

# South Ayrshire Council Planning Service

## Enforcement Charter

This Charter is also available in South Ayrshire libraries or from

Planning and Building Standards  
South Ayrshire Council  
County Buildings  
Wellington Square  
Ayr  
KA7 1DR



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## 1. Introduction

The Scottish Government places a strong emphasis on the role of Planning enforcement in delivering key policy objectives and maintaining public confidence in the Planning system. The Planning etc. (Scotland) Act 2006 introduced the requirement for Councils to produce enforcement charters, as a means of clarifying the purpose, powers and raising the overall profile of Planning enforcement. This charter, which was revised in 2022, explains what enforcement means, what the Council can and cannot do, the service standards and what happens at each stage of what can be a lengthy process.

Planning permission is required for most development that takes place in Scotland, with the exception of a wide range of “permitted developments” including some changes of use. Sometimes, development is undertaken without the necessary permission or without complying with conditions of a permission which has been granted. In such cases, the Council has powers to take action to remedy the issues which can occur.

There is a key role for members of the public to alert the Council to any potential breached of Planning control they become aware of, whether large or small.

The Council can also monitor high profile and other developments of public interest, where resources allow, to ensure Planning regulations and conditions are being adhered to.

**It should be noted that enforcement action is a discretionary power:** even when a breach of Planning control has occurred, and it may be determined by the Council that it would not be in the public interest to take formal action. The Planning system does not exist to protect the interests of private individuals against each other but must work in the public interest. The Council, as Planning Authority, must consider each case on its merits and decide the most appropriate response. The Council is unlikely to take formal action, for example over developments, which in Planning terms, are seen to be acceptable.

Enforcement is one of the most complex parts of the Planning system. The aim of this Charter is to ensure that the adopted procedures are applied fairly and reasonably, and that interested parties are kept informed and are made aware of the process.

It is understood that Planning enforcement is an issue that interests many people, and it is hoped that this Charter is useful. It should be noted that we regularly review the Charter and that comments on its content are welcomed. This Charter sets out the current powers available to Planning Authorities. These powers are set out in the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc. (Scotland) Act 2006.

## 2. What is Planning Enforcement?

Planning permission is required for most development that takes place in Scotland with the exception of some minor works. Under Scottish legislation the responsibility for Planning rests with the Planning Authority. Therefore, the Council is responsible, where necessary and appropriate in the public interest, for taking enforcement action when breaches in Planning control have taken place. The carrying out of development without Planning permission; Listed Building consent; or the failure to comply with any conditions attached to a Planning permission; or the lopping, topping or felling of protected trees are examples of breaches of Planning control.

The Council is committed to providing an efficient and effective Planning service in the interests of the local community. To provide a credible and effective Planning service the Council must be both reactive and proactive: reactive in responding to complaints and proactive in monitoring breaches of Planning control. The Council relies on the public to alert us to any breaches in the South Ayrshire area. Confidence in the Planning process is undermined if an unauthorised development is allowed to proceed with no intervention by the Council.

The Scottish Government have provided Planning Authorities with a legislative toolkit to resolve breaches of Planning control.

It should be borne in mind that not all development requires Planning permission as some minor development does not require the benefit of Planning permission. Development can be time-barred from enforcement action and therefore the Council does not have powers to act in such circumstances. In addition, enforcement is a discretionary power, and the Council is not bound to act. Consideration will be given to whether taking action is in the public interest and whether a retrospective Planning application would have received Planning permission. The purpose of Planning enforcement is to resolve the problem rather than punish the developer and any action must be appropriate to the scale of the breach. For instance, if an Enforcement Notice is served, it can affect the property significantly, as it would be revealed on a Property Enquiry Report and could deter potential purchasers.

Enforcement is a complex part of the Planning system. The purpose of this Charter is to outline the Scottish Government's enforcement toolkit, provided by legislation, and to explain the procedures South Ayrshire Council will follow. It provides a consistent and transparent approach to the Planning enforcement process. The Charter also provides details of the service standards adopted by South Ayrshire Council in dealing with Planning enforcement and demonstrates the Council's commitment to provide the local community with an efficient and effective enforcement service. It also explains what happens at each stage of what can be a lengthy process.

### **SERVICE STANDARD**

*By publishing our standards and targets, we aim to improve our enforcement service and make it responsive to the needs of our customers. This Enforcement Charter will be monitored, reviewed and updated to take account of any legislative or Government policy and guidance changes and any feedback received.*

### 3. What is a Breach of Planning Control?

Planning legislation is set out in the Town and Country Planning (Scotland) Act 1997 as amended.

This defines development as:

***“The carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in use of any buildings or other land.”***

Under The Town and Country Planning (General Permitted Development) (Scotland) Order 1992; the Town and Country Planning (Use Classes) (Scotland) Order 1997 and the Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2011, certain types of development are permitted without the need for Planning permission. Additionally, professional judgements must be made in each individual case as to whether Planning permission or related consents, such as Advertisement Consent or Listed Building Consent, are required for development and/or the display of advertisements.

