over developments which, in planning terms, are seen as acceptable and / or comply with the Council's development plan. It may be more appropriate, in such cases, to seek the submission of a retrospective planning application.

Whilst we understand that the outcome of the investigation may be disappointing if it doesn't meet your expectations, please note that the decision is final and represents the Council's conclusive stance. We are unable to re-investigate



Gretna Green

matters that have already been thoroughly examined. We kindly ask that you refrain from repeatedly challenging the decision or revisiting previously addressed issues, as this diverts resources away from investigating new cases where they are needed most.

Sometimes breaches of planning control occur on land which is under the ownership and control of the Council. In these circumstances it is not appropriate or expedient to take formal planning enforcement action, however, the Planning Enforcement Team will work with other relevant Council services to try and secure an appropriate resolution.

Only a relatively small number of cases require formal enforcement action. Formal enforcement action involves the issue of a notice to the landowner or developer. This may be a notice requiring that a retrospective planning application to be made; an enforcement notice; or a breach of condition notice.

A Section 33A Notice requiring a retrospective planning permission alerts the landowner or developer to the fact that the development described in the notice does not have the requisite planning permission and requires them to address the situation by submitting a retrospective application. The planning authority will consider this as they would any application made under planning legislation and may grant or refuse permission, depending on the planning merits of the application. Permission cannot be refused simply on the grounds that the application is retrospective. Permission may be granted subject to conditions or limitations which the planning authority considers are required to make the development acceptable.

If the recipient fails to make the application by the date set out in the notice, an updated assessment of the matter should follow and where the unauthorised development would receive a favourable recommendation (outright) then no

further action should follow. However, in cases where the unauthorised development would require conditions attached in order to satisfy the planning authority and no application is submitted, formal enforcement action may proceed.

Enforcement notices and breach of condition notices include the following information:

- *a description of the breach of control that is considered to have 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 Planning and Environmental Appeals Division (DPEA) <http://www.dpea.scotland.gov.uk/>

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.

### SERVICE STANDARD

Where a planning breach cannot be resolved and action is justified, a formal notice will be served. This will be either:- a Section 33A Notice requiring a retrospective planning application; an Enforcement Notice; or a Breach of Condition Notice. The Council will write to the recipient of the notice to explain what is required, the timescales involved and the available options to resolve the issue.



Failure to comply with a notice may result in the planning authority taking further action. This can include a range of possible options including:-

- referring the case to the Procurator Fiscal for possible prosecution;
- carrying out any work required by an enforcement notice ('direct action') and charging the person for the costs involved; and/or;
- seeking a Court interdict to stop or prevent a breach of planning controls.

For more detail, see the Enforcement Powers section at the end of the Charter.

## SERVICE STANDARD

Where the terms of any formal notice are not complied with, every effort will be made to resolve the case to the satisfaction of the Council. Options include:-

- in the case of an Enforcement Notice, direct action by the Council.
- for either an Enforcement Notice or Breach of Condition Notice, the matter being referred to the Procurator Fiscal for possible prosecution, or alternatively, offering the opportunity to pay a fixed penalty (issue of a fixed penalty notice).

Details of notices requiring retrospective planning permission, enforcement notices, breach of condition notices, temporary stop notices and stop notices are entered into an Enforcement Register. You can inspect these documents at the relevant Council Planning Office listed at the end of this document or see an abridged version online at <https://www.dumfriesandgalloway.gov.uk/planning-building/planning/step-by-step/make-planning-application-step-step/planning-enforcement-breaches>.

The Council has powers to enter land to:-

- establish if there has been a breach of planning control;
- check if there has been compliance with a formal notice; &
- check if a breach has been satisfactorily resolved.

This power applies to any land and may involve officials entering land owned by neighbours adjacent to the site of the breach or alleged breach.

Enforcement action has to be taken within strict time limits.

- A four year limit – this applies to 'unauthorised operational development' (the carrying out of building, engineering, mining or other operations in, on, over or under land) and to a 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 – this applies to all other development including changes 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.



Dumfries housing development

## ENFORCEMENT AND ADVERTISING

The display of advertisements is covered by the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984. Many advertisements are displayed with what is called 'deemed consent' which means they do not require the formal approval of the Council if they meet the criteria and conditions set out in the regulations. One of these conditions is that the landowner has given permission for the advertisement to be displayed on their land.

Displaying an advertisement in contravention of the regulations is an offence and, if convicted in court, an offender can be fined. The court can impose further fines for each day the breach of the regulations continues.

