



Glasgow City Council

Economy, Housing, Transport and Regeneration
City Policy Committee

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Neighbourhoods, Regeneration and Sustainability

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Item 3

23rd January 2024

PLANNING ENFORCEMENT CHARTER – STATUTORY REVIEW

Purpose of Report:

To advise members of the requirement through the Planning Etc. (Scotland) Act 2006 for an up-to-date Enforcement Charter. Legislation requires a new Charter to be produced every two years.

Recommendations:

It is recommended that Committee:

1. Considers the contents of the report;
2. Notes the terms of the Planning Etc. (Scotland) Act 2006 and the associated statutory obligations to the Council to produce an Enforcement Charter every two years; and
3. Considers the revised Planning Enforcement Charter 2024 (See Appendix A to this report).
4. Committee notes the contents of the report and refers the revised Planning Enforcement Charter 2024 to the City Administration Committee for approval.

Ward No(s): All

Citywide: ✓

Local member(s) advised: Yes No consulted: Yes No

PLEASE NOTE THE FOLLOWING:

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1 INTRODUCTION

- 1.1 The power to take Planning Enforcement Action is discretionary. In order to guide the public on how Councils set out their approach to dealing with breaches of planning control, the Planning Etc. (Scotland) Act 2006 requires a publicly available document setting out how the planning enforcement system works, the role of the planning authority and the service standards it sets itself.
- 1.2 The Council must prepare a statement of its policy towards taking enforcement action, explaining how the public can raise complaints about alleged breaches of planning control and what service they may expect to receive in making a complaint. This statement - which in effect is an operational document to guide the delivery of the Planning Enforcement service - is known as an Enforcement Charter. Once approved by the Council, the Charter will be submitted to the Scottish Government to ensure it meets the requirements of legislation. Legislation requires the Charter to be reviewed and re-published every two years.
- 1.3 Government guidance relating to Planning Enforcement states that a planning authority must keep their Charter under review. Charters must be upgraded and re-published at least every two years.
- 1.4 In achieving the above timescale, it should therefore be noted that the current Glasgow City Council Planning Enforcement Charter needs to be approved by the Scottish Government and **made available to the public by 1st April 2024.** Achieving this deadline is a commitment within the Council's Planning Performance Framework.

2 AMENDMENT TO THE CURRENT ENFORCEMENT CHARTER 2022-24

- 2.1 Planning Enforcement Charters are to be refreshed to take into account changes in legislation and circumstances which may affect how the Council delivers its planning enforcement service. The most significant change in legislation with an impact on planning enforcement powers in relatively recent times has been the **Planning (Scotland) Act 2019 ("the Act")** which set out to modernise the structure of the planning system and included measures to strengthen planning enforcement. However, over the life of the Planning Enforcement Charter 2022, no additional regulations have been put in place in relation to the outstanding enforcement aspects of the Act,
- 2.2 **Short Term Lets**

The most significant change affecting the work of the Planning Enforcement team over the life of the Charter 2022 (even although it is not planning legislation), was the introduction of a licensing scheme as required by The Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022. The consequence of this is that the law regarding Short-Term Lets changed on 1st October 2022. Since this date, all new hosts have been required to apply for a Short-Term Let licence. It is also now required that all hosts who were operating

before 1st October 2022 must apply for a licence in order to continue operating. However, the significant issue affecting Planning Enforcement is that to obtain a licence, the host must demonstrate that planning permission exists (where it is required) or that a certificate of lawful use demonstrating lawfulness through 10 years continuous use as a Short Term Let has been applied for or obtained.

2.3 Prior to the implementation of the licensing scheme the Planning Enforcement team was the main outlet for demands for action against the high volume of unauthorised Short Term Lets in the city. Enforcing the Short-Term Lets policy of the City Development Plan (contained within Supplementary Guidance 10: Meeting Housing Needs) has been a significant part of the workload in the years following the adoption of City Development Plan and SG10. The position in relation to this is that generally, planning permission will not be granted for use of flats as Short Term Lets where access to the flat is via a shared space such as a communal close.

