

# GLASGOW CITY COUNCIL: PLANNING ENFORCEMENT CHARTER 2022

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## 1- INTRODUCTION

### What is a Planning Enforcement Charter?

The Planning Enforcement Charter (“the Charter”) is the Council’s policy statement updated every two years, setting out how the Council will deliver a planning enforcement service for the city. The document is also a user manual for stakeholders explaining the processes, powers and policies which shall be applied in dealing with enforcement matters as well as the service pledges and standards which the Council aims to achieve. The Charter will explain the decision making processes through which alleged breaches are assessed in order to ensure consistency, transparency and expediency in all our actions.

## 2. IS PLANNING ENFORCEMENT ABLE TO ASSIST WITH MY CONCERNS?

### What constitutes a breach of planning control?

The majority of planning enforcement investigations involve the following alleged breaches, which may require planning permission:

- Building or engineering works.
- Changes of use of land or buildings.
- Development which has not been carried out in accordance with an approved planning permission.
- Failure to comply with a condition of planning permission or a legal agreement attached to a planning permission.

Certain other matters, although they **do not require planning permission**, do fall within the remit of the Planning Enforcement Team for other action:

- Demolition taking place in Conservation Areas, without consent,
- Works carried out to a listed building without Listed Building Consent.
- Removal of, or works carried out, to protected trees without notification and prior agreement.
- Unauthorised advertisements that do not benefit from consent under the Advertisement Regulations
- Excessively untidy private land or property which has a serious detrimental impact upon surrounding amenity concerns raised in relation to the High Hedges Act 2013.

### What does not constitute a breach of planning control?

The Planning Enforcement Team can only enforce breaches of planning legislation. It is a common misperception that Planning can intervene to resolve all amenity problems caused by neighbours or by nearby businesses. Many problems are controlled not through Planning, but other legislation. The aim of planning enforcement action is to seek to resolve breaches of planning control in the public interest, not to protect the private interests of individuals (although sometimes these may align). The following section describes what is **not** a breach of planning control.

- Permitted development: This is development which may be carried out without requiring permission under a General Permitted Development Order (These works are limited in or Conservation Areas and where the building is listed, listed building consent is likely to be required .
- Civil disputes: Neighbour nuisance/ Boundary disputes, including title deeds, tenancy agreements, ownership of lands.
- Failure to meet the requirement of any advisory note(s) attached to a planning or listed building consent
- Issues relating to other legislation regulated by other departments, i.e.:
  - \* Building Standards: Dangerous structures or a technical building issue regarding compliance with Building Standards Regulations .
  - \* Environmental Health: Fly tipping and Fly posting; statutory nuisances e.g. noise and smells (unless controlled specifically by a planning condition); construction site working hours
  - \* Roads (Maintenance)
    - Works on public roads and footways; attachment of flyposting to roads infrastructure.

### **Time limits prevent action (Enforcement Immunity Rules)**

Building works which have been substantially completed for more than four years will be immune from enforcement action. Changes of use generally will be immune if they have existed continuously for more than ten years, as will be any breach of a condition which has been attached to an earlier planning permission. This may be confirmed as lawful through certification of this claim.

### **Certificate of Lawful Existing Use or Development (CLEUD).**

If evidence indicates that the development has, in the balance of probability, reached the relevant immunity period, lawfulness may be confirmed through a granted application for Certificate of Lawful Existing Use or Development.

An Enforcement Notice “stops the clock” towards immunity being reached, although the length of existence of the development may be disputed and challenged as a ground of appeal that at the time the Notice was served the development was immune from enforcement action. Information received from complainants may therefore be critical to the success of an enforcement action; but also in demonstrating that there is a real negative impact of the development that needs to be addressed by the action.

### **3. HAVING CONSIDERED THE ABOVE, I WOULD NOW LIKE TO REPORT A BREACH OF PLANNING CONTROL**

#### **How to report a Breach of Planning Control**

Members of the public have a vital role in reporting breaches of planning control and any concerns should be raised with the service, preferably through the Planning Enforcement Team's online complaint form. To do so it is essential to provide your name, address and a contact telephone number, along with as much information as possible to identify the exact location and nature of the breach.

If you do not live within proximity of the breach and are therefore not affected by the breach directly, this will affect the priority with which your case is given (depending on the severity of the breach); although exception will be made for complaints made on behalf of any person who has difficulty in complaining directly. Multiple complaints reporting cases of a similar kind within a street or a wider area, will not be accepted as these place an excessive burden on the service.

Finite resources dictate that it is not normally possible to carry out proactive enforcement by "patrolling" an area to ensure action is taken comprehensively in relation to breaches that might exist. By requiring formal submission of a complaint, there is a guarantee that the matter will be inspected and answered; hence this effectively prioritises those matters which are of concern to the public. This also gives priority to breaches which impact upon those closest to where the breach exists.

In this way every single complaint submitted will be looked at and assessed for relevance to planning and appropriate action thereafter. If the complaint does not fall within the remit of the Planning Enforcement Team's you will be advised, and if appropriate directed to another department that may be able to help.

#### **Remote Assessment of planning breaches**

The Planning Enforcement Team has successfully adapted to working from home to the greater extent, which has been a necessary due to the Covid Pandemic restrictions. Remote assessment of reported breaches has been taking place wherever possible with complainants being requested to provide photographs of the breach wherever possible. Whilst High Priority Cases (See Service Standard 4) have been visited throughout the pandemic, a site visit protocol has been in place since August 2020 and site visits are being conducted where necessary, subject to adherence to the relevant safety protocols.

Notwithstanding the existence of restrictions forced by the pandemic, the service will continue to encourage remote assessment as this change to working practice has proved particularly successful for the assessment of relatively smaller scale householder developments, many of which fall within the allowances of permitted development. This has resulted in efficiencies in the speed of assessment of a large number of cases.

