GROWTH, PLANNING & DEVELOPMENT

PLANNING ENFORCEMENT CHARTER

Planning Enforcement, Monitoring Planning Conditions, High Hedges & Advertisements

2026 - 2028








Moray Council Planning Enforcement Charter

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Planning Enforcement Overview

Planning legislation requires the Council to prepare and publish a Planning Enforcement Charter. The Charter explains how the enforcement process works, the role of the Council, how we engage with developers and the service standards it sets itself. It also details what happens at each stage of what can be a lengthy process.

Planning permission is required for the majority of development that takes place in Scotland, with the exception of development that is permitted under the Town and Country Planning (General Permitted Development)(Scotland) Order 1992. Sometimes, however, developers or householders undertake work without planning permission or fail to implement the consent they have been granted in accordance with the approved plans and conditions.

Councils have powers to enforce planning controls in such cases, if they consider it is expedient and in the public interest to do so. We monitor developments to ensure planning controls are being followed, but there is also a role for the public in alerting the Council to any breaches of planning control they become aware of.

Enforcement can, in some cases, be one of the most complex parts of the planning system and can affect many members of the community. The aim of this charter is to ensure that adopted procedures are fair, reasonable, consistent and accountable, and that interested parties are fully aware of the procedures involved in the process, the powers available to the Council, and the limits of those powers.

We hope you will find this enforcement charter helpful and let us know if you think we could improve the service further.

Further copies of this Charter are available on the Council's website at **Enforcement Charter**, in local Libraries, local Council offices and from the address below:

Service Manager, Planning & Building Standards
Moray Council
Council Offices
Elgin
IV30 1BX

Key points on planning enforcement

Breaches of planning control do not, in most cases, constitute a criminal offence; however, unauthorised works to a listed building, or to a tree protected by a Tree Preservation Order, both of which are investigated by the enforcement team, do. The purpose of planning enforcement is to try and resolve the breach of planning control in the first instance where appropriate. However, enforcement action will be taken when it is deemed necessary to control the breach and to prevent further breaches occurring. Any action taken has to be proportionate to the scale of the breach and to the effect that it has on local amenity. Not complying with any formal notice that is served will result in a criminal offence taking place.

The Moray Council has statutory powers to investigate development carried out without planning permission, the breach of conditions attached to planning consents and other environmental matters which give rise to concern over general amenity. This can include land which has been allowed to deteriorate to such an extent that it affects the appearance of a wider area. We will take formal action where a satisfactory outcome cannot be achieved through negotiation. This means that the Council has to consider whether it is in the public interest to take enforcement action, and may decide that no action is necessary.

Where development has taken place without the necessary planning consent the Council would in most circumstances seek a retrospective application to consider whether what has been undertaken complies with the National Planning Framework 4 and the Moray Local Development 2020 and associated guidance before considering formal enforcement action unless where it was considered expedient for the breach to cease more timeously (to prevent injury or harm to amenity or in the interests of road safety).

The Council's authority to take enforcement action comes from government legislation. Further information on the use of enforcement powers can be found in the Scottish Government publication **Planning Circular 10/2009: Planning Enforcement.**

In relation to Listed Buildings and Conservation Areas guidance can be found in the **Managing Change Series (Historic Environment Scotland): Intervention by Planning Authorities**

Main issues

Is it a Planning Matter?

It is a common perception that planning can intervene to resolve all environmental matters. Many issues that are raised are controlled through other regulatory bodies.

The following are examples of issues that the Enforcement team cannot assist with:

- Civil disputes i.e. neighbour nuisance/boundary and land ownership disputes
- Enforcement of conditions on title deeds
- Noise and odour enquiries unless covered by a planning condition
- General land maintenance e.g. grass cutting
- Any wildlife Crime under the Wildlife & Countryside Act 1981 (as amended)

If we receive an enquiry which requires the involvement of another Council service we will pass it to the relevant service and we will inform you who we have contacted on the matter.
The main objective of planning enforcement is to remedy the undesirable effects of unauthorised development and to bring unauthorised activities under control, ensuring that the amenity of neighbours or a community is not adversely affected.

A breach of planning control is:

- Operational development such as building or engineering works which;
  - does not have planning permission or
  - benefit from permitted development rights.