2.4 Since November 2017, 486 cases alleging unauthorised Short Term Let usage have been logged and investigated. Although we are still in a transitional phase in terms of planning controls and the introduction of the licensing scheme (with a backlog of cases being suspended pending consideration of their planning status through submission of applications for Certificate of Lawful Use), it is important to note that it is a criminal offence to operate a Short Term Let without a licence. In relation to planning powers, it would only be a criminal offence where a case had been investigated, found to be operating as a STL and then formally served with an enforcement notice. If the Notice then became effective (possibly following dismissal of an appeal) it would then be a criminal offence to continue operating. It appears therefore that the better, more direct route for dealing with any unauthorised/unlicensed STL is through licensing legislation, the mantle of enforcing which falls to Police Scotland.

2.5 Although we are still at a transitional stage between the two legislative controls, it is anticipated that the existence of the licensing scheme will reduce complaints about STLs and free resources for other types of breach to be actioned more effectively. In the meantime, the Planning Enforcement Team continues to liaise with licensing in confirming the planning position regarding flats applying for a licence that may need planning permission, which in turn will affect whether a licence application may be considered.

2.6 **General approach**

The general approach to planning enforcement as set out in the revised Charter aligns with Government guidance. Changes to the format of the Charter are considered mainly to be improvements to how the information is presented in the existing Charter (which may be viewed on the Council's website until it is eventually replaced).

2.7 The revised Charter (attached as Appendix A to this report) focuses on providing users of the service with a simplified document to enable them to see what it is that Planning Enforcement deals with; what the process of making a complaint entails, and what they should expect from the service thereafter.

2.8 The incidence of complaints being wrongly sent to planning enforcement when there is no remit in the content submitted remains high and therefore extra emphasis is placed upon the triaging of submitted (mainly online) complaints at an early stage to ensure that complaints are directed properly to avoid unnecessary frustration and further complaint about delays.

2.9 As well as ensuring that complaints are relevant to planning and that there is sufficient information to log a case, the triaging stage also entails assigning a priority of High, Medium and Low to complaints within 5 days of successful completion of the online form (and receipt of automated reply). This will ensure that actions are proportionate to the impact of the breach and resources are distributed accordingly. Prioritisation will affect the reaction time where a visit may be required and also the timescale for follow-up reports that assess the breach in full (Planning Impact Reports).

3. PERFORMANCE MONITORING OF THE CURRENT CHARTER

3.1 Difficulties in resourcing the service due to staff departures (2.5 FTE) over the last year) and long-term sickness absence have impacted upon the team’s performance in relation to the four comparable standards as shown in the table below.

3.2 Table 1: Performance Monitoring of the Current Planning Enforcement Charter (April 2022 - December 2023)

PLANNING ENFORCEMENT CHARTER	Service Standard 1 (5 Day Ack)	Service Standard 2 (20 Day SV)	Service Standard 3 (High Priority)	Service Standard 4 (2 Mth Update)
1st April 2020- 31st March 2022				
2020-2022	73.9%	59.5%	100%	76%
1st April 2022 – December 2023				
2022-2024	48%	50%	100%	51%

3.3 Service Standard 1: Acknowledge the complaint within 5 working days

Performance in relation to the formal acknowledgement of cases within 5 working days has dropped considerably from 73.9% with the 2020 Charter to 48% over the life of the 2022 Charter so far. Performance in this standard relies on support from administrative staff and the period has seen challenges in terms of staff capacity to fulfil the standards.

Proposed Replacement for Service Standard 1:

Confirm all necessary details have been received in order to log and allocate the case to an officer, within 5 working days of automated receipt of the complaint being generated.