In respect of this it is worthy of note that of all cases investigated between January 2018 and December 2021 (a total of 2850 cases) only 46.6% of cases were found to be a breach of planning control, meaning that 53.4% of cases were either not development and/or a matter not relating to planning legislation; or in the greater proportion of cases, development permitted by statute. It therefore makes sense to be able to reach a quicker conclusion on these “non-founded” cases (some 1522 since January 2018) by avoiding site visits and assessing remotely. That way more resource can be put into matters which have been confirmed as breaches and particularly those causing significant detrimental harm to amenity.

However, in certain situations it may be difficult to assess the finer details of the breach and arrangements will be made to visit under site visit protocols. Also with significant breaches identified as a High Priority, these will be visited urgently and not remotely. It is worth noting that all cases recognised as High Priority were visited during the onset of the pandemic, but following strict Covid safety site visit protocols. This will continue as long as need be.

### **What details your complaint must include (and other information which will be helpful)**

Reports of breaches should state what has happened or is currently happening and when works or activities possibly requiring planning permission commenced. The identity of the person(s) believed to be responsible and any contact details if available should be made known. Where possible, please provide dated photographs of work in progress as these can assist greatly in determining the problem. Complaints lacking in a reasonable level of detail to commence the investigation may be referred back, thereby resulting in delay in setting up the investigation. Complaints can be registered by completing the on-line complaint form. Click here to open the form [Planning Enforcement Complaint Form](#).

Complaints can also be made by post although there will be delay in processing these due to reduced numbers working in the office.

### **information which is a minimum requirement:**

- The address of the property concerned;
- Details of the suspected breach of planning control;
- Your name, home address and telephone number

- As well as the above, please note: complainants using the **online form must supply a working email address**. This will be checked and if incorrect or given falsely the investigation will not proceed.

\* As much detail as possible regarding how the breach affects you

### **Information which is preferred:**

\* Dated electronic photographs to assist with assessment

\* Measurements of any building which can be provided reasonably accurately or as an estimate, without compromising your own safety or the privacy of the person responsible.

\* Dates and hours of operation of any alleged unauthorised use over a minimum of two weeks

### **The contact address is given below:**

Planning Enforcement Team

Neighbourhoods and Regeneration Services (DRS)

231 George Street G1 1RX

### **Anonymous Enquiries**

In order to maintain a full audit trail of the complaint and to discourage vexatious complaints which waste resources, often with no substance or made with malicious intent, the service does not log anonymous complaints for investigation. It is therefore vital to your complaint that we have your full details, including your name, address and telephone number along with any evidence of an alleged breach. Therefore, anonymous complaints or those where false contact information is given will not be accepted or investigated.

### **Confidentiality**

The role of the public in reporting the breach is important and being able to communicate with those directly and genuinely affected can be an essential element of the investigation. One reason for seeking anonymity is to preserve confidentiality. The service will ensure the confidentiality of all complainants as far as possible. Whilst the communications made in relation to the enforcement file are strictly confidential, written objections and representations made in relation to an application arising from enforcement action are public documents and may be viewed online, including names and addresses and the content of the representation.

Those on the receiving end of a complaint may make their own assumptions about the source of the complaint which can lead to disputes developing. It is therefore worth considering if there is any scope for discussing and resolving your concerns directly with your neighbour before submitting a formal complaint. .

With planning enforcement cases the Council will treat the complainant's personal details, name, address, phone number and any other contact details as confidential, unless the complaint is made on behalf of a corporate body or public body such as a community council. It should be noted that all information received by us is subject to the requirements of the current Data Protection legislation. This means that the Council has a duty to protect the personal information of complainants.

However, under the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004, we may need to disclose information relating to the substance of complaints.

### **Policy on Unacceptable Actions by Customers**

The Planning Enforcement Team aims to review all validated enforcement complaints and provide an assessment of the investigation in line with good Planning Enforcement principles, our Service Standards and Service Pledges. Whilst we endeavour to deal fairly, honestly, consistently and appropriately with all customers, there may be times where we refer a customer to our Customer Care Team under Glasgow City Council's Unacceptable Actions Policy. We believe that all customers have the right to be heard, understood and respected. We also consider that our staff have these same rights. For further information on please view the full policy [here](#).

## **4. A SUMMARY OF HOW THE PLANNING ENFORCMENT PROCESS WORKS**

Report alleged breach of planning control either via our **online form or in writing.**



Complaint is received by our central business support team who check the property history. If no case already exists it is logged and allocated to a Planning Enforcement case officer. You should receive formal acknowledgement of this **within 5 working days of the date of receipt.**



Evidence of alleged breach and the planning history of the property are reviewed by the case officer. Wherever photographic evidence, measurements and other materials allow, a remote assessment will be carried out. If a site visit is required carried out this will be **within 20 working days of the date of formal acknowledgement.**



During this period, if required, efforts are made to contact the owner/occupiers/persons with an interest in the property, to alert them of the alleged breach. This may necessitate obtaining ownership details from ScotLis (Registers of Scotland)



A Planning Impact Report (PIR) is issued to the complainant pertaining to one of 5 categories (CAT A-E) detailing the assessment and category of action required. You should receive this **within 2 calendar months** of the formal acknowledgement of the case.



Negotiation with owner/occupier/persons with interest to resolve the breach of planning control.



If negotiations fail, the Council has the discretion to take formal enforcement action. **Confirmation of the date action has been or will be taken will be provided within four calendar months of the case being acknowledged.** There is a statutory right of appeal to the Scottish Government (DPEA) against most enforcement actions. Should an appeal be dismissed, the requirements of the Notice must be complied with when the period of compliance stated in the Notice expires.



If a Notice is not complied with this is **a criminal offence.** Our actions will be proportionate to the harm caused: i.e. with relatively lower levels of breach, Notices may only act as a blight on the property, potentially to be resolved at change of ownership. On the opposite end of the scale very serious cases of significant harm will be reported to the Procurator Fiscal for possible criminal prosecution. A decision on the most expedient course of action will be taken and will be proportionate in relation to the wider public interest



Complainants will be notified of the decision to close a case, with justification, **within 10 working days of the case being closed on the system**

## The Planning Enforcement Service Standards

A service standard is a public commitment to a measurable level of performance that stakeholders can expect *under normal circumstances*. The following service standards are consistent with the priorities and objectives of the service. Performance in relation to the service standards will be monitored and reviewed over the life of the Charter which expires in April 2024.