Often Planning permission or other consents are granted with conditions or legal agreements attached, imposing limitations on the development.

Under Sections 150-155 of The Town and Country Planning (Scotland) Act 1997 certain developments are lawful after timescales are exceeded:

- The erection of buildings and other works – 4 years.
- Changes of use to a single dwelling house – 4 years.
- Changes of use of buildings or land – 10 years.
- Non-compliance with Planning conditions – 10 years.

After this time the development is lawful and immune from enforcement action.

There is no time limit for taking enforcement action against unauthorised works on a listed building.

For the purposes of this Charter, a breach in Planning control is therefore considered to be: **where development or works to protected trees has taken place without the required permission or consent or the failure to comply with any condition, agreement or limitation attached to any Planning permission or related consent, or departures from Planning permission and/or approved plans.**

Planning permission or other statutory consent is not always sought, and conditions and legal agreements are not adhered to. It is in these instances the Council will undertake investigations and where necessary or appropriate will take action using the **Planning Enforcement Toolkit**.

Generally, there is no direct criminal liability for carrying out unauthorised development except in certain instances where the breach relates to a listed building, advertisements or protected trees. A criminal offence occurs when the requirements of an enforcement notice are contravened, or any person wilfully undertakes works to protected trees in contravention of a tree preservation order or conservation area designation. In certain circumstances, the Council may choose to refer the matter to the Procurator Fiscal. However, it is for the Procurator Fiscal, not the Council, to decide whether the matter merits further inquiry, and it may be that only in extreme cases will criminal proceedings be initiated by the Procurator Fiscal. If a prosecution is taken, and a guilty verdict obtained, either by plea or following trial, a fine of up to £50,000 can be imposed.

### ***What legislation applies to Planning Enforcement?***

For further information on Planning enforcement legislation is available from [Home \(Legislation.gov.uk\)](https://www.legislation.gov.uk) (for the Planning Acts referred to below) and [The Scottish Government - gov.scot \(www.gov.scot\)](https://www.gov.scot) (for the Circular referred to below).

The legislation comprises; the Planning (Scotland) Act 2019, the Town and Country Planning (Scotland) Act 1997 (as amended), Part 4 of the Planning etc. (Scotland) Act 2006, Chapter IV of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, Circular 10/2009: Planning Enforcement and The Historic Environment (Amendment) (Scotland) Act 2011.

## **4. What's in the Planning Enforcement Toolkit?**

The most effective tools to resolve potential enforcement matters are negotiation and mediation. In many cases the breach is trivial and minor, with no formal action required by the Council.

However, there are several other legislative tools currently available to the Council to pursue formal action. This toolkit explains what these are.

### **4.1. Certificate of Lawfulness**

A person can apply for a Certificate of existing or proposed lawful development or use. The application for a Certificate seeks to prove that the development did not require Planning permission for the works already undertaken, either because the development is time-barred (as detailed above by Section 150-155 of the Act) or because it did not constitute development under the terms of Planning legislation. A Certificate of proposed lawful development or use can also be obtained for proposed works or uses that do not constitute development requiring Planning permission.

### **4.2. Retrospective Planning Applications – Section 33A Notice**

In some cases, unauthorised development may be made acceptable by the imposition of conditions on a Planning permission or consent. In these instances, it is appropriate to seek submission of a retrospective application for the development. Under Section 33A of the Planning Act, the Council may issue a "Notice requiring an application for Planning permission for development already carried out." Failure to comply with this Notice may result in formal enforcement action being taken. The application is then processed in the normal way. The fact that the development has already been carried out in part or full has no bearing on the determination of the application.

If the development is unlikely to receive permission, the Council should not encourage the submission of a retrospective application, although it remains the owner's/applicant's right to make an application for consideration by the Council.

### **4.3. Planning Contravention Notices (PCN)**

A PCN can be used by the Council to gain further information and to ascertain whether there has been a breach of Planning law. This can assist in the decision as to whether to take enforcement action. The notice can be served on the owner, occupier, or any other person with an interest in the land. Failure to comply with the terms of the notice within 21 days of its service represents an offence, which is liable to a fine.

### **4.4. Section 272 Notice**

This Notice can be used by the Council to obtain information as to who has an interest in land and the use of the land, with a specified response time of not less than 21 days. There is no appeal against this Notice and failure to comply is an offence, which is liable to a fine.

## **4.5. Section 179 Notice**

This Notice can be served on the owner, lessee or occupier of land and/or buildings where the amenity of an area is adversely affected by the condition of that land and/or buildings. The Notice must set out the steps required to make improvements. There is no right of appeal and failure to comply is an offence. Such notices will only be used in extreme cases which are causing a significant, in the view of the Council, impact upon public amenity in an area of sensitivity, rather than for buildings/land with a general maintenance problem.

