Guide to planning enforcement

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1. Introduction

The Environmental Rights Centre for Scotland (ERCS) aims to increase awareness of environmental rights and to ensure that people can effectively exercise them.

This guide is intended to help members of the public to challenge breaches of planning controls.

This guide explains the powers of councils to enforce planning controls, how to report breaches of planning controls and provides suggestions on what to do when a local authority refuses to use its enforcement powers.

This is not a comprehensive legal guide. ERCS provides free advice to individuals, community groups and organisations on environmental and related planning law. Please contact us for advice if you have a query relating to this guide.

2. Planning enforcement explained

'**Planning enforcement**' is action taken by a council in response to a '**breach of planning controls**'.

Councils have the main role in enforcing planning controls. They have broad powers to enforce planning controls.

2.1. What is a breach of planning controls?

A breach of planning controls can mean several different things.[1]

Most developments require planning permission.[2] Anyone who wants to carry out a development must apply for planning permission from the local council. Carrying out a development without planning permission is a breach of planning controls.

Planning permission may be granted with conditions attached. Failing to comply with conditions or a limitation of a planning permission is also a breach of planning control.

2.2. Councils' enforcement powers

Councils have the following powers to enforce planning controls (these are explained in more detail below):

- **A planning contravention notice** (a notice which requires information about a specific development; it is normally sent when a council has reason to believe that a breach of planning control may have occurred);
- **An enforcement notice** (a notice which states that a breach of planning controls has occurred and the steps which must be taken to resolve the breach);
- **A breach of condition notice** (a notice which states that a breach of planning controls has occurred as a result of noncompliance with an existing planning permission)
- **A stop notice** (a notice which requires that a specific activity stops taking place);
- **A temporary stop notice** (a notice which requires that a specific activity stops taking place for a specified period of time);
- **A fixed penalty notice** (a penalty payable for breaching an enforcement notice);
- **An interdict** (a court order which stops a specific activity from occurring or continuing to occur).

2.2.1 Planning contravention notices

A council can serve a planning contravention notice on the owner or occupier of the land, or on anyone using or carrying out operations on the land.[3] This notice may be served on anyone carrying out development.

A planning contravention notice requires information to be provided about the use of the land and the activities carried out there. If planning permission has been granted in respect of the land, the planning contravention notice may require information about any matters related to the conditions of this permission.

If the person does not provide the information required by the contravention notice within 21 days of receiving it, then that person would be guilty an offence punishable by a fine of up to £5,000.[4]

2.2.2 Enforcement notice

If a breach of planning controls has taken place, the council can issue an enforcement notice.[5]

This notice will be served on the owner and occupier of the land in question.

It will specify the steps which must be taken to remedy the breach, or an activity which must stop.

Actions which may be required by an enforcement notice include:

- the alteration or removal of any buildings or works;
- the carrying out of any building or other operations;
- any activity on the land not to be carried on except to the extent specified in the notice.

The enforcement notice will state a date from which it takes effect and a compliance period during which the breach must be remedied.

It is a criminal offence to fail to comply with an enforcement notice, punishable by a fine.[6]

2.2.3 Fixed penalty notices

If a council thinks that a person is in breach of an enforcement notice, it has the power to serve them with a 'fixed penalty notice' (FPN).[7]

An FPN offers the recipient the opportunity to pay a penalty fee instead of liability for a larger fine if they are convicted of the offence of failing to comply with the enforcement notice.

2.2.4 Stop notices

If a council decides that all relevant activity should stop before the compliance period expires on an enforcement notice, they can serve a 'stop notice'.[8] A stop notice can be served along with an enforcement notice or afterwards.

A stop notice prohibits the carrying out of the activity to which the enforcement notice relates.

A stop notice no longer has effect when:

- The enforcement notice is withdrawn or quashed;
- The compliance period expires; or
- The stop notice is withdrawn.

It is a criminal offence to disobey a stop notice punishable by a fine.[9]

2.2.5 Temporary stop notice

Temporary stop notices enable councils to take action to stop breaches immediately, without the need for an enforcement notice.

They can be served on anyone who appears to be carrying out activity on the land.

The council must display a copy of the notice on the land, with an explanation about the associated offences.[10]

It is a criminal offence to contravene a temporary stop notice, punishable by a fine.[11]

2.2.6 Breach of condition notice

When planning permission is granted for a development, it can be subject to specific conditions.[12]

A council can serve a breach of condition notice where a planning condition has not been complied with.