- Material change of use of land or buildings which has a different or tangible impact in terms of land use.

- Development which has not been carried out in accordance with an approved planning permission.

- Failure to comply with a condition attached to a planning permission.

Other matters which also fall under the scope of planning control are;

- Demolition taking place in Conservation areas, without Conservation Areas consent.

- Works carried out to a Listed Building which effect the historic character or setting.

Planning and related consents, any conditions and also the approved plans can be viewed on line at **Public Access**

The Council follows guiding principles in relation to planning enforcement:

Expediency: Planning enforcement is a discretionary power which requires the Council to consider whether it is in the public interest to take enforcement action. There is no requirement for the Council to take any particular action on a breach of planning control; in many circumstances it is considered that action is not necessary or would be disproportionate to the breach. This approach is in line with Scottish Government guidance which states that formal enforcement action should not normally be taken where the breach does not cause harm.

Consistency: Each enquiry presents its own unique set of circumstances, we will endeavour to carry out our duties in a fair, equitable and consistent manner.

Proportionality: To ensure that any enforcement action taken is proportionate to the scale and nature of the breach that has occurred.

Negotiation: The enforcement powers provide leverage to resolve breaches and are not intended to be used as a punishment. In all but the most severe cases requiring immediate attention, we will seek to negotiate compliance in the first instance. However, negotiations will not be allowed to cause unreasonable and unjustified delay.

Section 1 - Priorities for Enforcement

Whilst all enquiries will be investigated we recognise that when an enquiry is made there is a high expectation for the matter to be resolved quickly and delays can be frustrating. Due to the large number of enforcement enquiries we receive it is necessary for them to be prioritised and the available resources allocated appropriately and proportionately. Below is the Council's classes of prioritisation.

1

Priority 1

- Breaches of planning conditions for major and local developments
- Demolition or alterations to Listed Buildings
- Unauthorised felling/inadequate protection measures of trees - either in a Conservation Area, covered by a TPO or protected by planning condition

2

Priority 2

- Any development that obstructs visibility or is a danger to pedestrian and highway safety
- Change of use of land and buildings
- Demolition or alterations to buildings in a Conservation Area
- Display of Advertisements where they have an adverse impact upon a Conservation Area.

3

Priority 3

- Display of Advertisements
- Untidy land
- Householder (extensions, outbuildings, boundary fences etc)

What to Expect

On receipt of a legitimate planning enforcement enquiry it is standard procedure for Officers to:

1. **Register the enquiry**
2. **Acknowledge the enquiry**
3. **Undertake a site history search**
4. **Visit the site**
5. **Assess if unauthorised development has been carried out or a planning condition has been breached**
6. **Consult with relevant consultees**
7. **Make recommendations on whether it is expedient and in the public interest to take enforcement action**

Enquiries that do not fall within the planning remit will not be investigated further and in such instances the enquirer will be advised. Where there is a suspected breach of planning control it may be necessary to utilise the notices described below to aid the enquiry process.

Service Standards

Service Standard - Acknowledging enquiries

- We will acknowledge an initial telephone, written or email enquiry within five working days of receipt and will include a reference number and contact details for the investigating officer.

Service Standard - Replying to enquiries/keeping you informed

- If you make an enforcement enquiry, you will be updated as regularly as resources allow. This will be done in writing, preferably by email.

Service Standard - Timescales for resolving enquires

- 75% of all new enquiries will be assessed within a period of 10 weeks up to the point of taking formal enforcement action or no further action.

Section 2 - How to request an investigation into a possible breach of planning control

Members of the public have a vital role in reporting breaches of planning control. Any concerns should be raised with us at the earliest opportunity. You can make enquiries by telephone on 0300 1234561. There is a **Planning Enforcement enquiry form** on the Council website which can be completed. This allows us to have a clear record of the enquiry and to keep you informed about any action we take. Full contact details are provided at the end of the Charter.

We need the following information when a suspected breach is reported:

- The address of the property concerned;
- The name of the owner of the property, or of the person responsible for the suspected breach; (if known)
- Details of the suspected breach of planning control, with times and dates if relevant;
- Your name, telephone number and address and email address;
- Information on how the breach impacts on you.