Service Standard	Aim	Target Timescale	Additional Information
Service Standard 1	To acknowledge the complaint	Within <b>5 working days</b> of receipt of the complaint	The acknowledgement will contain the Council's case reference number and the investigating officer's name and contact details.
Service Standard 2	To undertake a preliminary investigation and a <b>remote assessment</b> ; or if necessary, <b>visit the site</b> .	Within <b>20 working days</b> from the acknowledgement date	It can often take some time to access the site to establish the nature of a breach and identify who is legally responsible.
Service Standard 3	To prioritise <b>high priority cases</b> (as described in Enforcement Service Pledge 4)	Visited on a <b>same day/ next day</b> basis	Urgent intervention required to minimise the harm of works which may in certain situations (such as the felling of trees in Conservation Areas, or works to a listed building), be irreversible.
Service Standard 4	To provide the complainant with a <b>Planning Impact Report</b> (stating one of five possible categories of action, A-E)	Within <b>2 months</b> of the acknowledgement of the case, in <b>80%</b> of all cases received.	The Council recognises that delays can be a source of considerable frustration to those making a complaint, particularly if they consider their amenity is affected. The Planning Impact Report will indicate what action is intended to be taken.
Service Standard 5	<p><b>CATEGORY A – PLANNING ENFORCEMENT ACTION NECESSARY</b></p> <p>Further update to be provided within four months of date of the case being acknowledged</p> <p><b>CATEGORY B – PLANNING APPLICATION REQUIRED</b></p>		<p>The need for enforcement action may result in removal or modification of the development prior to the service of the Notice. Where a CAT A PIR is confirmed the complainant should be advised that a Notice has been served (or is due to be served within a specified date) no later than four months of the date of acknowledgement of the case being raised.</p> <p>Similarly it may be possible to modify the development so that</p>

	<p>Further update to be provided within four months of date of the case being acknowledged</p> <p><b>CATEGORY E: Interim Reply</b></p> <p>Further update to be provided within four months of date of the case being acknowledged</p>		<p>planning permission is not required or serve a S.33A Notice requiring an application to be submitted. One or the other outcomes should be expected no later than four months after date of acknowledgement of the breach.</p>
<p>Service Standard 6</p>	<p>With <b>CATEGORY A</b> (Enforcement Action necessary), <b>CATEGORY B</b> (Planning permission required) &amp; <b>CATEGORY E</b> (Interim reply) PIRS, to provide the complainant with a letter explaining the reasoned justification (expediency) for closing the case</p>	<p>Within 10 working days of the case being closed on the planning electronic records system (Uniform) retaining the correspondence against the planning enforcement record for future reference</p> <p>-----</p>	

**Service Standard 1** ensures that once the complaint form is received (in the majority of cases) electronically or by post, the case is logged quickly and complainants are provided with the details and start date against which further progress is measured.

**Service Standard 2** provides 20 working days against which the case records will be checked, ownership details obtained and the site assessed remotely to see if planning permission is required. Sometimes information will be insufficient to determine this and the officer may write back to the complainant several times to require further information. If this is not sufficient then a site visit will be required.

**Service Standard 3** requires visits to High Priority cases as a matter of urgency, hence a visit is necessary on the same day or next day.

#### **Service Standard 4 (PLANNING IMPACT REPORTS):**

The Planning Enforcement Team service received an award in the Improvement to Service Process Category at the Scottish Government's 20th Annual Scottish Awards in Quality Planning in November 2019, for introducing Planning Impact Reports into its processes.

The Council has statutory powers to investigate breaches of planning control and to take formal action where a satisfactory outcome cannot be achieved by negotiations. Enforcement, however, is a discretionary power. That means, even where there is a breach of planning control, the Council has to consider if it is in the 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 action is not necessary or justified (hence not "expedient" to pursue). To provide stakeholders with clarity and transparency of the decision making process and to assess breaches at an earlier stage and thus reduce the need for further actions on the numerous matters raised which were not founded as being actionable in a planning sense (about 54% on average of all cases received since 2018), Planning Impact Reports were introduced.

The Planning Impact Report is a detailed assessment of the alleged breach taking into account all material planning considerations and weighing up the appropriate action. PIRs must be provided within two months of the case being acknowledged, with an 80% target for achieving this timescale.

The Planning Impact Report will provide summary details of the site visit, the assessed planning impacts of the alleged breach and justification for one of the following 5 potential outcomes, described as CATEGORIES A- E:

- PIR (CAT A): Enforcement Action Necessary

The development causes serious planning harm which requires formal action to be taken.

- PIR (CAT B): Submission of an application is required

The development may be acceptable subject to mitigating conditions. Therefore a retrospective planning application will be required.

- PIR (CAT C): Minor technical breach of planning control

Planning permission is technically required, but it is not in the public interest to pursue the matter further.

Some development may technically require consent but have limited or “neutral” impact. Prioritisation of resources indicates that it would not be in the public interest to pursue acceptable development merely to regularise unauthorised works where added quality through adjustment of the development or attachment of a condition mitigating its impact would not be required.

- PIR (CAT D): No breach of planning control

The alleged breach does not require planning permission and therefore the case will be closed.

- PIR (CAT E): Interim Response :

There will be occasions when it proves impossible or impractical to conclude upon either of the four categories above, most typically because there is insufficient information to reach a conclusion. In these circumstances the Planning Impact Report will detail the reason for the delay and will indicate the likely timescale for a response.

### CHALLENGING THE OUTCOME OF A PIR

There is no formal right of appeal against the assessment provided within the PIR; therefore in the majority of cases the decision will be final. An exception to this rule will be where an allegation of factual inaccuracy of any point contained within the PIR assessment would provide reasonable grounds for reconsideration of the outcome, although any claim to this effect would have to be substantiated through the submission of evidence to the contradict the initial finding.

