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Enforcement Action

Local planning authorities can serve enforcement action against anyone who has carried out development without first obtaining planning permission, or against anyone who has not met the conditions of their planning permission.

Usually the first stage of enforcement is to establish if a breach of planning control has taken place. If a breach has occurred, then a Planning Contravention Notice (PCN) can be served on anybody with an interest in the land concerned. Failure to reply to the planning contravention notice within 21 days or to give false information are offences punishable by fines.

With the information gathered from the planning contravention notice, the local planning authority can serve an enforcement notice. This details what the breach of planning control has been, and the steps that must be taken to correct it. It will specify a date on which the notice will take effect, and requires that all unauthorised development be removed on that date.

When a serious breach of planning control occurs, a stop notice can be served. This has the power to stop building or any unauthorised use immediately. The stop notice must be served with or after an enforcement notice. There is no right to appeal, so failure to stop work will be met with a fine.

Appealing an enforcement notice

Any person with an interest in the land concerned can appeal in writing to the Scottish Ministers against an enforcement notice. The appeal must be made before the notice takes effect (at least 28 days after it is issued). Lodging an appeal prevents the enforcement notice from coming into effect. So, until the enforcement notice is upheld on appeal, the requirements of the notice do not need to be followed. When you lodge an appeal against an enforcement notice, you are deemed to have made a planning application. The appropriate planning application fee must therefore be paid. Appeals can only be made on certain specified grounds. These are:

1. Planning permission should be granted for the development.
2. The matters alleged in the enforcement notice do not constitute a breach of planning control.
3. The alleged breach of planning control has not occurred.
4. Too much time has elapsed since the breach of planning control for enforcement action to be taken.
5. The enforcement notice was not served properly.
6. The requirements of the enforcement notice exceed what is necessary.

7. The period of compliance with the enforcement notice is too short.

An appeal can be made on one or more of these grounds providing relevant evidence is submitted in support. If an appeal is not lodged or is late, the enforcement notice will become effective. If the notice becomes effective, it must be complied with. If the appeal is upheld, the enforcement notice is overturned and planning permission will automatically be granted.

What enforcement action can be taken?

Your local planning authority can only use their enforcement powers if they think it is necessary. So to get them to take action you need a good case.

You can encourage the local planning authority to take action by:

- Asking them if planning permission has been granted.
- If planning permission was not granted, contact the local 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 local councillor or members of the planning committee to put forward your objections.

It should be noted that unauthorised development is immune from enforcement action after a certain period of time has elapsed. In most cases this time period is 10 years but in certain cases, such as sub-dividing a house into flats without permission, it is only 4 years.

Your local planning office should be your first stop for planning information. If you are still unsure or need independent advice then Planning Aid for Scotland may be able to help. We offer professional advice free of charge to individuals and community groups.

For more information contact Planning Aid for Scotland.