



**Glasgow City Council**  
**City Administration Committee**

**Item 3**

24<sup>th</sup> February 2022

**Report by Councillor Kenny McLean, City Convenor for  
Neighbourhoods, Housing and Public Realm**

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**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 a Planning Enforcement Charter every two years; and
3. Considers the revised Planning Enforcement Charter 2022 (See Appendix A to this report for approval).

Ward No(s):

Citywide: ✓

Local member(s) advised: Yes  No ✓

consulted: Yes  No ✓

## 1 INTRODUCTION

- 1.1 The power to take 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 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 the circumstances. 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 1<sup>st</sup> April 2022.** Achieving this deadline is a commitment within the Council's Planning Performance Framework.

## 2 AMENDMENT TO THE CURRENT ENFORCEMENT CHARTER 2020-22

- 2.1 Planning Enforcement Charters are to be refreshed every two years 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 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.
- 2.2 Although the majority of these changes in respect of enforcement provisions have been enacted as yet there is no specific guidance ready in relation to the use of these measures. One aspect which has fully been enacted is Section 42 of the Act which increases the maximum level of fines that can be imposed for failing to comply with the requirements of various types of Notices issued to enforce planning controls. There is also a provision that the courts should take into account any financial benefit gained from the date the offence was committed (i.e., non-compliance with an effective Enforcement Notice). This applies to any Enforcement Notice served on or after **20 December 2019.**

- 2.3 Regulations have also been prepared to enable, and set procedure for, the designation of short-term let control areas. Whilst this is part of a wider intent to control Short Term letting under a licensing scheme (which Councils must have in place by October 2022), this Council already has a policy which restricts the use of Short Stay Accommodation within blocks of flats sharing the same access.
- 2.4 The Act introduces provision for charging orders, allowing planning authorities to place a charge on the property to recover the costs of taking direct action to implement the requirements of an enforcement notice. However, before this can happen regulations are required to set out the forms for registering and discharging charging orders, together with guidance for local authorities on the new powers.
- 2.5 The requirement for planning authorities' enforcement charters to include a statement on the authority's monitoring of compliance with planning permission for major developments is stated in the Act, although as yet no guidance on monitoring of conditions attached to planning consents has been provided. Changes made in the Act have commenced only for the purpose of allowing Ministers to make regulations or issue guidance. Further regulations at a later date will bring them into effect fully. In the meantime this Charter contains a commitment in the Service Pledges section of the appendices to the Charter to liaise with Development Management officers to take action to resolve breaches of condition on the following basis
- 2.6 Service Pledge 5: Monitoring of Major Developments
- *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 (Development Management) 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.*

- 2.7 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).
- 2.8 The revised Charter (attached as Appendix A to this report) splits the enforcement process into two parts, the first part emphasising what can and what cannot be dealt with in relation to enforcement powers (identifying common misconceptions). This is important as an average of 54% of all cases logged since 2018 have been identified as "not founded" which means that planning permission (for one of several possible reasons) was not required. It is therefore important to emphasis what the remit for planning enforcement is. The second part of the process explains how stakeholders should engage with the service, detailing how to report a breach, advising what information is crucial and/or helpful at the initiation of an investigation, and explaining what stakeholders may expect in terms of service standards thereafter. Justification for not accepting anonymous complaints and assurances given regarding the confidentiality of complainants are also discussed as these are often raised by stakeholders prior to and during the course of an investigation.
- 2.9 In establishing that a breach requires planning permission, there are underlying principles which guide how the situation should be dealt with. These principles are enshrined in Government guidance and have been quoted in appeal decisions, Ombudsman decisions and case law. Given that these are not commonly understood, the Charter outlines these, although as with Service Pledges and Enforcement Powers, detailed consideration of these are provided in the appendix to the Charter as additional information, thereby ensuring that the process and performance elements of service provision are at the forefront of the revised Charter.
- 2.10 Service Standards follow on directly from the Service Pledges, setting measurable targets for processing cases and seeking to provide assessments of the breach to stakeholders within reasonable timescales.