**Service Standard 5:** Further updates are to be provided within 4 months of date of acknowledgement of the case for CAT A, CAT B and CAT E PIRs.

Where the Council has committed to take further action, there is a need to ensure that targets are put in place to ensure that the commitment is achieved. Therefore, where a CAT A commitment has been given take enforcement action or a CAT B to require a planning application, there is a new target in this Charter to update the complainant within 4 months of the date of acknowledgement of the case. This should provide

sufficient time to enable for the appropriate actions to be taken and update the complainant accordingly or to advise why there has been a delay and provide a date when the action will be taken.

Similarly this applies to CAT E Interim replies which will have a further requirement for an update within 4 months of the date of the complaint being acknowledged.

**Service Standard 6:** To notify the complainant within 10 days of a case being closed on the system.

It has been stated earlier in this Charter that the Council has the discretion to take action - or not as the case may be - as long as the decision can be justified. This is why it is imperative that the complainant is advised of the decision to close a case. There is therefore a new target date in this Charter to aim to advise the Complainant of the closing of the case within 10 days of the decision being recorded on the system. A reasoned justification for doing so will be provided to the complainant to ensure that there is full transparency of a justified and robust reasoning for this highly significant outcome.

## **5. MAKING A SUGGESTION OR COMPLAINT ABOUT THE SERVICE YOU HAVE RECEIVED**

### **The Council's Complaints Handling Procedure (CHP)**

The Council aims to provide a planning enforcement service which the public will be satisfied with. If, however, you have any suggestions for improvement, concerns or difficulties, this Service would like to hear from you. The Council is committed to improving our service and dealing promptly with the cause of a complaint. This Service will investigate all complaints made about the way an enforcement enquiry was dealt with. Whilst some people may disagree with the outcome of an investigation, that in itself is not grounds for complaint about the service provided.

A complaint, not about the factual outcome of the case but of the manner in which it has been handled, may be made in relation to the Council's Complaints Handling Procedure (CHP), although this can only be made on the following grounds:

- \* Delays in responding to your enquiries and requests
- \* Failure to provide a service
- \* Our standard of service
- \* Treatment by or attitude of a member of staff

\* Our failure to follow proper enforcement procedures (as laid down in this Planning Enforcement Charter).

In the first instance, complaints about the enforcement service should be discussed with the member of staff involved. If you are dissatisfied, please contact the Principal Planner Enforcement Officer under the Stage 1 procedure, using this [link](#)

If you are still dissatisfied with the advice provided, you can ask for the name of a more senior officer who will investigate the matter under the Stage 2 procedure. If you are not satisfied with these responses, you can pursue the formal Council complaint procedure. This is detailed on the Council's website at this [link](#).

## **6. HIGH HEDGES PROBLEMS– WHAT CAN PLANNING ENFORCEMENT DO?**

### **High hedge notice applications**

It is important to emphasise that hedges do not constitute development and therefore a person responsible for a high hedge is not in breach of planning control.

Powers relating to the control of high hedges are not provided under planning legislation but under The High Hedges (Scotland) Act 2013 ("the Act"), which came into force on 1 April 2014. The Act aims to provide a solution to the problem of high hedges where neighbours have not been able to resolve their dispute amicably. Given the nature of the disputes and the similar "infrastructure" and skill sets required in dealing with the overall process, Glasgow City Council has decided that its Planning Enforcement Team is the best placed for dealing with any assessments required and applications made under the Act.

A hedge is defined by the Act as being formed of a row of two or more trees and shrubs which exceed two metres in height and form a barrier to light. It should be noted however, that revised guidance was issued in 2019 which states that this is only the minimum possible criteria for a high hedge. Other factors will also determine whether a hedge will be subject to a Notice, such as whether protected birds, animals or plants would be affected by works to the hedge, the past and current management of the trees and shrubs and that the spacing of trees and shrubs are consistent with traditional hedge planting. If these criteria are all fulfilled, the applicant may approach the Council to consider service of a High Hedge Notice. The applicant is, however, under an obligation to take reasonable steps to resolve the high hedge dispute before making an application to the Council.

As stated above, responsibility for processing applications in relation to the Act has been given to the Planning Enforcement Team. A fee of £500 is required to be paid for the council to validate an application. Where the decision is made to serve a High Hedge Notice, the owner and applicant (in instances where there is a belief the Notice

instructions are insufficient) both have the right of appeal to the Scottish Government. The applicant also has the right of appeal when a Notice is not served.

Where a High Hedge Notice has been served and takes effect, the owner of the hedge is required to remedy the problem and prevent it occurring. Beyond the initial action, annual maintenance is considered reasonable action to prevent the hedge reoccurring, as the requirements of the Notice are in effect in perpetuity. The Act allows the Council to undertake work where owners fail to comply with the High Hedge Notice with the costs of the work being recoverable from the hedge owner.

The Council has guidance available on its webpage [here](#).

The Scottish Governments guide for local authorities is available [here](#)

### **Pre-application requests for assessment**

The Council recognises that it is expensive to make a formal application, but that there are reasons for this. Any Notice which is confirmed has its requirements remain in perpetuity and this in itself places a burden on the Council in terms of the potential for ongoing actions. There are also right of appeal on both sides, from the applicant and the High Hedge Owner.

To assist in clarifying this situation prior to making an application, the Council provides a free assessment of any concern regarding the potential for making a High Hedge application. This entails a site visit and assessment confirming that the situation is appropriate, or not, for making an application and full detailed guidance is given to the person who is considering making an application, However, this should not be considered as a substitute for making an application as no communications will be sent to the owner of the hedge advising of any action - the Council will not mediate between two parties, although the potential applicant will be reminded of their own duty to attempt formally to resolve the situation with the hedge owner prior to submitting an application.

The process for requesting an assessment is the same as making an enforcement complaint, online or in writing. In the same way it is necessary to satisfy the requirements as stated in relation to submitting a report of a breach of planning control, but instead identifying the impact of the hedge in terms of the enjoyment of your residential amenity.