The Council has the power to serve an enforcement notice. This specifies a time period (normally 28 days) for compliance with the notice. However, this period can be reduced to 7 days if the Council believes there is an urgent need for the advertisement to be removed or altered in the interests of public safety, **or** if the advertisement can be removed without any other work being required.

An enforcement notice can also require that a particular piece of land should not be used to display advertisements. This remains in force even if the original advertisement is removed. Any subsequent advertising on this site would amount to a breach of the notice.

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

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

## MONITORING MAJOR DEVELOPMENT

The Council is required to produce a statement on the authority's monitoring of major developments to comply with the updated Planning Bill. This includes the requirement for planning authorities' enforcement charters to include a statement on the authority's monitoring of compliance with planning permission for major developments, together with guidance on such monitoring. The case officer handling the major planning application would receive, discharge and monitor conditions for prior and post development and would be the point of contact for the developer.

- If the case officer is unable to resolve matters for any outstanding conditions, within a reasonable timescale, the case officer would advise the developer that the matter was being referred to the Planning Enforcement Team for further action. The case officer would notify the Planning Enforcement Team and an enforcement case would then be created and investigated.
- If there are specific conditions that the case officer would like monitored during the course of construction works i.e., landscaping works, external materials, boundary treatment, the case officer would notify the Planning Enforcement team and an enforcement case would be created and monitored at regular intervals. Where a condition requires externally appointed ECoWs (Ecological Clerks of Work) and PMOs (Planning Monitoring Officers) the onus is on the developer to ensure these are in place for the duration of the construction and the information submitted to the case office where required/requested.

## PLANNING REGISTER

Details of enforcement notice, breaches of condition notices and stop notices are entered into an Enforcement Register, which forms part of the Planning Register. These documents are available for inspection at Kirkbank House, English Street, Dumfries, DG1 2HS by appointment or an abridged version can be accessed via the Council's website.

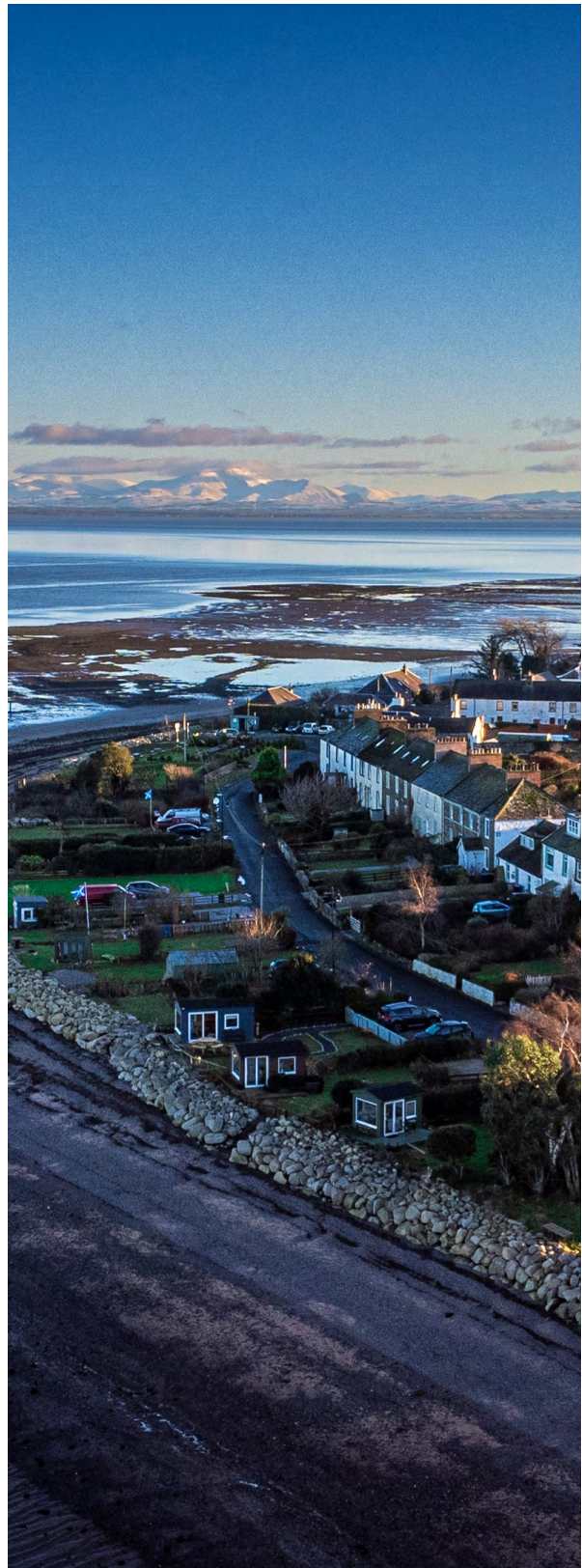
**<https://www.dumfriesandgalloway.gov.uk/planning-building/planning/step-by-step/make-planning-application-step-step/planning-enforcement-breaches>**

An interested party will be able to view the notice contained within the register however the enforcement file will remain confidential.