### **3. PERFORMANCE MONITORING OF THE CURRENT CHARTER**

- 3.1 The Planning Enforcement Audit (which was completed in January 2016) required that there should be systematic monitoring of performance in relation to the standards set out by the Enforcement Charter. This is an ongoing commitment with each biennial iteration of the Charter. Performance is reported to senior management on a quarterly basis and for the period of the existing Charter (up to the most recently fully completed quarter – December 2021) is detailed in the following Table 1 below:

3.2 Table 1: Performance Monitoring of the Current Planning Enforcement Charter (April 2020 - December 2021)

Financial Quarter	Service Standard 1 (Complaint Acknowledged within 5 Working Days)	Service Standard 2 (Visit site within 20 Working Days)	Service Standard 3 (High Priority – visit site on same day/next day)	Service Standard 4 (Provide Planning Impact Report with 2 months)
<b>1<sup>st</sup> April 2020- 31<sup>st</sup> March 2021</b>				
1 <sup>st</sup>	117 (67%)	127 (95%)	4 (100%)	132 (89%)
2 <sup>nd</sup>	5 (2.4%)	75 (40%)	3 (100%)	100 (84%)
3 <sup>rd</sup>	144 (80%)	109 (54%)	2 (100%)	195 (80%)
4 <sup>th</sup>	172 (92%)	33 (62%)	2 (100%)	118 (82%)
<b>Year Average 2020/2021</b>	<b>110 (60.4%)</b>	<b>86 (62.8%)</b>	<b>3 (100%)</b>	<b>136 (83.8%)</b>
<b>1<sup>st</sup> April 2021 – December 2021</b>				
1 <sup>st</sup>	228 (74%)	99 (75%)	3 (100%)	146 (79%)
2 <sup>nd</sup>	200 (94%)	116 (54%)	2 (100%)	120 (66%)
3 <sup>rd</sup>	118 (94%)	120 (40%)	2 (100%)	110 (60%)
4 <sup>th</sup>	N/A	N/A	N/A	N/A
<b>Projected Average 2021</b>	<b>182 (87.3%)</b>	<b>112 (56.3%)</b>	<b>2 (100%)</b>	<b>125 (68.3%)</b>
<b>PERFORMANCE OVER DURATION OF CHARTER</b>	<b>TOTAL PROJECTED 1,166 (73.9%)</b>	<b>TOTAL PROJECTED 791 (59.5%)</b>	<b>TOTAL PROJECTED 20 (100%)</b>	<b>TOTAL PROJECTED 1,046 (76%)</b>

3.3 Adapting through the pandemic

It has been possible in the main for the work of Planning Enforcement to be carried out from home, with remote access to systems gradually being brought in and a protocol for visiting sites safely which was adopted in July 2020. However, it is clear from average performance that there has been an impact on performance in relation to all standards (including from Central Business Services who provide support for Service Standard 1), with the exception of Service Standard 3 which relates to a relatively small number of cases.

3.4 Enforcement Activity by Alleged Breach Type

ENFORCEMENT BREACH TYPE	*CASES RECEIVED	*CASES CLOSED	*BREACH NOT FOUNDED	*BREACH FOUNDED	*NOTICES SERVED
BREACH OF ADVERTISEMENT REGULATIONS	26	16	3 (19%)	13 (81%)	0
BREACH OF CONDITIONS	86	40	20 (50%)	20 (50%)	0