## **7. APPENDICES : OUR POWERS, GUIDING PRINCIPLES and SERVICE PLEDGES**

### **APPENDIX 1: PLANNING ENFORCEMENT POWERS**

#### **Investigatory powers & Enforcement Powers**

##### **Planning Contravention Notice (under Section 125 the Town and Country Planning (Scotland) Act 1997)**

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, or a person with any other interest in the land or anyone carrying out operations on the land. The persons served 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.

##### **Requisition for Information 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. Failure to provide the information required is an offence.

##### **Rights of Entry (Sections 156 – 158 of the Town and Country Planning (Scotland) Act 1997)**

**Section 156** enables the Council to enter land at any reasonable hour without a warrant to ascertain whether there is or has been a breach of planning control or to ascertain whether there has been compliance with any requirements arising from earlier enforcement action.

**Section 157** provides the Council the right to enter land with a warrant issued by a Sheriff if entry is refused.

**Section 158** provides that the Council has to produce evidence of their authorisation and state the purpose of their entry before they enter the land.

#### **Formal Action**

##### **High Hedges (Scotland) Act 2013**

Once the local authority has decided that action needs to be taken regarding a high hedge, it must issue a High Hedge Notice. This Notice gives effect to the local authority's decision and details the action to be taken to restore a suitable balance between the amenity enjoyed by the applicant and the hedge owner, having regard

also to the needs of the wider community. A High Hedge notice will specify the 'initial action' and any 'preventive action' required by the owner of the hedge. The Notice will detail what action is required to alleviate the problem (most likely to reduce the height of the hedge) and any maintenance required to prevent recurrence of the problem. A High Hedge Notice remains in existence for as long as the hedge remains on the land or a local authority has withdrawn the notice.

### **Enforcement Notice (Section 127 – 129 of the Town and Country Planning (Scotland) Act 1997)**

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 and advertisements (see below). An Enforcement Notice will specify a time period to take effect (a minimum of 28 days), the steps that must be taken to remedy the breach and the timescale within which the remedial action to be completed. There is a right of appeal and 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 Fixed Penalty Notice of £2,000 or a fine of up to £50,000 in the Sheriff Court if prosecution is pursued. Failure to comply may also result in the Council taking Direct Action to correct the breach (see Further Action).

### **Advertisement Enforcement (under the Town and Country Planning (Control of Advertisement) (Scotland) Regulations 1984)**

The Advertisement Regulations and the 1997 Act include various provisions for dealing with the unauthorised display of advertisements, or challenging existing displays. These include:

**Advertisement Enforcement Notice:** This seeks to remove advertisements which do not have consent.

**Discontinuance Notice:** This allows the Council to challenge a consented display which is no longer considered acceptable. This usually applies to displays which have been in place for some time.

**Removal or obliteration notice:** This allows the Council to remove or obliterate placards or posters. This provision was introduced primarily to deal with "flyposting".

### **Breach of Condition Notice (under Section 145 of the Town and Country Planning (Scotland) Act 1997)**

This can be 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 above), 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 serving a Fixed Penalty Notice for £300 or deciding to prosecute, where a fine can be imposed of up to £1,000.

### **Stop Notice (under Section 140 of the Town and Country Planning (Scotland) Act 1997)**

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 Council must have first issued 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 Council may face claims for compensation, which differentiates a Stop Notice from other types of enforcement notice. There are, however, exemptions. For example, a Stop Notice cannot be served on a dwelling.

### **Temporary Stop Notice (under Section 144A of the Town and Country Planning (Scotland) Act 1997)**

This is used to stop the unauthorised activity immediately. It may be served before the issue of an Enforcement Notice and ceases to have any effect after 28 days.

### **Amenity 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 adversely affecting the amenity of the area. This sets out the action that needs to be taken to resolve the problem within a specified period. There is a right of appeal against an Amenity Notice. Such a notice will normally only be used where serious disamenity is caused to the wider area, not for relatively minor instances of untidiness such as poor maintenance of garden lawns.

### **Interdict and Interim Interdict (Section 146 of the Town and Country Planning (Scotland) Act 1997)**

An interdict may be granted by the courts and is used to stop or prevent a breach of planning control. Court proceedings can prove costly and the Council normally only seeks interdicts in very serious cases e.g. where public safety may be involved or unauthorised works are taking place to a listed building. The Council can seek an interdict, however, 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.

### **Request for Application Notice (Section 33A of the Town and Country Planning (Scotland) Act 1997)**

This may be served where the Council requires the submission of a planning application for development which has already taken place without the appropriate planning permission. Technically, this constitutes formal enforcement action and extends the period within which other enforcement action may be taken.

### **Fixed Penalty Notice (Sections 136A and 145A of the Town and Country Planning (Scotland) Act 1997)**

This may be served as an alternative to seeking prosecution where the terms of a notice have not been complied with. The penalties are £2,000 (£1,500 if paid within 15 days) for non-compliance with an Enforcement Notice, and £300 (£225 if paid within 15 days) for non-compliance with a Breach of Condition Notice. Failure to pay a Fixed

Penalty fine may result in the case being referred to the Procurator Fiscal for possible prosecution.

### **Listed Building Fixed Penalty Notice (Section 39A (5) and (13) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997)**

For Listed Building Enforcement Notices the penalties are £2,000, £3,500 for a 2nd breach and £5,000 for 3rd and subsequent breaches. Failure to pay a Listed Building Fixed Penalty fine may result in the case being referred to the Procurator Fiscal for possible prosecution.

### **Tree Replacement Notice (under Sections 167 and 172 Town and Country Planning (Scotland) Act 1997)**

This may be served when a protected tree (either protected by a Tree Preservation Order or a tree located within a Conservation Area) is felled or otherwise destroyed without prior consent. An appeal may be made against a Tree Replacement Notice.

### **Possible Further Action**

If an Enforcement Notice has not been complied with and the time for compliance has elapsed if the breach is continuing, the Council can pursue the following actions:

#### **Fixed Penalty Notice**

This may be served as an alternative to seeking prosecution in the Courts.