## **4.6. Stop Notice (SN) and Temporary Stop Notices (TSN)**

These can be used by the Council in extreme cases where there is a severe detrimental impact upon public amenity and immediate action is justified. A Stop Notice can only be used at the same time or after the service of an Enforcement Notice and before all appeals against such a notice are resolved. It takes immediate effect. There is no right of appeal and fines can be imposed for non-compliance. However, if a SN/TSN is served without due cause, or an appeal against an accompanying Enforcement Notice is successful, the Council may be liable for compensation claims. A Temporary Stop Notice might not necessarily prohibit the activity over the entire site. It might instead restrict the activity to a certain area or times.

## **4.7. Enforcement Notice (EN)**

An EN can be served on the owner, occupier or any other person with an interest in the land. The notice is required to set out the steps necessary to secure compliance and a timescale must be given which is at least 28 days. There is a right of appeal and therefore use of an EN is not ideal as the appeal process can slow down eventual compliance. However, the fine is greater than other notices. If the EN is not complied with, the Council can also take Direct Action to remedy the breach and recover the expenses incurred from the owner. Failure to comply with the terms of an EN is a criminal offence, which could result in prosecution, as explained above. Although Enforcement Notices are not formal charges on the property, they are included in Property Enquiry Reports and can, therefore, deter potential purchasers.

## **4.8. Breach of Condition Notice (BCN)**

A BCN can be used to secure compliance with any conditions or limitations on a relevant permission for the development. Similar to the EN, the notice must outline the steps required to comply and set out a timescale which is not less than 28 days. The notice takes effect upon service. There is no right of appeal. As with Enforcement Notices, failure to comply with a BCN can result in a referral being made by the Council to the Procurator Fiscal. A BCN would also be included in a Property Enquiry Report and therefore can deter potential purchasers.

## **4.9. Fixed Penalty Notices (FPN)**

A Fixed Penalty Notice may be used as an alternative to prosecution for breach of an enforcement notice. There is no right of appeal against an FPN. No court proceedings can be initiated during the 30-day payment period. However, should the penalty not be paid within the 30-day period then it would remain open to the Council to consider referral to the Procurator Fiscal for prosecution. Use of Fixed Penalty Notices is discretionary, and the Council will decide each case based on principles of proportionality. FPN's relate to breaches of enforcement notices and similar action can be taken for failure to comply with Breach of Condition Notices and Listed Building Enforcement Notices

## **4.10. Direct Action (DA)**

DA can be taken by the Council when any steps required by an EN have not been carried out within the timescales specified. The Council may enter the land/building and carry out the steps independently and, thereafter, attempt to recover the costs incurred from the owner through the courts if necessary.

## 4.11. Interdicts

Interdicts are used to prevent or stop a breach in Planning control before it has occurred or in cases of extreme urgency or importance. It can also be used as an alternative to EN or BCNs and does not require these to have been served either simultaneously or previously. Like Stop Notices it is generally only used as a last resort by the Council when all other action has failed since the granting of an Interdict is at the Court's discretion and a failure to secure one is likely to carry a heavy cost for the Council. Some breaches in Planning control are subject to separate legislation, namely listed buildings and advertisements.

There are also several specific notices available to use: Listed Building Enforcement Notices, Advertisement Enforcement Notices and Advertisement Discontinuance Notices, Tree Preservation Order Notices and Special Enforcement Notices.

## 4.12. Listed Buildings

Breaches of listed building control are considered a serious matter. The legislation makes it clear that it is a criminal offence to undertake works to demolish, significantly alter, or extend a listed building without the proper authorisation from the Council and, in some circumstances, Historic Scotland. On conviction, this can lead either to an unlimited fine or imprisonment.

A Listed Building Enforcement Notice can be served on the owners and anyone with an interest in the property. The procedures are similar to the service of an EN and there is a right of appeal to the Scottish Ministers.

## 4.13. Advertisements

The control of display of advertisements is covered by the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984. Many advertisements can be displayed with 'deemed consent' which means that they do not need formal consent from the Council providing certain criteria are met. Advertisements with deemed consent may include shop fronts outwith Conservation Areas, estate agent signs provided they are displayed on the land to which they refer and temporary signs for community charity events in certain cases.

Displaying an advertisement in contravention of these Regulations is an offence. An Advertisement Enforcement Notice can be served for an advertisement which has no consent or where condition or limitation on any consent is not complied with. In such cases a time period of a minimum of 28 days is imposed. However, this period can be reduced to 7 days if the Council believes there is an urgent need for the advertisement to be removed in the interests of public safety. The notice can also require that a specific land area cannot be used to display advertisements and therefore any subsequent advertising on the site would amount to a breach of the notice. There is a right of appeal to the Scottish Ministers

Some advertisements can be displayed with deemed consent and without the need for formal advertisement consent. However, where it is considered that the advertisement causes a severe detrimental impact upon amenity or is a danger to members of the public, an Advertisement Discontinuance Notice can be served specifying when the display must cease. A minimum of 28 days is given after which the notice will take effect. There is a right of appeal to the Scottish Ministers.

