

## 5. Enforcement

**This information sheet is aimed at anyone who is involved in a planning enforcement issue.**

**Update:** The Scottish planning system is currently undergoing reform process. In September 2015, the Scottish Government appointed an independent panel to undertake a review of the planning system. Subsequently, a Scottish Government consultation paper was published with a response deadline of 4 April 2017. It is expected that a new planning Bill will go before the Scottish Parliament in late 2018. Full details of the reform process are available at this [link](#). In the meantime the planning system operates as set out below.

### What is Enforcement?

Enforcement plays an important role in the planning process as it controls unauthorised development and protects the environment. Enforcement action can be taken against anyone who has carried out development without first obtaining planning permission, or against anyone who has not complied with the terms and conditions of their planning permission.

### When is Enforcement action taken?

Planning authorities (your local Council or National Park Authority) monitor development to ensure that planning conditions are being met. In addition to this, members of the public have an important role as they can alert planning authorities when they feel that unauthorised development is occurring. As enforcement is a discretionary power, your planning authority must consider whether it is in the public interest before they take action.

The first stage of enforcement is for the planning authority to establish whether a breach of planning control has taken place. An enforcement officer will investigate and has rights to visit a site to gain more information. The planning authority will then decide on whether they need to take action and serve a relevant notice.

### What is a Planning Contravention Notice?

In order to find out if a breach has occurred, a Planning Contravention Notice can be served on anybody with an interest in the land concerned. A Planning Contravention Notice is used to obtain information on the activities on the land where the breach of planning control is suspected. Failure to reply to the Planning Contravention Notice within 21 days or to give false information, are offences punishable by fines.

### What is an Enforcement Notice?

If the information gathered from the Planning Contravention Notice indicates that a breach has occurred, the planning authority can then serve an Enforcement Notice. This will detail what the breach of planning control has been, why it is harmful and the steps that must be taken to resolve it. It will also specify a date on which the notice takes effect,

and will set a compliance period within which the unauthorised development must be removed, or the use cease.

### **What is a Listed Building Enforcement Notice?**

This notice is used for breaches of listed building control, and must similarly specify the breach of control, the harm, the steps that must be taken and a date for compliance. It is a criminal offence to undertake unauthorised works to demolish, significantly alter, or extend a listed building and in certain circumstances this may lead to prosecution resulting in an unlimited fine or imprisonment.

### **What is a Breach of Condition Notice?**

This can be used as an alternative to an Enforcement Notice, and is used to enforce the conditions of a planning permission, which control or limit a development. Unlike an Enforcement Notice there is no right of appeal, so failure to resolve the matter can lead to prosecution and a fine.

### **What is a Stop Notice?**

When a serious breach of planning control occurs, either a Stop Notice or Temporary Stop Notice can be served. These have the power to stop building works or any unauthorised use from continuing. They are usually used where the unauthorised activities are causing a threat to public safety. A Temporary Stop Notice can be served immediately, and remains in place for 28 days. A Stop Notice must however be served with or after an enforcement notice. There is no right to appeal a Stop Notice, so failure to stop work may be met with a fine.

### **Can an enforcement or listed building enforcement notice be appealed against?**

Any person with an interest in the land concerned can appeal in writing to the Scottish Ministers against an enforcement or listed building enforcement notice. Appeals are usually dealt with by Reporters of the Scottish Government's [Directorate of Planning and Environmental Appeals](#) (DPEA).

### **On what grounds can Appeals be made?**

Appeals can only be made on certain specified grounds. These have been amended by the 2006 Planning Act, and have resulted in a number of changes. For example, you can no longer appeal on the basis that planning permission ought to be granted or that the relevant condition or limitation should be discharged. Forms and guidance on appeals for Enforcement Notices and Listed Building Enforcement Notices can be found online at the Directorate of Planning and Environmental Appeals [website](#).

### **What if an Appeal fails, or is not lodged?**

If an appeal is not lodged or is dismissed, the enforcement notice will become effective and must be complied with. Depending upon the type of notice, failure to comply may result in a prosecution, a fixed penalty or the removal of the illegal development and a recovery of costs.

### **What about time limits for Enforcement action?**

Enforcement action can only be taken within set time limits. These are 4 years for building or engineering operations, or the change of use of a building to a dwelling, and 10 years for any other breach such as an unauthorised change of use to a workshop or a breach of a planning condition. If no action is taken within the 4 or 10 year period the development becomes lawful for planning purposes.

### **What is a Certificate of Lawful Use?**

A person who is unsure about whether planning permission is required, or who wishes to establish the lawful use of their land may apply for a Certificate of Lawful Use or Development. This is a formal certificate which establishes whether the proposed or existing use of buildings/land, operations (development that has been carried out) or failure to comply with a planning condition is lawful for planning purposes. If approved, and considered to be lawful, planning permission will not be required and no enforcement action can be taken. If the application is refused, the applicant can appeal to the Scottish Ministers against the decision.

### **How do I inform my Planning Authority of unauthorised works?**

If you are aware of unauthorised works or breaches of planning conditions, you should contact the enforcement officer at your planning authority who will investigate.

You can encourage the planning authority to take action by:

- Asking them if planning permission has been granted.
- If planning permission was not granted, contact the planning authority in writing to tell them of the unauthorised development.
- Keep a note of the activities of the unauthorised development - for example, noise levels, opening hours, activities happening. This could be useful evidence.
- Contact your community council or local councillor to put forward your objections.

### **Obtaining further information**

- Contact your planning authority. (Every planning authority in Scotland is required to produce an Enforcement Charter which sets out how the enforcement process works and their roles and responsibilities. This is an important document as it contains standards on how they will deal with enforcement. You can obtain a copy from your planning authority, and there should also be a copy on their website.)
- Scottish Government [Planning Circular 10/2009: Planning Enforcement](#).

Note - this information sheet contains only a brief outline of the Enforcement process. More detailed information is contained within the above Circular.

### **How can PAS help?**

If you are still unsure or need independent advice, then PAS may be able to help. Contact our **planning helpline** on **0300 323 7602\*** (\*calls cost no more than a national call rate).

[www.pas.org.uk](http://www.pas.org.uk)