#### **Prosecution**

The Council may refer the matter to the Procurator Fiscal for possible pursuit of the case in the Sheriff Court. A fine of up to £50,000 may be imposed but this will not necessarily resolve the breach of planning control. If the breach continues, the Council can again refer the matter to the Procurator Fiscal.

#### **Direct Action**

Failure to comply with the terms of an Enforcement Notice or a High Hedge Notice within the time specified can result in the Council carrying out the required work. The Council will seek to recover the costs it incurs from the current landowner.

#### **Burden on Property**

In some circumstances the Council may decide not to take any action and leave an extant enforcement notice as blight on land/property. This can lead to a delay if a house/land is to be sold and the sellers agents require these breaches to be rectified in order for the sale to conclude. Where there are any outstanding financial implications registered against land/property that appear on a Councils Property Enquiry Certificate, all sums due to the Council will be deducted from the future sale of that land/property.

## **APPENDIX 2: THE PRINCIPLES UNDERLYING GOOD PLANNING ENFORCEMENT**

### **Expediency**

Planning Enforcement is a discretionary power. This means that the council has to consider whether it is in the public interest to take enforcement action. There is no requirement for the council to take any particular course of action in response to an alleged breach, and in many cases, the most reasonable approach is to not take any action, such as if the breach is of a very small scale, does not cause harm, or enforcement action would be disproportionate.

Harm can arise through a range or combination of factors:

- Adverse impact on visual amenity
- Inappropriate development that harms the surrounding area
- Failure to comply with a condition of planning permission
- Loss of privacy or loss of natural light
- Loss of protected trees
- Irreversible damage to a listed building or demolition of a building within a conservation area
- Extremely untidy land and derelict buildings.

Harm does **not** include:

- Competition caused to another business
- Ownership disputes, including trespass onto land
- Loss of value to a property

### **Proportionality**

Enforcement action should always be proportionate to the scale and nature of the breach of planning control and the seriousness of the harm caused as a consequence. It is important to recognise that generally, it is not a criminal offence to carry out works without planning permission.

It is however a criminal offence to do the following without consent:

- Work affecting the character of a listed building
- Felling, lopping, uprooting or wilful damage/destruction of trees protected by Order (TPO)
- Display of an advertisement requiring consent
- Failure to comply with an Enforcement Notice which has taken effect

Planning legislation enables people who have carried out unauthorised development to apply for retrospective planning permission. In dealing with such applications, the Council must consider them in exactly the same way as any other application.

There are many options available when dealing with a breach of planning control. An opportunity will always be given to allow the breach to be resolved without formal action, however, unreasonable delay should not prevent swift action where it is clearly necessary.

The most severe breaches showing flagrant disregard for the planning system and concerns regarding the impact of unauthorised development will be met with swift action, including the use of Temporary Stop Notices (stopping any unauthorised activity for 28 days to allow consideration longer term action) and through the use of Interdicts where an Enforcement Notice has not been complied with. Relatively minor breaches may be acceptable and an application will be asked for where appropriate. At the lowest end of this spectrum, technical breaches with little or no impact will not be pursued for further action. All investigations and Notices are identified on property enquiry certificates and may present problems to an owner should they wish to sell their property. Solutions to the breach are often sought at that juncture.

### **Consistency**

Whilst each situation presents its own unique circumstances, we endeavour to carry out our duties in a fair, equitable and consistent manner. We will consider each individual matter on its own merits. There will be a consistent approach to enforcement action against breaches of a similar nature and circumstance, guided by the City Development Plan and supplementary planning guidance to establish what action is required. In reaching a decision we will be mindful of advice contained within relevant government guidance as well as taking into account emerging planning appeal decisions and case law where appropriate.

### **Negotiation**

Enforcement powers provide leverage to resolve breaches and are not intended to be used as punishment where planning permission has not been obtained.

In all but the most severe cases requiring immediate action, we will seek to negotiate compliance in the first instance. However negotiations will not be allowed to cause unreasonable and unjustified delay where clearly action should be taken.

### **Standards**

The Planning Enforcement Charter explains the service which will be provided and the standards of performance that customers can expect to receive. The planning Enforcement Charter is subject to review every two years. Service standards are monitored quarterly to ensure that performance meets expectations.

### **Openness**

Information and advice will be provided in plain language on the rules we apply. We are happy to discuss general issues, specific cases or other issues with anyone with an interest in our service, subject to data protection and freedom of information legislation. We will keep those who submit complaints identity anonymous.

### **Helpfulness**

We will work with the public to address their concerns and win dealing with developers will advise them towards compliance in the spirit of cooperation. Officers contact details will be provided to enable customers to contact them directly when seeking advice and/or an update on the progress of a case. We will issue a Planning Impact Report in accordance with service standard 4.

Whilst we aim to assist wherever possible, abusive, threatening or unacceptable language or behaviour, either in person or in correspondence will not be tolerated. Such actions will be referred to the Councils Customer Care team for potential action in relation to the Councils Unacceptable Actions Policy.

## **APPENDIX 3: PLANNING ENFORCEMENT SERVICE PLEDGES**

### **THE ENFORCEMENT SERVICE PLEDGES**

The way the Council deals with complaints is outlined above. In following this process the Council commits itself to service pledges which are a public commitment to a basic code of conduct of service delivery. The service pledges provide the overarching service direction and context to the detailed service standards which follow on from them.

#### **Service Pledge 1: To follow agreed procedures in resolving cases**

The Council will follow the procedures below in dealing with its enforcement activities. The general approach is that any action taken will be in proportion to the scale and nature of the breach.