The Council has the powers to remove/destroy placards and posters which are displayed without advertisement consent. If the owner/person who has displayed the advertisement can be identified, two days' notice is required to be given to inform the advertiser that the Council may take action to remove the signage. If the advertiser cannot be identified the advertisement can be removed immediately.

The Council has the power to enter unoccupied land to remove an advertisement but cannot remove advertisements displayed within a building to which there is no public access.



#### **4.14. Crown Land**

A special Enforcement Notice can be served relating to unauthorised development on Crown Land. Its procedures are similar to those for a general Enforcement Notice in terms of service, timescales and appeal.

#### **4.15. Tree Preservation Orders (TPO) – Section 168 Notice**

It may be an offence - liable, on conviction, to a substantial fine - to undertake works to a tree or trees protected by a Tree Preservation Order or Conservation Area designation, without the prior consent of the Council. In circumstances where (a) protected trees have been removed, uprooted or destroyed, in contravention of a tree preservation order or conservation area designation, and the landowner has failed to comply with the statutory replanting duty; or (b) the landowner has failed to comply with a replanting condition imposed on a permission granted under a tree preservation order, the Council may, in addition to referring the matter to the Procurator Fiscal, issue a Notice under Section 168 of the 1997 Act, requiring the owner of the land to plant another tree or trees of an appropriate size and species at the same location within a specified time period. Such a Notice may only be served within 2 years from the date on which the failure to comply came to the knowledge of the Council.

There is a right of appeal to the Scottish Ministers against such a notice, on various specified grounds.

The Council will only use such a notice if it considers the loss of trees has had a significant adverse impact on the integrity, character and appearance of the tree preservation order or conservation area designation and all efforts to secure replanting by negotiation have been exhausted. When work required by a re-planting notice has not been carried out within the specified period, the Council may enter the land and plant the tree or trees, and, thereafter, seek to recover from the landowner any costs reasonably incurred in so doing.

#### **4.16. High Hedge Notice (HHN)**

The High Hedges (Scotland) Act 2013 offers a possible resolution to neighbour disputes over high or “nuisance” hedges. Further information can be found on our website: [High hedges - South Ayrshire Council \(south-ayrshire.gov.uk\)](https://www.south-ayrshire.gov.uk)

### **5. When will South Ayrshire Council take action?**

The power to take enforcement action is discretionary. The purpose of Planning enforcement is to resolve the breach in Planning control in the interests of the local community, particularly when the breach causes unacceptable harm to public amenity. The Planning system does not exist to protect the interests of one person or business against the activities of another, although in some cases private interests may coincide with the public interest.

Enforcement action should be used to:

- Remove any detrimental effects of unauthorised development
- Bring unauthorised development under control

It is not intended to be a punitive process. Several considerations must be taken into account before the Council decides what course of action it will take.

Councils are discouraged from using powers of enforcement to regularise development that would have received the relevant permission should an application have been received.

The Council will also prioritise its resources appropriately and consider the level of harm being caused by the unauthorised development upon the local community.

## 6. What are South Ayrshire Council's Priorities?

The Council recognises that when a complaint is made that there is a high expectation for the matter to be resolved quickly and any delays can be frustrating. Due to the large number of enforcement complaints received by the Planning Service it is necessary for them to be prioritised and available resources to be assigned appropriately and proportionately. This Prioritisation Scheme has been adopted to take into account the level of harm being caused to the local community and public amenity. South Ayrshire Council is committed to investigate every suspected breach and as stated, both the contravener and the complainants will be regularly kept informed. Regardless of the source of the complaint it will be assessed against the priorities listed below. The timescales placed against the priorities is that which is considered to be reasonable but there will be instances when they are not met due to unforeseen circumstances, such as inaccessibility to the land/building, difficulties in tracing the landowner(s), and protracted negotiations. In all cases it will be for the Planning authority to decide whether and to what level any harm to public amenity results from any suspected breach.

### 6.1. Priority Matters

The following alleged breaches will take priority in the case work of the Enforcement Team:

- Demolition or alterations to a listed building or a building in a conservation area
- Development which may result in damage to sites of international or national importance, for example Sites of Special Scientific Interest and Scheduled Ancient Monuments and built heritage resources.
- Development or a breach of condition attached to a Planning permission, generally for major developments, which may result in immediate or severe harm to the local community
- Works in contravention of the requirements of a notice or a continuing breach of Planning control
- Unauthorised felling of trees protected by Tree Preservation Orders

#### **SERVICE STANDARD**

*All written complaints, whether by letter or e-mail, will be treated in the same manner regardless of the source, in accordance with the Prioritisation Scheme.*

### 6.2. Non-Priority Matters

The following cases will generally not be regarded as a priority:

- Development likely to cause limited or no harm to public amenity.
- Advertisements (unless there is likely to be an impact upon road safety, which may be referred to the Roads Department for attention).
- Untidy land.