## COMMENTS, COMPLIMENTS OR COMPLAINTS ABOUT THE SERVICE YOU HAVE RECEIVED

It is important for us to understand your experience of dealing with the planning enforcement service. If we are doing something well, we want to build on that. If there is an area where we could do better, we want to learn from your experience and improve how we deliver our services. If you want to provide feedback on the service you have received, the first step is usually to speak to someone who has been involved with your enquiry or a manager in that service.

If you are unhappy with the response from the service, or do not want to raise your concerns directly with the planning enforcement service, you can submit a complaint. Further details on how to do so can be found at **[www.dumgal.gov.uk/complaints](http://www.dumgal.gov.uk/complaints)** or you can also request a form from any of our staff members. There are some matters which cannot be considered under the Council's Complaints Handling Procedure including the outcome of an enforcement investigation. Further details on what can and cannot be dealt with as a complaint are available on the complaints pages of



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our website. As noted above, there is a separate appeals procedure for a recipient of an enforcement notice.

If you are not happy with the Council's final response to your complaint, you have the right to take your complaint to the Scottish Public Services Ombudsman, at:-

Online contact: [www.spsso.org.uk/contact-us](http://www.spsso.org.uk/contact-us)

Website: [www.spsso.org.uk](http://www.spsso.org.uk)

The SPSO cannot normally look at:

- a complaint that has not completed our complaints procedure (so please make sure it has done so before contacting the SPSO)
- events that happened, or that you became aware of, more than a year ago
- a matter that has been or is being considered in court.

The remit of the SPSO is to judge whether the Council has fulfilled its administrative duties and functions reasonably, and not to amend or change planning decisions.

## ENFORCEMENT POWERS

The Planning Enforcement powers available to your local planning authority are set out in the Town and

Country Planning (Scotland) Act 1997 as amended by the Planning etc. (Scotland) Act 2006. Listed Building enforcement notices are covered by the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. The Planning Acts are available from HMSO, 71 Lothian Road, Edinburgh and can be viewed online at the Office of Public Sector Information (OPSI) website; <http://www.opsi.gov.uk/www.scotland->

Government policy on planning enforcement is set out in Circular10/2009: "Planning Enforcement." The circular is published on the Scottish Government website and can be viewed at:-

[www.scotland.gov.uk/Topics/Built-Environment/planning/publications/circulars](http://www.scotland.gov.uk/Topics/Built-Environment/planning/publications/circulars)

A Glossary of Enforcement Terms is attached to this Charter.

## ENFORCEMENT CONTACTS

Reporting of suspected breaches of planning control, and making general enquiries on planning issues can be made by emailing the following address;

Email: [planningenforcementteam@dumgal.gov.uk](mailto:planningenforcementteam@dumgal.gov.uk)



Moffat

## GLOSSARY OF ENFORCEMENT TERMS

### Types of Notice

**Retrospective Planning Applications** – Some forms of unauthorised development may not significantly breach planning policy or can be made acceptable by imposing planning conditions. In such cases the planning authority may invite the owners to submit a retrospective planning application. The planning process for retrospective applications is exactly the same as normal planning applications and is consulted upon in the same way. The fact that the development has already commenced should not be allowed to influence the outcome of the planning process. Where proposal are less clear cut, or it appears that a retrospective application is unlikely to be successful, care should be taken to ensure that, even though it remains their rights, a developer is not being encouraged to submit an application that has no prospect of success.

**Breach of Condition Notice** – this is used to enforce the conditions applied to any planning permission. It is effective from the date it is 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 the Council deciding to prosecute, with a fine of up to £1,000.

**Enforcement Notice** – this is generally used to deal with unauthorised development, but can also apply to breach of planning conditions. There are similar notices and powers to deal with Listed Buildings (see below), and advertisements. An enforcement notice will specify;

- A notification period before it comes into effect (a minimum of 28 days – but see the section below on advertisements);
- The steps that must be taken to remedy the breach; and
- A further period (known as the compliance period) which is set by the planning authority and gives the recipient time to carry out any work required to comply with the notice. There is no minimum or maximum period, so long as the amount of time allowed is reasonable and reflects the amount of work that may need to be undertaken.