Email to: planning.enforcement@moray.gov.uk
By telephone to: 03001234561

The support of complaints is important in determining then outcome of an enforcement investigation. We will treat your complaint as confidential during our enquiries. However should the matter end in formal enforcement action your details may be required to be forwarded to the DPEA where an appeal is made against an enforcement notice. Should the matter end in court proceedings then you may be required as a witness. Before Court action is sought we will seek your permission to divulge your details to Court.

Planning Enforcement enquiry form

Or alternatively in writing to:
Service Manager, Planning and Building Standards,
Development Management, Moray Council Office, High Street, Elgin, Moray IV30 1BX

Section 3 - Monitoring of Planning Conditions

Monitoring of planning conditions will be carried out as resources allow, however, our number one priority for enforcement is numbers of conditions on major planning applications. It is not, practical or proportionate for the Council to monitor all permissions/consents. It is the responsibility of the developer to inform us of when they intend to implement their planning permission. This is done through the submission and registration of a Notification of Initiation of Development (NID). The Condition Compliance Officer will then check to ensure that any requirements contained within the pre development conditions have been fulfilled before work begins. Initiating development without submitting a NID is a breach of planning control and the planning authority may consider enforcement action. On completion of development the developer is required to submit a Notification of Completion of Development (NCD) as soon as practicable.

A collaborative approach to ensuring planning conditions are complied with is required to ensure our resources are used efficiently. A single point of contact will be given to all major developers to make contact regarding the monitoring of planning conditions and this will be added as a specific informative on all consents relating to major developments. Regular review meetings will be arranged with major developers to ensure that development is implemented timeously and in accordance with the agreed phasing/triggers imposed on planning conditions.

Notification of Initiation and Completion of Development (NID/NOCD) and display of notices while development is carried out

These are not enforcement powers. They are intended to improve planning enforcement by requiring landowners, householders and developers to confirm when development is due to commence or been completed, and in the case of on-site notices to raise community awareness of developments in the local area. The Moray Council will then be made aware of active development in their areas, enabling then to prioritise resources with a view to monitoring development.

A Notice of Initiation of Development (NID) must be submitted to the Moray Council for any development which has been granted permission and state when development will start. It must be submitted after planning permission has been granted and before development has commenced. Starting development without submitting an NID is a breach of planning control and the Moray Council may consider enforcement action.

The Notice of Completion of Development (NOCD) requires a developer to submit a further notice as soon as practicable after development has been completed.

Depending on the nature and scale of a development, the developer may also be required to display on-site notices while development is taking place. These notices contain basic information about the site and the development. They also provide contact details where members of the public may find out more information or report alleged breaches of planning control. It is a breach of planning control to fail to display such a notice when it is required to do so.

Section 4 - High Hedges

The High Hedges Act 2013 aims to provide a solution to the problem of high hedges, where neighbours have been unable to resolve the issue amicably. The Act gives home owners and occupiers a right to apply to the relevant Council for a High Hedge Notice but neighbours must attempt to resolve the dispute themselves first with recourse to the Council being a last resort.

The Scottish Government has also issued **guidance** to all Local Authorities to assist with implementation of the Bill and legislation.

Local Guidance (PDF) has also been prepared to help explain the process and give you guidance on all reasonable steps that must be taken prior to making a formal application under the Act. Potential applicants may wish to make contact with ourselves to discuss a possible application.

Section 5 - Control of Advertisements

The display of advertisements is covered by the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984. Many advertisements are displayed with what is called 'deemed consent' which means they do not require advertisement consent if they meet the criteria and conditions set out in the regulations. One of these conditions is that the landowner has given permission for the advertisement to be displayed on their land. It should be noted however, that where an advertisement with 'deemed consent' is considered to be affecting amenity or public safety then in these circumstances the Moray Council can serve a Discontinuance Notice to have the offending advert removed.

Displaying an advertisement in contravention of the regulations is an offence and, if convicted in court, an offender can be fined. The court can impose further fines for each day the breach of the regulations continues. The Moray Council has the power to serve an advertisement enforcement notice. This specifies a time period (normally 28 days) for compliance with the notice. However, this period can be reduced to seven days if the Council believes there is an urgent need for the advertisement to be removed or altered in the interests of public safety, or if the advertisement can be removed without any other work being required.