## 7. What are The Council's Planning Enforcement Service Standards and Targets?

South Ayrshire Council is committed to providing an efficient and effective Planning enforcement service with continuous improvements introduced through monitoring and reviewing processes.

The following service standards are summarised from the body of this Charter as:

- By publishing our standards and targets, we aim to improve our enforcement service and make it responsive to the needs of our customers. This Enforcement Charter will be monitored, reviewed and updated to take account of any legislative or Government policy and guidance changes and any feedback received.
- The Council will operate a re-active and pro-active enforcement service
- All written complaints, whether by letter or email, will be treated in the same manner regardless of the source, in accordance with the Prioritisation Scheme, as follows:
- Upon receipt of an enforcement complaint an acknowledgement letter or e-mail will be sent to the complainant within 5 working days.
- The site visit will be carried out in a professional manner with identification shown and access only to be gained where necessary
- All interested parties (complainants and contraveners) will be advised of the progress and outcome of the investigations regardless of whether action is to be pursued or the case to be closed. Where action is to be taken, parties will be kept informed.
- If formal action is to be taken the complainant will be notified as appropriate.
- The Council will endeavour to resolve alleged breaches of Planning law by means of negotiation and informal action. Formal action by the Council will be as a last resort or used in situations where an immediate solution is necessary in the interests of public amenity.

The following will be taken into account when deciding whether to pursue enforcement action:

- Scottish Government Planning policy and guidance.
- South Ayrshire Council Planning policy and guidance.
- The degree of harm being caused to public amenity.
- Whether such action is in the public interest.

The decision whether to pursue action will be taken by the Planning Service of the Council.

### **SERVICE STANDARD**

*A full record of each enforcement investigation will be kept giving the reasons why action was or was not pursued by South Ayrshire Council.*

## 8. How does the Planning Enforcement process work?

An investigation into a possible enforcement matter will have been generated from either an external source e.g., community or individuals, or less often, an internal source e.g., Planning officer undertaking their duties. Proactive monitoring is also undertaken through the review of notices returned to the Council advising of the commencement and completion of development. The public plays a crucial role in reporting possible breaches in Planning control. Regardless of the source, the process will be identical in terms of the investigation, consideration and ultimately deciding what action to be taken. South Ayrshire Council is committed to providing a fair and reasonable enforcement service.

### 8.1. How to make a complaint regarding unlawful Planning activity/breach of Planning conditions:

Complaints of suspected breaches of Planning control should be made to the Council in writing or by email. Complaints made by telephone will only be acted upon at the discretion of the Planning and Building Standards Service, and usually only if they are considered by the Council as requiring immediate action. Anonymous complaints will not be processed unless they are considered to be such that they require immediate action by the Council in terms of health, safety or amenity.

#### **CONTACT DETAILS**

You can contact the Planning Service by:

By e-mail to: [Planning.Enforcement@south-ayrshire.gov.uk](mailto:Planning.Enforcement@south-ayrshire.gov.uk)

Writing to the following address:

Planning and Building Standards  
South Ayrshire Council  
County Buildings  
Wellington Square  
Ayr  
KA7 1DR

By telephone to: (01292) 616 107

**While the Council is subject to the requirements of the Freedom of Information (Scotland) Act 2002, rulings from the Information Commissioner indicate that information received in confidence in respect of enforcement is exempt from the requirements of that Act. Therefore, information including names and contact details of complainants will always be treated confidentially.** A possible exception to this could occur if the breach is referred to the Procurator Fiscal when total confidentiality may compromise the Council's ability to present sufficient evidence to secure a successful action against the contravener and consequently be unable to achieve a remedy to the alleged breach.

The Planning and Building Standards Service will not under any circumstance become involved in any complaints relating to a civil matter or neighbour disputes where there is no breach in Planning law. For example, boundary disputes, land ownership or complaints regarding vandalism or nuisance will not be investigated. Complaints that are obviously malicious or vexatious in nature will not be taken up. Complaints that are general and not related to a specific development will also not be pursued. Complaints relating to matters dealt with under other legislation, for example, Environmental Health, which do not relate to Planning legislation, will not be pursued. An example is noise nuisance which will only be investigated where noise levels are limited by condition on a Planning permission. Planning enforcement action cannot be taken where the Council has an ownership interest in the land.

When making a Planning related complaint, it is helpful if the following information is provided, where possible. Such information will enable the Council to record all complaints in a consistent manner and will ensure that all the necessary information is received allowing the investigation to be commenced without delay.