There are limited rights of appeal against an enforcement notice and, if an appeal is made, the terms of the notice are suspended until a decision is reached.

Failure to comply with an enforcement notice within the time specified is an offence, and may lead to a fine of up to £20,000 in the Sheriff Court. Failure to comply

may also result in the Council taking **Direct Action** to correct the breach (see other powers below).

**Listed Building Enforcement Notice** – this must be served on the current owner, occupier and anyone else with an interest in the property. The procedures are similar to those outlined above. The notice must specify the steps to be taken to remedy the breach and a final date for compliance. Failure to meet the terms of the notice by the date specified is an offence. There is the 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 unauthorised works to demolish, significantly alter, or extend a Listed Building. In certain circumstances, this can lead either to an unlimited fine or imprisonment.

**Stop Notice** – this is used in urgent or serious cases where unauthorised activity must be stopped, usually on grounds of public safety. When a stop notice is served, the planning authority must also issue an enforcement notice. There is no right of appeal against a stop notice and failure to comply is an offence. An appeal can be made against the accompanying enforcement notice. If a stop notice is served without due cause, or an appeal against the enforcement notice is successful, the stop notice may be quashed and the Council may face claims for compensation. The use of stop notices therefore needs to be carefully assessed by the Council.

**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 dwellinghouse. TSNs are enforceable for 28 days, after which time they expire. They may, however, be followed by further enforcement action such as an Enforcement Notice and Stop Notice. There is no provision to appeal against a TSN.

**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.

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

#### **Other Powers**

**Planning Contravention Notice** – this is used to obtain information about activities on land where a breach of planning control is suspected. It is served on the owner or occupier, on a person with any other interest in the land or who is carrying out operations on the land. They are required to provide information about operations being carried out on the land and any conditions or limitations applying to any planning permission already granted. Failure to comply with the notice within 21 days of it being served is an offence and can lead to a fine in the Courts.

**Notice under Section 272** (of the Town and Country Planning (Scotland) Act 1997) – this provides limited powers to obtain information on interests in land and the use of land. In cases where a breach of planning control is suspected, a Notice under Section 272 requires the recipient to furnish the planning authority in writing with any information which it needs to determine the situation. Failure to provide the information required is an offence. Serving a Section 272 notice does not constitute ‘taking enforcement action’ nor is it a pre-requisite to taking formal enforcement action.

**Notice under Section 179** (of the Town and Country Planning (Scotland) Act 1997) – this allows planning authorities to serve a notice on the owner, lessee or occupier of land which is considered to be seriously affecting the amenity of the area. This notice is not normally served on land that has become overgrown with natural vegetation and is more commonly served on sites that have been the subject of the tipping of waste materials and similar. This is also known as an **‘Amenity Notice’** or **‘Wasteland Notice’** and sets out the action that needs to be taken to resolve the problem within a specified period.

**Interdict and Interim Interdict** – an interdict is imposed by the courts and is used to stop or prevent a breach of planning control. Court proceedings can prove costly and Councils normally only seek interdicts in serious cases or where enforcement notices have been ignored in the past. However, a Council can seek an interdict in relation to any breach without having to use other powers first. Breaching an interdict is treated as a contempt of court and carries heavy penalties.

**Direct Action** – failure to comply with the terms of an enforcement notice within the time specified can result in the Council carrying out the specified work. The Council may recover any costs it incurs from the landowner.

**Notice of Initiation of Development, Notice of Completion of Development and Notice of Development in Progress** – While not in themselves planning enforcement powers, these notices are intended to improve delivery of planning enforcement by requiring positive confirmation of the date development is expected to commence and the date of completion, and, in the case of on-site development in progress notices, to raise community awareness of national and major developments and developments which may impact over the wider area. As such, the planning authority will be made aware of active development in their area, enabling them to prioritise resources with a view to monitoring development.

For any development for which permission has been granted, a Notice of Initiation of Development has to be submitted to inform the planning authority of the date on which the development will commence. It is to be submitted after planning permission has been granted and before development has commenced. Initiating development without submitting a Notice of Intention to Develop is a breach of planning control and the planning authority may consider enforcement action.

The Notice of Completion of Development requires a developer to submit a notice as soon as practicable after development has been completed. The planning authority may take enforcement action if such a notice is not given.

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. A Notice of Development in Progress contains basic information about the site and the development. It also provides contact details where members of the public may find out more information or report breaches of planning control. It is a breach of planning control to fail to display such a notice when required to do so.