A person served with a breach of condition notice has at least 28 days from the date of serving the notice to comply with the conditions and this period may be extended.

It is a criminal offence to fail to comply with a breach of condition notice, punishable by a fine of up to £5,000.[13]

2.2.7 Interdict

A council can go to court for an interdict.[14]

An interdict is a court order which states that someone cannot do something or must stop doing something.

3. Time limits

If you suspect that a breach of planning control is taking place, we recommend that you report it as soon as possible.

Enforcement action is subject to time limits[15] - taking enforcement action against a breach of planning control is not possible once a specified amount of time has passed.

If the breach concerns the carrying out of any building, engineering or any other type of works on land, then enforcement action must be taken within four years of the date on which the breach first took place.

If a breach consisting of any change in use of land, either without planning permission, or in breach of planning conditions or limitations, then enforcement action must be taken within ten years of the date when the breach first took place.

4. Planning enforcement charters

Every council must maintain an 'enforcement charter' which sets out their policies for taking enforcement action, explains how the public can report suspected breaches of planning control, and outlines the procedure for making enforcement-related complaints.[16]

Enforcement charters are required to be kept up to date through regular reviews.

They must be made publicly available, both online and in local libraries. Your local council should have an enforcement charter available on their website.

We recommend you read the relevant enforcement charter before reporting a breach of planning controls.

5. How to report a breach of planning control

If you are concerned about a breach of planning control, you can report your concerns to the relevant council.

When you report a suspected breach, we recommend that you do that in writing and that you include the following information:

- The address where you believe there is a breach of planning control.
- Details of the breach such as times and dates where relevant.
- Your name and contact details.
- Information regarding how the breach affects you or any other significant effects of the breach (such as the impacts of the breach on the environment).
- Evidence of the breach (e.g. photos or videos).

The Council should acknowledge your breach and then investigate it in line with the process set out in their planning enforcement charter.

6. Planning enforcement registers

Councils must keep a register of planning enforcement notices.[17]

The register should be available for inspection by the public at all reasonable hours.

The enforcement register is normally accessible on the online planning portal of each council's website.

7. What to do when a council refuses to take enforcement action

Planning enforcement is 'discretionary'. That means the council gets to decide whether to take enforcement action.

Even if a council agrees with you that a breach has occurred, they may decide against taking any enforcement action.

If you have reported a breach to the relevant council and they have refused to take any action – or they have not responded - there are two main further steps you could take.

7.1 Make a complaint

You could make a complaint to the council using their complaints procedure. All councils should have their complaints procedure available on their website.

We recommend that you make your complaint in writing. Your complaint should clearly outline the grounds for the complaint.

If you have contacted the council and reported the breach of planning enforcement, you should include all information related to your correspondence in respect of the breach.

7.2 Take advice on a legal challenge

In some cases you may be able to go to court over a breach of planning controls.

That could be either to challenge the breach of planning controls directly (by seeking an interdict against whoever is responsible for the breach - see 2.2.7 above), or to challenge the council's failure to take enforcement action (by judicial review – see our guide to judicial review).

Interdicts and judicial reviews can be complicated, and there are very short time limits for starting judicial review proceedings.

We recommend you take advice as soon as possible if you are considering a legal challenge.

ERCS provides free advice to individuals, community groups and organisations on environmental and related planning law.

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[1] Section 123 Town and Country Planning Act (Scotland) 1997 ('the 1997 Act').

[2] Unless they are 'permitted development', which refers to any development that falls within the classifications under Schedule 1 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992.

[3] Section 125 of the 1997 Act.

[4] Section 126 of the 1997 Act.

[5] Section 127 of the 1997 Act.

[6] Section 136 of the 1997 Act.

[7] Section 128 of the 1997 Act.

[8] Section 140 of the 1997 Act.

[9] Section 144 of the 1997 Act.

[10] Section 144 of the 1997 Act.

[11] Section 144C of the 1997 Act.

[12] Section 145 of the 1997 Act.

[13] Ibid.

[14] Section 146 of the 1997 Act.

[15] Section 142 of the 1997 Act.

[16] Section 158 of the 1997 Act.

[17] Section 147 of the 1997 Act.