- The name and address of the owner/occupier or the person/business operating at the property concerned.
- The location of the site including a full postal address.
- Details of the suspected breach of Planning control including any evidence to substantiate any claims made.
- Details of how long the suspected breach of Planning control has been taking place or when the unauthorised works commenced or were completed.
- Information of the harm the suspected breach of Planning control is causing and how it affects you.
- Your contact details, including your name, address, email address (if possible) and telephone number. This enables the Council to register the complaint and make future contact with updates regarding the investigation and what action, if any, will be taken.
- The name of any contractors involved in undertaking the unauthorised works.

South Ayrshire Council will not tolerate any inappropriate or defamatory statements within any form of communication including letters of complaint. The content of communications should focus on factual information.

South Ayrshire Council acknowledges that complainants can be very concerned about a suspected breach in Planning control, but under no circumstances will anger or abuse against Council officers be tolerated. Officers of the Council are not directly responsible for the breach and are there to assist complainants. They are only able to work within the parameters of the legislation. The Council operates a Respect at Work Policy and officers have the right to terminate abusive telephone calls or conversations. Any further ongoing communication is then likely to proceed in writing.

## **8.2. What will we do with complaints?**

Once the complaint has been received it will be allocated to the appropriate Planning Officer by either the Planning Co-ordinator or Compliance Supervisor and prioritised in accordance with the Prioritisation Scheme included in this Charter.

Complaints that do not fall within the jurisdiction of the Planning Authority will not be investigated further. In such instances the complainant will be advised of this and, where possible, the appropriate body to which the complaint ought to be directed.

Officers may, as appropriate, visit the site to investigate the complaint and establish what works or activities are taking place at the site.

The most appropriate enforcement approach will be taken to remedy each complaint on a suspected breach of Planning control. In that regard it may also be appropriate to consider whether any other public authority (e.g., the Roads or Environmental Health Authority) is in a better position to take remedial action. Breaches of Planning control on Council owned land will not be the subject of a Planning enforcement notice but the complaint will be passed to the Council's Property and Neighbourhood Services for their attention and the complainant advised accordingly.

### **SERVICE STANDARD**

*We will aim to send an acknowledgement letter or e-mail to the complainant within 5 working days of receipt.*

## **8.3. What will happen during the site investigation?**

South Ayrshire Council is committed to treating both the complainant and the alleged contravener fairly. The following process will be followed during a site inspection:

- Proof of identity of the Council's officer(s) will be shown
- The purpose of the visit and the suspected breach of Planning control will be explained
- Access to the land/buildings will only be made if necessary to complete the site visit. The Council has powers to enter the land / buildings for enforcement purposes to establish whether a breach of Planning control or unauthorised tree works have occurred, to check compliance with a formal Notice, check whether a breach has been satisfactorily resolved or obtain information relating to high hedge notices.
- Notes and photographs will be taken
- Due to the nature of the investigation of a suspected breach of Planning control it is not appropriate to give advance notice of a site visit.

### **SERVICE STANDARD**

*The site visit will be carried out in a professional manner with identification shown and access only to be gained where necessary.*

## **8.4. What will happen after the site investigation?**

Following the site inspection further research may be undertaken into the Planning history or other relevant sources, for example ownership details and records from other Council services such as Building Standards. A letter will be sent to the suspected contravener advising whether a breach of Planning control has been found, and if so the likely course of action to be taken by the Council. The letter may outline any steps that are required to remedy the breach and an opportunity to discuss the matters and any possible options available will be given. In all cases an opportunity to remedy the breach is given to the person concerned rather than the Council requiring taking formal action, and the contravener will be kept informed of any intended course of action by the Council.

The complainant will also be advised of the outcome of the investigations, that:

- No breach of Planning control has been found and the case is closed
- A breach of Planning control has been found and what action is proposed to be taken to resolve matters
- A breach of Planning control has been found but does not merit enforcement action

It is not always possible to gauge how long it will take for the Council to resolve suspected breaches. This is due to their often complex and sensitive nature and the need to collect detailed and accurate information before acting. This is particularly important should the Council serve a notice or have its actions appealed against. Appeals can be lost if correct procedures are not followed, and the Council can be penalised financially in some instances.

Complainants will be kept informed as regularly as resources allow regarding the progress of their complaint. This will be done in writing or preferably by email.

#### **SERVICE STANDARD**

*All interested parties will be advised of the outcome of the investigations regardless of whether action is to be pursued or the case closed.*

*If formal action is to be taken, the complainant will be notified as appropriate.*

### **8.5. What will happen if a breach in Planning control is found?**

The Council must first assess whether the breach is such that formal action is necessary in the interests of the community and public amenity. Cases of lower priority, as identified in the Prioritisation Scheme, may be closed with no further action. These will be cases where the breach is minor and has, in the Council's view, no harmful effect upon public amenity. Where the breach is thought likely to receive Planning permission or consent upon receipt of an application then enforcement action will not be pursued whilst an application is being considered. It would not be expedient to take action against a development which was acceptable when assessed against policy and guidance and did not cause any harmful impact upon public amenity.