- a. Each complaint regarding a possible breach of planning control will be followed up when it is received, in accordance with the Service Standards identified in this Charter.
- b. The Council will investigate all written or email complaints, where the complainant provides an email or postal address to receive a written reply. Anonymous complaints will not be investigated although discretion in this may be exercised where the allegation relates to a very serious breach of control (as described in Service Pledge 4 below).
- c. The Council will treat the complainant's personal details, name, address, phone number and any other contact details as confidential, unless the complaint is made on behalf of a corporate body or public body such as a community council. Complainants should, however, be aware that, if the case progresses to a planning appeal, then their name and some contact details may be released by Scottish Ministers into the public domain.
- d. The Council will attempt to resolve the alleged breach without recourse to the service of a formal notice, but will not allow the process to be unnecessarily delayed where it appears unlikely from the outset that planning or other consent would be granted by the Council.

e. Where a breach of planning control appears at face value to comply with the City Development Plan and does not unduly impact on amenity or public safety, the Council will initially invite a retrospective planning or other appropriate application to be submitted. Subsequent failure to submit an application under these circumstances may result in the service of a Section 33A Notice (See Appendix 1) which is an enforcement notice formally requiring the submission of an application.

**Service Pledge 2: To take action where it is considered expedient to do so.**

The Council will take formal enforcement action only where the breach is considered to have an unacceptable effect on public amenity, or where the use of land and buildings merits protection in the public interest. Each case will be considered on its merits and the decision will be informed by the relevant policies of the City Development Plan and the degree of harm caused by the breach, assessing the impact relative to the established appearance or character of the property and area. Generally, a higher priority will be given to a breach where it affects the complainant's amenity in the locality of their own address. Correspondingly, less weight will be given to complaints from one source about many similar breaches located throughout the wider area, which may have little or no direct impact on the amenity of the complainant concerned.

**Service Pledge 3: To use powers which are in proportion to the harm caused by the breach**

The Council will consider the range of its enforcement powers (see Appendix 1) to remedy an unacceptable breach. The action taken will depend on the nature of the breach.

Where an effective Enforcement Notice is not being complied with the case will be assessed in term of further action. Legal action may be an option but will usually only be possible where the impact of the development is unprecedented and severe enough to be considered by the Procurator Fiscal to be in the public interest to prosecute.

Fixed Penalty Notices may be a more realistic option as these will have repercussions when a Property Enquiry Certificate is obtained by solicitors on behalf of the property owner when selling the property. The threat of the FPN may also provide leverage to bring about resolution and can be a useful tool in this way.

Direct Action is possible where a Notice has not been complied with; but given the substantial financial cost with no guarantee of costs being recovered this may not be practical or financially feasible. However, each case will be considered in light of prevailing circumstances at the time and all options will be considered.

**Service Pledge 4: To identify cases for higher priority action**

The Council will generally deal with complaints about alleged breaches in accordance with the order in which they are received except for the following which will be given priority. Where there is a conflict between priorities those cases involving the historic fabric of the City will take precedence.

- Complaints alleging conspicuous irreversible damage to listed buildings.
- Complaints alleging breaches of control which have a severe impact on the character of a Conservation Area.
- Complaints alleging damage to trees protected by a Tree Preservation Order (TPO), or trees in Conservation Areas.
- Complaints alleging damage to Sites of Special Scientific Interest (SSSI), local nature reserves and other environmentally designated sites as identified in the City Development Plan.
- Complaints alleging the storage of hazardous substances.
- Complaints alleging breaches of planning control which have more than a local impact on amenity and/or public safety.
- Non-compliance with the terms of a legal agreement entered into between the Council and a developer.

### **Service Pledge 5: Monitoring of Major Developments**

**The Planning (Scotland) Act 2019** 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. This was to be brought into force by Quarter1 2021, although guidance which has been promised has yet to be provided. In the meantime, the following approach will be taken:

- The Planning (Development Management) Officer handling the major planning application will receive, discharge and monitor conditions, prior to and post-initiation of the development and will be the initial point of contact for the developer.
- If the Planning (DM) Officer is unable to resolve outstanding conditions within a reasonable timescale, the planning officer will advise the developer that the matter will be referred to the Planning Enforcement Team for consideration of appropriate action. The Planning (DM) Officer will notify the Planning Enforcement Team of the breach of condition and an enforcement case will then be logged and investigated accordingly.
- There may be a specific condition that the Planning (DM) Officer considers was pivotal to planning permission being granted and should therefore be monitored during

the course of construction works such as the creation of a site access or ground remediation on a contaminated site. Consequently, the Planning (DM) Officer may notify the Planning Enforcement Team of this and an enforcement case will be created to monitor compliance with the condition at regular intervals. This may involve joint site visits with the Planning (DM) Officer, Planning Enforcement Officer and any other specialist area of expertise as required from within NRS to assess and assist for appropriate action.

### **Service Pledge 6: Communication with the subject of the complaint and the complainant**

The Council will notify the owner/occupier of the property/site of the alleged breach.

- Progress updates will be provided to complainants and subjects of the complaint, at significant junctures (including closure of the case).
- Following confirmation that enforcement action is necessary, formal enforcement action will be taken where negotiations fail within a reasonable timescale.

## **APPENDIX 4: ADDITIONAL SOURCES OF INFORMATION**

**Government policy on planning enforcement is set out in Circular 10/2009, 'Planning Enforcement'.**

This document is available from the Scottish Executive and can be viewed on-line at the [link](#).

In this section you can find further information on the planning enforcement legislation and suggested key contacts.

### **Planning Legislation and Supporting Documents**

#### **Town and Country Planning (Scotland) Act 1997**

A copy of this legislation can be found [here](#). Enforcement specific legislation can be found under Part VI Enforcement.

#### **Planning (Listed Buildings and Conservation Areas) (Scotland Act 1997**

Planning Legislation controlling works to listed building and within conservation areas. A copy of this legislation can be found [here](#).

#### **The Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984.**

Planning Legislation controlling the display of advertisements. A copy of this legislation can be found [here](#). Please note, Planning powers do not regulate the content of

advertisement. This is regulated by the Advertising Standards Authority whose website can be found [here](#).

### **Planning Circular 10/2009: Planning Enforcement**

Scottish Government policy of the use of enforcement powers in planning. This circular can be found [here](#).

### **Glasgow City Council City Development Plan and Supplementary Guidance**

Glasgow's City Development Plan was adopted in March 2017, replacing City Plan 2 (2009). The Plan sets out the Council's vision and strategy for land use whilst also providing the basis for assessing planning applications along with its associated Supplementary Guidance. The City Development Plan can be found [here](#) with its supplementary guidance [here](#).