DEVELOPMENT IN CONSERVATION AREA	42	19	11 (58%)	8 (42%)	0
CHANGE OF USE	119	41	21 (51%)	19 (49%)	10
S179 - EXCESSIVE DISAMENITY of PRIVATE LAND (NOT FLYTIPPING)	3	3	3 (100%)	0 (0%)	0
HIGH HEDGE COMPLAINT	6	3	6 (100%)	0 (0%)	0
HOUSEHOLDER DEVELOPMENTS	361	244	142 (58%)	102 (42%)	12
HOUSE IN MULTIPLE OCCUPATION	3	1	1 (100%)	0 (0%)	1
CHANGE OF USE TO HOT FOOD TAKEAWAY	22	11	8 (73%)	3 (27%)	2
LISTED BUILDING ALTERATIONS	96	42	20 (48%)	22 (52%)	1
PIGEON LOFT	7	3	0 (0%)	3 (100%)	0
NOISE (UNAUTHORISED USE OF PREMISES)	11	7	5 (71%)	2 (28%)	1
COOKING ODOURS (UNAUTHORISED USE OF PREMISES)	2	1	1 (0%)	1 (100%)	0
ANNEXING OPEN SPACE TO RESIDENTIAL PROPERTY (LAND GRAB)	34	22	10 (45%)	12 (55%)	0
OTHER	97	70	49 (70%)	21 (30%)	2
OUTDOOR SEATING ON PAVEMENT	40	24	9 (37%)	15 (63%)	0
SATELITE DISHES	2	9	6 (67%)	3 (33%)	0
SHOPFRONT ALTERATIONS	24	10	4 (40%)	6 (60%)	0
SHORT STAY ACCOMMODATION	135	125	68 (54%)	57 (46%)	21
SUBDIVISION OF RESIDENTIAL DWELLING	3	2	2 (100%)	0 (0%)	0
TELECOMMUNICATION APPARATUS	9	9	6 (67%)	3 (33%)	0
TREES IN CONSERVATION AREA	53	24	17 (71%)	7 (29%)	1
WINDOWS IN CONSERVATION AREA	19	9	3 (33%)	6 (67%)	1

**\*Cases Received are within the period from 1<sup>st</sup> April 2020 to present day.**

**\*Breach Not Founded/ \*Founded and \*Notices served do not relate to \*Cases Received but to \*Cases Closed**

3.5 The above table represents the range of enforcement activity from 1<sup>st</sup> April 2020 to present day as categorised on the Uniform database for search using a dashboard system. A total of 52 formal Enforcement Notices were served in this period. Overall numbers are lower than a typical pre-pandemic period due to the fact that site visits were restricted by lockdown and Notices were also normally prepared in office and hand delivered to the Sheriff Officers Office in Royal Exchange Square, a process which has been changed to allow for transfer of the issued Notice electronically for service thereafter.

3.6 It should be noted that any actions have also been resolved without the requirement for a formal Notice to be served. Development taking place in residential gardens has been a significant issue during lockdown periods with a noticeable rise in garden structures, outbuildings and other improvements. Although there was a hiatus in complaints in relation to Short Stay Accommodation (Short Term Let) during lockdown restrictions, this has again risen sharply with those restrictions being lifted.

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

Performance in relation to the formal acknowledgement of cases within 5 working days overall has been reasonable, with the exception of quarters 1 and 2 in 2020/21. Quarters 2 and 3 of 2021 have shown good progress in logging and acknowledging cases processing cases and indicate that the front end of the process is working well. Therefore no change is proposed to this target

3.8 Service Standard 2: Undertake a preliminary investigation and visit within 20 working days from the date of acknowledgement

Performance has dropped down from the previous year and on average for the life of the Charter indicates that only 59.5% of cases are being visited within the required target. Site visits are being carried out subject to Covid protocols which can in some situations result in delay although this should be counter-balanced by the fact that a lot of cases are being assessed remotely. A part-time staff member has been on maternity leave from Quarter 2 and this has resulted in the spread of the relevant officer's workload to others in the team, also coinciding with a return to increased reporting on matters relating to Short Term letting which has continued into Quarter 3.

3.9 It is not proposed to change the target date for this Standard which is reasonable although closer performance monitoring is required. The loss of a member of staff is a temporary measure which will need managing in terms of addressing priorities to reduce the overall caseload to manageable levels.

3.10 Service Standard 3: Visit on same day/next day basis for High Priority Cases

In all quarters 100% performance has been achieved. Service Standard 3 is unchanged given that there has been a 100% record in attending such sites over the life of the current Charter.

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

With performance over the life of the current Charter averaging at 76%, the 80% target has not been achieved, although performance is reasonable in the context of the challenges which have been faced during the pandemic and the transition to a primarily home based working situation for the whole team. However, there is concern that performance has dropped this year in comparison to last year's figures and this will have to be addressed through more detailed monitoring of caseloads and examination of performance. As stated in paragraph 3.6 the likely main explanation is the impact of the loss (temporarily) of a part time officer on the recent Quarters 2 and 3 and the additional burden this on others (having to reply to the legacy of ongoing cases left by the officer) whilst also having attending to matters of their own caseload and achievement of targets on new incoming cases.