Where a breach in Planning control is found and it is considered to be a priority due to its harmful effect upon public amenity, it is South Ayrshire Council's aim to try to remedy the situation through informal action, where possible and appropriate. It is not in the Council's or the community's interests to proceed to formal action without first exploring and using other tools to remedy the situation. Action will always be taken that is commensurate and proportionate with the breach of Planning control to which it relates.

Negotiation is often the best tool to remedy breaches of Planning control. This is the preferred course of action.

In accordance with Scottish Government guidance, the Council will not seek a retrospective application solely to regulate. A retrospective application will only be sought where the proposals are acceptable in principle but require an amendment or remedial works to be undertaken by the owner/person which can be imposed by the use of an appropriate Planning condition to remedy the breach. For example, a change of use may be acceptable upon control of its hours of opening, or a development may be acceptable upon a detailed planting scheme being implemented and maintained.

Retrospective Planning applications are treated in the same way as Planning applications submitted prior to development. The application will be assessed against the Council's Planning policies and any relevant Scottish government policy and guidance together with other material considerations, including third party representations and consultation responses. Formal enforcement action will not be pursued during the consideration of the retrospective application since to do so could prejudice the decision-making process.

Alternatively, removal of the development in whole or part, or the unauthorised use to cease, may be sought. The Council may also require considering direct action in such instances.

Reasonable timescales, within the view of the Council, will be required for responses from the contravener either for the submission of a retrospective Planning application or for remedial works or amendments to be undertaken.

Most enforcement cases are resolved without formal action. However, if the issue is not resolved informally, the Council will consider what the most appropriate way forward may be. This decision will be made by the Compliance Supervisor/Enforcement Officer, in consultation with the Planning Co-ordinator and/or Service Lead. Where appropriate, for example where pursuing the action could lead to a possible cost to the Council, the matter will be referred to the Service Lead for final decision.

### **SERVICE STANDARD**

*The Council will endeavour to resolve any breaches of Planning control by means of negotiation and informal action. Formal action such as the service of an enforcement notice or breach of condition notice by the Council will be used only as a last resort or in situations where an immediate solution is necessary in the interests of public amenity.*

Regardless of which formal Notice is served, the Notice will include the following information:

- A description of the breach of Planning control that has taken place
- The steps that need to be taken to remedy the breach.
- The timescale for taking these steps.
- The consequences of failure to comply with the notice.
- In the case of an Enforcement Notice any rights of appeal, and how to lodge an appeal.

The Planning Authority is also required to keep an Enforcement Register. It is a public document which lists details of all the enforcement notices, breach of condition notices and stop notices. Information from this Register is included in Property Enquiry Reports obtained during the sale of a property. The Enforcement Register is available for viewing at County Buildings, Wellington Square, Ayr KA7 1DR during the hours of 0845 – 1645 (Mon-Thurs) and 0845 – 1600 (Friday).

The Planning Enforcement Register forms part of the Council's publications scheme and can also be found on our website: [Planning Enforcement - South Ayrshire Council \(south-ayrshire.gov.uk\)](https://www.south-ayrshire.gov.uk).

Where the breach is resolved the complainant will be notified that the case is closed giving the reasons behind the Council's action and decision.

### **SERVICE STANDARD**

*The Council will acknowledge all enforcement complaints, undertake site visits and always communicate the outcome with all complainants.*

If, however, the situation is not resolved it is open to the Council to report the matter to the procurator fiscal or to take Direct Action (as detailed in the Planning Enforcement Toolkit). If Direct Action is the chosen way forward, the Council has the right to enter the land/building and carry out the works required to ensure compliance with any notice served. Any expense incurred can and will be recovered from the landowner or lessee through legal and court procedures where necessary.

## **8.6. What is the Appeal process?**

As detailed above in the Planning Enforcement Toolkit, there is a right of appeal by the contravener against the service of some of the specific notices. A contravener can appeal to the Scottish Government. Most appeals are dealt with by what is called the written representations process whereby written statements are submitted and exchanged. However, some can be determined by a hearing of public local inquiry. Appeals are required to be submitted prior to the notice taking effect and therefore normally within 28 days. As required by the Scottish Government, complainants will be notified if an appeal is lodged. Appeals against enforcement notices are dealt with, in most cases, by Reporters from the Scottish Government Directorate for Planning and Environmental Appeals (DPEA).