### **Scottish Government's Guidance on Householder Permitted Development Rights**

Some minor works can be considered to benefit from planning permission through statute. These are called Permitted Development Rights. A guide to householder permitted development rights can be found [here](#).

## **APPENDIX 5: KEY CONTACTS**

### **Key Contacts within Glasgow City Council**

- **Planning Enforcement**

The Planning Enforcement webpage can be found [here](#).

- **On-line Planning**

On-line Planning is a planning portal where plans and other documents are available for planning applications received on or after 1<sup>st</sup> January 2007. This can be accessed [here](#)

- **Duty Planner**

The Planning Service operates a Duty Planner service to advise the general public on planning matters. You may wish to contact them before submitting a complaint to clarify if the matter would be consider a planning enforcement matter or breach of planning control. They can be contacted via [online form here](#), via email at [planningenquiry@glasgow.gov.uk](mailto:planningenquiry@glasgow.gov.uk) or via telephone (Monday-Friday 9am to 1pm) on 0141 287 6060.

- **Building Standards**

Breaches of Building Standards regulations are often confused as a Planning Enforcement matter. However, Building Standards operate under different legislation from Planning and therefore action cannot be taken under Planning legislation. For further information on Building Standards at Glasgow City Council, their website can be found [here](#). They can be contacted via [online form](#), email at: [building.control@drs.glasgow.gov.uk](mailto:building.control@drs.glasgow.gov.uk) or via phone at 0141 287 8555.

**FOR DANGEROUS BUILDINGS OR OUT OF HOURS PLEASE CALL: 0141 287 1059 (OPTION 2).**

- **Public Health**

Often matters pertaining to environmental health issues cannot be dealt with under planning legislation or would be more effectively addressed under environmental legislation. Our Public Health Group is located within Environmental Health. The group provides services in relation to Statutory Nuisances (including minor household disrepair, odours from commercial premises, draining issues, bug infestations, noise issues etc.), Commercial Waste enforcement, Fly-tipping enforcement, and Pest Control. For further information please view their page [here](#). Public Health can be contacted via email at: [publichealth@glasgow.gov.uk](mailto:publichealth@glasgow.gov.uk) or by phone at 0141 287 1059.

- **Noise issues**

The Council's noise teams can investigate noise problems in domestic and commercial properties. For further information please view their page [here](#). You can report a noise problem via their [online form here](#). Please note you may have to register for a **myGlasgow account**. Alternatively you can contact officers between 5pm and 3am on 0141 287 6688.

- **Landlord Registration**

Almost all private landlords must apply for registration with their local authority, under Part 8 of the Antisocial Behaviour etc. (Scotland) Act 2004. Further information can be found [here](#). They can be contacted via email at [PrivateLandlordRegistrationUnit@glasgow.gov.uk](mailto:PrivateLandlordRegistrationUnit@glasgow.gov.uk) or via phone at 0300 343 0414.

- **Housing in Multiple Occupancies (HMO)**

A landlord who permits their property to be occupied by three or more persons who are not related to one another must obtain a HMO license as well planning permission. It is a criminal offence to operate a HMO without a license and the maximum penalty upon conviction for doing so is a fine of £50,000. See Part 5 of the Housing (Scotland) Act 2006. The licensing process is regulated by the Housing and Regeneration Services. For further information please see their [webpage here](#). They can also be contact via email at: [privatelandlordregistrationunit@glasgow.gov.uk](mailto:privatelandlordregistrationunit@glasgow.gov.uk) or via phone at 0300 343 0414.

- **Licensing**

Licences are not issued by the Planning Service. For information on licences issued by Glasgow City council and contact details see the Licensing [webpage here](#).

- **Roads and Parking**

Unless controlled specifically through a planning condition, generally parking matters are not controlled through planning legislation. For further information, view our Roads and Parking webpage [here](#).

- **Trees**

The responsibility for good management of all trees always rests with the property owner, as does the responsibility for obtaining the correct permissions for any proposed work. For further information please see our Tree Responsibility webpage including contact forms [here](#).

### **Key Contacts **Outwith** Glasgow City Council**

- **Advertising Standards Authority**

Planning powers do not regulate the content of advertisement. This is regulated by the Advertising Standards Authority whose website can be found [here](#). You can make a complaint via their [online form here](#).

- **Directorate for Planning and Environment Appeals**

The Directorate for Planning and Environment Appeals (DPEA) administers and determines any appeals against Planning decisions including against Planning Enforcement notices. Their website can be found [here](#). Guidance provided by the Scottish Government on Planning Enforcement appeals can be found [here](#).

- **Health and Safety Executive**

The Health and Safety executive provide information and advice on keeping people safe and healthy at work. Their website can be found [here](#). To report a health and safety issue you can use their [online form](#). Alternatively you can call 0300 003 1647.

- **Planning Aid Scotland**

Planning Aid Scotland can offer free, impartial advice and information on planning matters. Their website can be found [here](#) or you can contact their helpline on 0300 323 7602.

- **Police Scotland**

Police Scotland provide local community support for matters which can arise from a breach of planning control i.e. anti-social behaviour, criminal activity etc. For further information you can visit the Police Scotland website [here](#). If you wish to report a crime, ring 101 or in an emergency 999. Never use these email addresses for reporting crime.

- **Scottish Environmental Protection Agency**

Scottish Environmental Protection Agency (SEPA) is a non-departmental public body of the Scottish Government. Their role is to make sure that the environment and human health are protected, to ensure that Scotland's natural resources and services are used as sustainably as possible and contribute to sustainable economic growth. Further information can be found on their website [here](#). Alternatively they can be contacted via [online form](#) or via phone at 03000 99 66 99.

- **Scottish Assessors**

The Scottish Assessors provide information regarding Council Tax and valuation for rating (Commercial). To check if a property is correctly registered you can view the registers [here](#).

- **Scottish Public Services Ombudsman**

Their website and contact information can be found [here](#).