- 3.4 The new Charter therefore proposes to remove Service Standard 1 as existed previously and use the automated response of the online complaint form as the effective date of acknowledgement (complaints are rarely received by letter nowadays). It would therefore fall to Planning Enforcement Staff to triage the complaint form, ensuring that the complaint is relevant to planning; that it is complete in information requirements; and that it is assigned a priority within 5 working days of the automated reply.
- 3.5 Whilst this is an additional responsibility to planning qualified members of staff in the planning enforcement team, it is hoped that this will reduce overall the unnecessary time spent on matters that are not relevant to planning and help minimise any complaints that may be received because of delays through complainants being misdirected to planning.
- 3.6 There will also be other knock-on benefits provided by the triage process: i.e., the fact that there should be a greater opportunity to obtain a good standard of information which is necessary to remotely assess the case (thus avoiding the need for a site visit) and also to prioritise the workload, ensuring that resources are directed to the cases that are most deserving of attention in terms of their negative planning impact.
- 3.7 **Service Standard 2: Undertake a preliminary investigation and visit within 20 working days from the date of acknowledgement**

Performance has dropped from an average of 59.5% for the life of the 2020 Charter to 50% for the duration of the 2022 Charter thus far (i.e., excluding statistics for the final quarter of the financial year). Whilst the increased ability to remotely assess cases should entail that those cases requiring a visit get to be looked at quicker, countering this has been the fact that the planning enforcement team has been understaffed for a very significant part of 2023 due to departures and long-term sickness absence.

Service Standard 2 retained

- 3.8 Notwithstanding the challenges it presents, it is important to retain service standard 2 as worded, to ensure that site visits are carried out where they are absolutely necessary within a reasonable timescale. Job adverts are in place for 2.5 FTE staff and hopefully appointed staff will be in place by the end of February 2024 (and certainly in time for the newly adopted Charter which should be in force by 1st April 2024.)
- 3.9 **Service Standard 3: Visit on same day/next day basis for High Priority Cases**

Service Standard 3 retained

The service gives great importance to visiting High Priority cases quickly and therefore the 100% attendance rate within a same day or next day basis has been achieved as it was with the 2020 Charter. The Service Standard therefore remains unchanged from the previous Charter.

3.10 Service Standard 4: To provide a Planning Impact Report within 2 calendar months in 80% of all cases.

Performance over the life of the current Charter has dropped from 76% over the life of the 2020 Charter to 51% for the average performance of the 2022 Charter (up to the time of writing, mid-December 2023). Again, performance has been particularly affected by the staffing challenges set out above.

- 3.11 With reduced resources available for various reasons, prioritisation is crucial, as is finding smarter ways of working that can save time. Incorporating a triage process into the service standards and prioritising cases should help ease pressure on officers and direct attention to cases where there is greater justification for intervention, whether through seeking a negotiated solution or taking formal action.

Proposed Replacement for Service Standard 4:

To provide the complainant with a Planning Impact Report for High and Medium Priority Cases within 2 months, and for Low priority cases within 6 months, from the date at which the case is assigned a priority.

- 3.12 The priority system entails that there will be a longer timescale for providing Planning Impact Reports for low priority cases which will be six months, whereas with High and Medium Priority cases this will be the normal two-month period. Most cases where enforcement action is necessary or where it is appropriate to encourage a retrospective application, will be within the category of High or Medium Priority cases; further, it is already the case that most low priority cases tend not to receive any significant form of intervention. Relaxing the timescale for providing a Planning Impact Report in relation to lower-level impact cases shifts more attention onto developments where there is a significant negative impact, where resources applied may be proportionate to the level of the harm caused.

3.13 Service Standard 5: Further updates are to be provided within 4 months of date of acknowledgement of the case for where a commitment to further action has been stated through the initial Planning Impact Report.

This service standard applies where further action is required, which applies to the following: cases where **enforcement action is necessary (CAT A)**; or **a planning application is required (CAT B)**; and finally, that the case needed more information to assess it, hence **an interim reply was necessary (CAT E)**

- 3.14 The need for enforcement action (as stated in the PIR) may result in removal or modification of the development prior to the service of the Notice. A total of four months from the date of the case being acknowledged was considered to be sufficient time to enable resolution or resort to formal action being taken; or at the very least being in a position to advise the complainant when the agreed deadline for taking formal action would be. However, performance in relation to this standard has been very poor during the life of the 2022 Charter (it was a new standard introduced by that Charter), with only 25% of cases receiving a further update and meeting the service standard.
- 3.15 It is important to have milestones in communication to limit further delay and keep complainants and other stakeholders informed of progress. However, these milestones should be aligned to priorities, hence it is proposed to alter the wording of the service standard as follows:

Proposed Replacement for Service Standard 5:

Service Standard 5: To update complainants in High and Medium Priority Cases within 8 months of the date of the case being logged.