## 8.7. Grounds of appeal

There are seven grounds of appeal:

- That Planning permission should be granted for the alleged breach
- That the alleged breach in the notice has not occurred
- That there has not been a breach in Planning control
- That at the time of serving the notice, the alleged breaches were time-barred
- That the notice was incorrectly served on everyone with an interest in the land
- That the steps outlined in the notice to remedy the breach are excessive and that there are lesser steps which would achieve the same outcome
- That the time given in the notice to remedy the breach is too short

## 8.8. Appeal Outcome

- If an appeal is dismissed and the contravener is required to comply with the notice remedying the breach, it is the Council's responsibility to monitor and enforce the terms of the notice.
- If the appeal is allowed, this does not grant Planning permission, but no further enforcement action can be taken by the Council against the breach. The applicant then ought to apply for retrospective Planning permission.

## 9. How will South Ayrshire carry out pro-active enforcement?

The Council is committed to providing an effective and efficient enforcement service. A reactive service dealing with complaints alone is neither efficient nor effective. A strong pro-active service can act as a deterrent thus reducing breaches in Planning control.

There are several actions that South Ayrshire Council can and will take to be pro-active in enforcement management.

### 9.1. Monitoring

Monitoring of implemented Planning permissions will be carried out as resources allow since it is not, practical or proportionate for the Council to monitor all permissions/consents. Evidence suggests that Planning permissions are usually built according to approved plan and that where variation occurs this is usually minor and will not usually generate public amenity issues warranting monitoring or investigation. Permissions where there is a known public amenity issue will be monitored, for example, in relation to a retrospective Planning permission following enforcement involvement.

The Planning etc (Scotland) Act 2006 requires the notification of both the initiation and completion of development. This has proved to be extremely effective in enabling proactive monitoring of Planning permissions. A monitoring process at the initiation and completion of development ensures that developments adhere to any conditions attached to Planning permissions, legal agreements or limitations imposed on those permissions. Such notices also alert the Planning Service to the commencement of development so that proactive monitoring of development, where appropriate, can be proportionately undertaken.

Sometimes Planning permissions have conditions that require an action or mitigation (an action to counteract a negative impact) after the commencement of development. Development with potential for significant environmental impact, where the environmental impact requires ongoing monitoring, are prioritised for ongoing monitoring, as are development requiring a 'time specific' mitigation e.g., a road improvement requirement at the 100<sup>th</sup> house being built, for example.

### **Compliance Monitoring – Major Developments**

In relation to major developments such as windfarms, opencast coaling, quarries, landfill and housing developments over 50 units the Planning Authority will carry out planned and unplanned compliance monitoring site inspections throughout the life of the construction process and thereafter, as may be considered necessary.

In some instances, where a specialist knowledge base is required, the Planning Authority may engage Independent Consultants to carry out inspections, if considered necessary. A record is kept of all monitoring activity for major development sites including findings and any necessary actions and outcomes. The Council's webpage explains that monitoring records can be made available for public viewing should we receive a request for this information.

Information on what constitutes a major development can be found on the Scottish Government website: [Scottish Planning Series Circular 5 2009: Hierarchy of Developments - gov.scot \(www.gov.scot\)](http://www.gov.scot/resources/documents/2009/06/Scottish_Planning_Series_Circular_5_2009_Hierarchy_of_Developments.pdf).

### **9.2. Publicity**

South Ayrshire Council considers that successful enforcement, when achieved through appeal or through the courts, should be used as a deterrent to future similar breaches of Planning control. The Council therefore reserves the right to publicise such successes.

### **9.3. Implementation of policy and guidance**

Where relevant, upon the adoption of any new policies or guidance, South Ayrshire Council will publicise any changes.

### **9.4. Targeted action**

Targeted action may be used by South Ayrshire Council when several similar complaints are received about a particular problem. For example, unauthorised poster-boards can collectively have a detrimental impact upon public amenity. Targeted action, including publicity and direct correspondence, will be used to reinforce Council policy. All owners of unauthorised poster-boards will be contacted and given a timescale to remove them.

### **9.5. Engaging the local community**

The local community can greatly assist by alerting the Council to suspected breaches in Planning control for investigation in their own local areas.

Planning decisions are available on the Council's website: [Planning Applications - South Ayrshire Council \(south-ayrshire.gov.uk\)](http://www.south-ayrshire.gov.uk). Those who make representations on Planning applications are automatically notified in writing of the outcome and made aware of the availability of the decision on the website.

## 10. Other Useful Contacts:

### Planning Aid for Scotland

[Planning Aid Scotland](#)

### Public Services Ombudsman

[Home | SPSO](#)

### Directorate for Planning and Environmental Appeals

[Scottish Government - Planning and Environmental Appeals Division \(DPEA\) \(scotland.gov.uk\)](#)

### Health and Safety Executive

[Health and Safety Executive \(Scotland\) \(hse.gov.uk\)](#)

### Advertising Standards Authority

[Home - ASA | CAP](#)