3.12 Service Standard 4 should remain at the existing target of providing a Planning Impact Report within 2 months in at least 80% of cases. PIRS Category A (Planning Enforcement Action necessary) and Category B (Planning permission required) are PIRs which require further action rather than effectively closing the case; these will have a further requirement for a response within four months of the case being acknowledged to ensure that formal action is confirmed or that a firmed-up date for this action being taken can be given.

## **4 NEW SERVICE STANDARDS**

4.1 Planning Impact Reports (PIRs) were introduced as a way of re-aligning resources more effectively with cases of greater priority. The introduction of the PIR was also intended as a formal way to assess the breach and thereby afford a greater degree of transparency in how that decision had been reached - in the same way that a planning application report of handling provides detailed justification of the decision making process.

4.2 As a consequence of the Planning Impact Report greater emphasis has been placed on reviewing cases at an early stage, thereby removing non-breaches and cases of "neutral impact" from the system (as no further action would be intended to be taken with these).

4.3 New Service Standard 5

A further improvement is proposed through the introduction of a new Service Standard 5 which deals with the outcomes where further action is required: i.e. CAT A (PLANNING ENFORCEMENT ACTION IS NECESSARY; and CAT B (SUBMISSION OF A PLANNING APPLICATION IS REQUIRED). With these PIRs there is a need for further action. 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 should be sufficient time to confirm service of the Notice or at very least being in a position to advise the complainant when the agreed deadline for taking action will be. It is a further milestone to ensure that communication with complainants is monitored and that unreasonable delay in process is avoided.

#### 4.4 New Service Standard 6

*Whilst there is a general Service Pledge 6: to ensure Communication with the subject of the complaint and the complainant at key junctures there is a need to ensure that all decisions to close a case are justified and recorded and that the details of this are made known to the complainant. Therefore a new Service Standard 6 states the following:*

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

This will add greater transparency and ensure that any decision made to close a case is robust and open to scrutiny.

## 5 NEXT STEPS

- 5.1 If Committee are satisfied with the updates to the Charter as a result of reviews of operational performance and those introduced by legislation, it is intended to present the Charter to the Scottish Government for confirmation that it meets the requirements as to form and content.

## 6 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:** The Charter priorities align to the 7 cross cutting themes in the Council Strategic Plan (CSP) 2017 to 2022

In relation to the CSP the Charter supports: theme of A Vibrant City a specific outcome of which will be the protection and enhancement of buildings of architectural importance and the character and appearance of conservation areas; and, the theme of A Well Governed City that listens and responds, the outcomes of which are open and transparent decision making (with the Planning Impact Report) and listening and responding to citizens.

**Equality and Socio-Economic Impacts:**

The impacts of this report in relation to the Public Sector Equalities Duty and the 14 outcomes aligned to the four improvement aims of the Council Family's Equality Outcomes for 2017 to 2021 have been considered. The report has no significant direct impact on the Council's equalities duties.

*Does the proposal support the Council's Equality Outcomes 2021-25? Please specify.*

There are no specific equality outcomes which relate to planning or enforcement.

*What are the potential equality impacts as a result of this report?*

An Equality Impact assessment screening was carried out which identified good practice in relation to the current Planning Enforcement Charter 2020-22.

The changes proposed to the Charter for 2022-2024 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.

*Please highlight if the policy/proposal will help address socio-economic disadvantage.*

The Planning Enforcement Charter 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. The Charter allows for protection of the built environment which supports sustainable economic activity.

## **Climate Impacts:**

*Does the proposal support any Climate Plan actions? Please specify:*

The Charter makes provision for ensuring the protection of the City from unacceptable unauthorised development and adherence to plans and conditions in relation to any approved sustainable development.

*What are the potential climate impacts as a result of this proposal?*

The Charter makes provision for ensuring the protection of the City from unacceptable unauthorised development and adherence to plans and conditions in relation to any approved sustainable development.

*Will the proposal contribute to Glasgow's net zero carbon target?*

The Charter makes provision for ensuring the protection of the City from unacceptable unauthorised development and adherence to plans and conditions in relation to any approved sustainable development.

## **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.

## **7. Recommendations:**

7.1 It is recommended that Committee:

1. Notes 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 a Planning Enforcement Charter every two years; and
3. Approves the revised Planning Enforcement Charter 2022 (See Appendix A to this report).