An advertisement enforcement notice can also require that a particular piece of land should not be used to display advertisements. This remains in force even if the original advertisement is removed. Any subsequent advertising on this site would amount to a breach of the notice.

The Moray Council also has powers to remove or destroy placards and posters that do not have planning permission or deemed consent. If the person who put up the poster can be identified, they have to be given at least two days' notice that the Council intends to take the poster down. If they cannot be readily identified, then the advert can be removed immediately.

Council officials can enter unoccupied land, if necessary, to remove an advertisement. However they have no powers to remove advertisements displayed within a building to which there is no public access.

Planning enforcement also covers the display of advertisements such as billboards and advertisement hoardings, although slightly different procedures apply. These are set out in a separate section at the end of this Charter. The actual text and images on an advertisement are not covered by planning control.

Any enquiries about the content of an advertisement should be made to the:

Advertising Standards Authority, Castle House, 37 - 45 Paul Street, London EC2A 4LS
Tel: 020 7492 2222, e-mail: enquiries@asa.org.uk website: www.asa.org.uk

Advertisement Discontinuance Notice

Where an advert enjoys deemed consent under the relevant advertisement regulations but the Council require it's removal for amenity or safety reasons, a discontinuance notice may be served. This can be appealed to the Directorate for Planning and Environmental Appeals (DPEA).

Section 6 - How to make a suggestion or complain about the lack of Planning Enforcement

The Council tries hard to meet people's expectations and we hope that you will be satisfied with the planning enforcement service. We are committed to improving our service and dealing promptly with any failures or shortcomings. However, if you have any concerns or difficulties, we want to hear from you. **Planning Enforcement enquiry form**

We will respond to you within 5 working days of receiving a formal complaint about our Planning Enforcement Service where possible. If we feel that we need more time to investigate the matters raised you will receive an acknowledgement within five working days and a full response within 28 working days in accordance with the **Council's Complaints Procedure.** A copy of this can be viewed on the Council's website.

Lastly, if you are dissatisfied with the Council's Complaints process, you have the right to take your complaint to the Scottish Public Services Ombudsman, at: **www.spso.org.uk/**

SPSO, Bridgeside House, 99 McDonald Road, Edinburgh EH7 4NS
Telephone: 0800 377 7330, or e-mail: ask@spso.org.uk

Generally, you must contact the Ombudsman within 12 months of the date of the complaint. Attached to this charter for your information is Appendix 1 which explains the powers available to deal with breaches of planning control.

Section 7 - Powers available to deal with breaches of planning control

Enforcement powers

The enforcement powers available to a planning authority are set out in Part VI of the Town and Country Planning (Scotland) Act 1997, Chapter IV of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and Part IV of the Planning etc. (Scotland) Act 2006. The Planning Acts are available from:

The Stationary Office, 71 Lothian Road, Edinburgh EH3 9AZ

Or can be viewed at: **www.legislation.hmso.gov.uk**

- Government policy on enforcement is set out in **Planning Circular 10/2009: Planning Enforcement.**

Planning legislation is complex and therefore if you are served with a statutory notice from the Moray Council planning authority, we advise you seek legal or independent professional planning advice.

Types of Notices

Enforcement Notice (Section 123 & 127 - 129)

This generally deals with unauthorised development, but can also apply to breach of planning conditions. This must be served on the current owner, occupier and anyone else with an interest in the property or land in question. There are similar notices and powers to deal with Listed Buildings (see below), and advertisements. An Enforcement Notice will specify a time period for the notice coming into effect (a minimum of 28 days), the steps that must be taken to remedy the breach and the time for this to be completed. There is a right of appeal to the Directorate of Planning and Environmental Appeals (DPEA) up to the date the notice takes effect at which time the notice is suspended until a decision is reached. Failure to comply with an Enforcement Notice within time is an offence, and may lead to a fine of up to £50,000 in the Sheriff Court or the Moray Council considering direct action to remedy the breach.

