

Before deciding whether to take one or more of these actions, the Council will normally warn of the possible actions and invite comment from those with an interest in the land within a short specified period. We shall take account of all relevant evidence and information in making a fair and objective decision. Apart from planning contravention notices which can be authorised by officers, the final decision to take enforcement or legal action rests with the Planning Committee.

You will see from the information above that there are a number of legal steps to go through to make sure that any enforcement action is carried out reasonably, fairly and properly, and that all the information we may need for an appeal or for court action is carefully gathered and obtained.

## Building Regulations

Almost every form of building operation needs approval under the Building Regulations. The function of Building Control is to ensure that all new buildings are constructed in a fashion that ensures the health and safety of the occupants, visitors and members of the public as well as ensuring the building is energy efficient and, where appropriate, has adequate facilities for the disabled.

If building work is carried out without approval, or does not comply with the Buildings Regulations, the Authority may serve notice and/or take legal proceedings. This could result in a substantial fine for each offence until the work is put right and also lead to works having to be replaced at the expense of the person who undertook them.

Building Control staff are also responsible for inspecting and resolving issues connected with dangerous buildings and structures which may be a danger to the public. If you consider that a building may be in an unstable or dangerous conditions and a danger to the public please contact the Service. Because unlawful building works can be a serious problem in terms of safety, action taken using the Building Regulations is swift and often urgent.

## Keeping you informed

If you contact us and tell us you are worried at what appears to be development without permission, you will be advised about the progress we are making on the investigation.

We may ask for more information from you. Occasionally we ask neighbours to keep a note of activities that are the subject of the allegations; this is because neighbours are often in the best position to observe what is going on, especially if the use is not continuous or cannot be seen clearly from a road. We appreciate that sometimes people may be reluctant to do this because of worries about the attitude of the person breaking the rules, but often without this evidence it is not possible to press on with our case.

**If in any doubt, please contact your local Planning and Building Control Office; details of locations given in Leaflet 1.**

## Leaflets in this series

- 1 How to Contact Us
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- 5 How Do I Comment on a Planning Application?
- 6 Enforcement Action
- 7 How to Appeal
- 8 Planning Applications and Contaminated Land

*This series of leaflets is intended to give you some general advice and guidance on the planning and building control system; they are not a definitive guide to the law. Please note that this list is being added to on a regular basis.*

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The Highland Council  
Planning & Development Service

# Leaflet 6

## Enforcement Action

Planning & Building Control  
Help & Advice Leaflets



SERVING The Highland Community

On occasion, you may be aware of work being done without permission from the council, and this work may worry you.

This leaflet explains how development undertaken without the necessary permission can result in the Council taking enforcement action. It explains how you can raise concerns about such development with the staff of The Highland Council's Planning and Development Service, what we will do, and what the procedures are in law.

## Enforcement

It is one of The Highland Council's responsibilities to deal with problems where development has:

- taken place without planning permission or building warrant;
- or where development has taken place without meeting the conditions of the planning permission.

This responsibility lies with the Planning and Building Control Office in your Area, where planning and building control staff regularly check developments.

However any member of the public who thinks that a problem may have arisen can report the matter to the Service and investigations will be carried out.

Likewise, developers have a responsibility to keep planning and building control officers fully informed of proposed amendments and to ensure they have the appropriate permissions for such changes.

## Telling us of a problem

If you are worried that something is being done without permission, let us know; often this will relate to planning rather than building control, but the Manager will pass your concern to the appropriate officer. Your letter of complaint will be acknowledged and you will be informed as to who is dealing with

your query. The matter will be investigated, the site will be inspected as soon as practicable, permissions will be researched as necessary, and checks will be made of current laws and regulations. Soon after, a letter will be sent to you to inform you of the Council's findings and of any action which may be taken.

## What we will do to try and resolve matters

The Service hopes to sort out any planning problems through negotiation, co-operation and assistance, and is usually successful. However, if it is necessary to take legal action you will be kept informed of the progress.

It is important to remember that if legal action is taken, any information which you can provide may be helpful, for example noise, opening hours, dates, and so on could all be useful evidence. Any court action which may arise from enforcement action could require a complainant to act as a witness to give evidence about the problems.

Sometimes complaints are received about matters over which the Service has no control - some developments do not require permission, or may not fall within the scope of the Service – eg, neighbour disputes relating to the legal position of a boundary, or matters associated with feu superiors consent. If your complaint is not one which the Service can help with, staff will advise you of this.

There are also some circumstances in which the complaint, once investigated, is not considered sufficiently serious for the Service to use its enforcement powers. **On planning matters, enforcement action is a discretionary power and the Planning Service could decide that a problem is so minor that they will not take action.** In such cases you will be informed and an explanation provided. However, if you consider that the Planning Service may have acted improperly by not following up your concerns, the Council operates a

formal complaints procedure, or you may contact the local government ombudsman who may decide to investigate on your behalf. Details of the Council's complaint procedure and the ombudsman are available from Council offices.

## What action can be taken by The Highland Council?

If we think that a planning breach has occurred, we shall write to the person who appears to be the owner/ occupier, setting out the breach that appears to be taking place. Initially a letter will be sent to those persons causing the problem asking them to sort things out within a specific time period.

Sometimes it is appropriate to ask for a planning application which will then be considered and a decision taken in the usual way. If we think that planning permission might be given for the building or use (probably subject to conditions) we will suggest that an application be made.

Depending upon how serious the case seems, we may send a Planning Contravention Notice requiring the owner or occupier to provide information about activities on the land and the names of people connected with it. In less serious cases where an occupier has agreed to put right a breach, we shall set out the time for this to happen and inspect the site again.

In order to ensure that enforcement action is taken against the right persons, a formal request for information on owners, occupiers and tenants will be served.

### Enforcement action can take several forms:

- Serving a **breach of condition** notice where conditions on a planning permission have not been followed.
- Serving an **enforcement notice** against unauthorised development.
- Serving a **stop notice** to end the use of land or stop an operation which is causing particularly serious harm.
- Seeking a **Court injunction** to prevent an actual or expected breach of planning control.