- 3.16 Whilst 8 months may be considered an overly generous amount of time, the constrained performance in relation to the previous Service Standard 5 suggests that this amount of time is a realistic basis from which to build, particularly as it will provide the necessary safety net to ensure that there is communication of the outcome of cases which have had significant impact.
- 3.17 Service Standard 6: To notify the complainant within 10 days of a case being closed on the system.

Again, this was a new standard introduced by the 2022 Charter. Owing to a shortage of staff resources, performance in this was poor amounting to only 12% of cases having met the target set by the standard. It may be the case that there are many situations where it is not necessary or appropriate to formally close the case off with a letter advising that this has been actioned. Complaints rarely focus on this issue and with the existence of safeguards in terms of communications in other service standards it is considered that this service standard would be best removed.

4. NEXT STEPS

- 4.1 If Committee is satisfied with the updates to the Charter as a result of reviews of operational performance and all other matters of relevance such as staffing, it is intended to present the Charter to City Administration Committee to seek approval to adopt, to meet the statutory obligation which is to have an updated Charter in place by 1st April 2024.

5 POLICY AND RESOURCE IMPLICATIONS

Resource Implications:

<i>Financial:</i>	No direct financial impacts as a result of this report.
<i>Legal:</i>	Compliance with Planning Etc., (Scotland) Act 2006.
<i>Personnel:</i>	The Charter is based upon prioritising the use of existing staff resource. There are no direct personnel implications.
<i>Procurement:</i>	No relevant procurement issues.

Council Strategic Plan:

Grand Challenge 1: Reduce poverty and inequality in our communities. Mission 3, 4
Grand Challenge 2: Increase Opportunity and Prosperity for all our Citizens. Mission 1, 2
Grand Challenge 3: Fight the Climate Emergency in a Just Transition to Net Zero. Mission 1, 2
Grand Challenge 4: Enable staff to deliver essential services in a sustainable, Innovative, and efficient way for our communities: Mission 1

Equality and Socio-Economic Impacts:

<i>Does the proposal support the Council's Equality Outcomes 2021-25</i>	There are no significant equality or socioeconomic impacts arising from this report.
<i>What are the potential equality impacts as a result of this report?</i>	The Planning Enforcement Charter, by virtue of its relationship to the City Development Plan and NPF4 is intended to achieve overall a significant positive impact on equality The changes proposed to the Charter for 2024-2026 are made in relation to Scottish Government legislation and also technical revisions to reflect internal operations, therefore it is not considered necessary to obtain further Equalities Impact Assessment screening.
<i>Please highlight if the policy/proposal</i>	The Planning Enforcement Charter 2024, by virtue of its relationship to the City Development Plan and NPF4 is intended to achieve overall

will help address socio economic disadvantage.

a significant impact in reducing socio-economic disadvantage.

Sustainability Impacts:

Environmental: Protection of the City from unacceptable unauthorised development.

Social, including opportunities under Article 20 of the European Public Procurement Directive

Encourages adherence with the planning system and therefore engenders respect for others through understanding of the negative impact which unauthorised development may have upon fellow citizens.

Economic: The Charter allows for protection of the built environment which supports sustainable economic activity.

Privacy and Data Protection impacts:

Where a valid enforcement complaint is received from a member of the public, wherever possible the Council will treat personal details pertaining to the complaint as confidential.

6 RECOMMENDATIONS

1. Considers the contents of the report;
2. Notes the terms of the Planning Etc. (Scotland) Act 2006 and the associated statutory obligations to the Council to produce an Enforcement Charter every two years; and
3. Considers the revised Planning Enforcement Charter 2024 for approval.
4. Committee notes the contents of the report and refers the revised Planning Enforcement Charter 2024 to the City Administration Committee for approval.