Breach of Condition Notice (Section 145)

This enforces the conditions applied to any planning permission if they have not been complied with and is effective from the date it is served. It may be used as an alternative to Enforcement Notice (see above), and is served on anyone carrying out development and/or any person having control of the land. Anyone contravening a Breach of Condition Notice can be fined up to £5,000 in the Sheriff Court. There is no right of appeal to this notice.

Listed Building Enforcement Notice

This must be served on the current owner, occupier and anyone else with an interest in the property. The procedures are similar to those outlined above. The notice must specify the steps to be taken to remedy the breach and a final date for compliance. Failure to meet the terms of the notice by the date specified is an offence. There is the right of appeal to (DPEA) against the notice. Breaches of listed building control are a serious matter. It is a criminal offence to undertake unauthorised works to demolish, significantly alter, or extend a listed building. In certain circumstances, this can lead either to an unlimited fine or imprisonment.

Stop Notice (Section 140)

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 planning authority must also issue 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 Moray Council may face claims for compensation. Therefore, the use of Stop Notices needs to be carefully assessed by the Council. It should be noted that a Stop Notice cannot prohibit the use of a building as a dwelling house.

Temporary Stop Notice (TSN)

This requires the immediate halt of an activity which breaches planning control. The provisions make an exception in that a TSN cannot prohibit the use of a building or caravan as a dwelling house. TSNs are enforceable for 28 days, after which time, they expire. They may, however, be followed by further enforcement action such as an Enforcement Notice and associated Stop Notice. There is no provision to appeal against a TSN.

Fixed Penalty Notice (FPN)

This provides the Moray Council with an alternative process, in addition to the option to seek prosecution, to address situations where a person has failed to comply with an Enforcement Notice (EN) or a Breach of Condition Notice (BCN). By paying the penalty imposed by the FPN, the person will discharge any liability for prosecution for the offence. They will not, however, discharge the obligation to comply with the terms of the EN or BCN, and the Moray Council will retain the power to take direct action to remedy the breach and recover the costs of such from that person. The Moray Council is not required to offer the option of a fixed penalty. Any decision to do so would be dependent on considerations such as the scale of the breach and its impact on local amenity. The fixed penalty amounts to £2,000 for each step not complied with in an Enforcement Notice and £300 for each step not complied with in a breach of condition notice.

Notice requiring application for planning permission (Section 33A)

Where the Moray Council considers that a development which does not have planning permission may be acceptable, i.e. the Council considers that it might be granted planning permission, the Council may issue a S33A Notice requiring the landowner or developer to submit a retrospective planning application. This application will be considered on its planning merits and handled in the same way as any other planning application. Issuing a S33A Notice does not guarantee that permission will be granted; the Moray Council may, on consideration of the application, decide instead to refuse planning permission, or grant permission subject to conditions or amendments to make the development acceptable. There is no right of appeal to this notice.

Notice requiring information as to interests in land (Section 272 Notice)

This provides limited powers for planning authorities to obtain information on interests in land and use of land. Failure to provide the information required is an offence.

Planning Contravention Notice (PCN) Section 125

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, on a person with any other interest in the land or who is carrying out operations on the land. They are required to provide information about operations being carried out on the land and any conditions or limitations applied 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 court.

Amenity Notice (Section 179)

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 is also known as an Amenity Notice and sets out the action that needs to be taken to resolve the problem within a specified period.

Interdict and Interim Interdict

Planning authorities can apply to the courts to grant an interdict to stop or prevent a breach of planning control. Court proceedings can be expensive and the Moray Council would normally only seek interdicts in serious cases or where Enforcement Notices or Amenity Notices have previously been ignored.

However, the Council can seek an interdict 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.

Direct Action (Section 135)

Failure to comply with the terms of an Enforcement Notice or Amenity Notice within the time specified can result in the Moray Council carrying out the specified work. The Moray Council can recover any costs it incurs from the landowner.

All planning authorities are required to keep an Enforcement Register of all notices issued by that planning authority. The Moray Council Enforcement Register can be accessed online through the Planning Portal on the Moray Council website.

Please Note
This Charter does not comprise of an authoritative interpretation of the Planning Acts. Planning legislation is complex and if you receive any notice from Moray Council, you are advised to seek legal or independent professional planning advice.

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