

# SCOTTISH PLANNING ENFORCEMENT HANDBOOK



**Scottish Planning Enforcement Forum  
Supported by the Scottish Executive and  
The Royal Town Planning Institute in Scotland**

# **SCOTTISH PLANNING ENFORCEMENT HANDBOOK**

For planning enforcement officers in Scotland

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## INTRODUCTION

This handbook has been prepared by the Scottish Planning Enforcement Forum, with assistance and advice from the Scottish Executive and the Royal Town Planning Institute in Scotland. It is intended as a manual for use by enforcement officers, providing guidance and assistance when it is often most valuable – in the field.

The Scottish Planning Enforcement Forum (SPEF) was established in order that enforcement officers across Scotland could have an exchange of information and procedures. It was recognised that there was a vast amount of knowledge which could, and should be collated and thereafter, disseminated to enforcement practitioners.

The SPEF seeks to promote good practice and consistent planning enforcement across Scotland which is appropriate to the Scottish Executive's programme for Modernising Planning.

The Scottish Ministers attach great importance to effective enforcement as a means of sustaining public confidence in the planning system. PAN 54 and SEDD Circular 4/1999 provide Government advice and guidance on enforcement, while the information contained in the handbook is intended to provide more practical guidance for those engaged in enforcing planning control. However, the authors wish to make it clear that this document should be seen as a supplement rather than a substitute for official publications.

Planning Authorities are recommended to publish their own guidance which is particularly important for consistent practices.

Nevertheless, the handbook is practical in style and presentation and the authors are confident that it will prove to be a useful tool for enforcement officers.

Further information on planning matters can be viewed on the following websites :  
Scottish Executive Planning – [www.scotland.gov.uk](http://www.scotland.gov.uk) and,  
Royal Town Planning Institute – [www.rtpi.org.uk](http://www.rtpi.org.uk)

## **PART 1: GATHERING INFORMATION**

### **1.1 Sources of Information**

During an enforcement investigation, the planning authority will require to compile information in respect of parties interested in the affected land or building. When serving statutory notices, the planning authority must ensure that it has served copies of the notice on all interested parties (see legislation for details)

The failure to properly serve notices can result in an appeal being lost, or a case being thrown out of court. Therefore it is important to use all the resources available to ensure that the correct owner, occupier or lessee information is used in the preparation of a notice.

The following list can provide useful sources of information, although some are more reliable than others and caution should be shown when assessing the accuracy and integrity of certain sources.

**Registers of Scotland** - This Register contains every parcel of land in Scotland, and its current owner. It is a legal obligation to ensure the Sassines are notified of ownership changes.

**Council Tax Records/Valuation Roll** - These records, prepared by individual councils, contain ownership details of both residential and commercial properties.

**Electoral Register** - This can be useful in identifying properties that have been subject to changes of use, ie HMOs. However, it is not necessarily up to date, and should be used in conjunction with other sources.

**Companies' Register** - This is a particularly useful source of information, as it is essential that a council serves enforcement notices on all parties with an interest in a business. This provides details of the type of company, members' names, any previous names etc.

**DVLA** - DVLA can provide information relating to vehicle ownership and keepers. In cases such as unauthorised car repairs, this can be particularly useful where the owner claims that all vehicles in question belong to him/her. All local planning authorities should have a supply of VQ4 forms.

**Internet** - Most enforcement sections now have access to the Internet. This can provide valuable and comprehensive information, especially when investigating business operations, and should be utilised during investigations.

**Housing Department** - This source can provide details of council tenants, and may often include a forwarding address for individuals.

**Building Control** - These records pre-date planning records, and can be particularly useful in determining permitted development rights, where the original design of developments is required.

**Environmental Health** - In many cases this Department will receive the same complaints as the planning department, especially in situations involving hot food shops, restaurants, etc. EHOs may well have information that will be useful to planning, thereby avoiding duplicating investigations.

**Neighbours** - When collating information, neighbours can be a very useful source, although the integrity of such evidence must always be considered. Many neighbours have old scores to settle, and will be more than happy to provide misleading information in the hope of causing inconvenience and trouble. However, they remain an important provider of information, and should be utilised whenever possible.

**Colleagues** - Development Control Officers and other Enforcement Officers may well have considerable knowledge of a particular site or area, often reaching back over a number of

years, and will be able to provide an accurate record of its planning history. The integrity of this source should be relatively sound.

## **1.2 PLANNING CONTRAVENTION NOTICE (PCN)**

### **SECTION 125**

This is a Notice which may be served, where it appears to the Planning Authority that there may have been a breach of planning control. It is the main method of obtaining information about alleged unauthorised developments.

In essence, it can be served on any person who has an interest in the land to which it refers, or is carrying out an operation or using the land for any purpose.

It requires the person(s) on whom it is served to give information as requested on the Notice.

Section 126 refers to the penalties for non-compliance with a PCN.

## **1.3 SECTION 272**

This is a Notice similar to the Section 125. Its purpose is to gain information in order to serve statutory Notice(s). It also has a response time of 21 days.



## **PART 2: SITE SAFETY AND ENTRY TO LAND/PROPERTY**

### **2.1 INTRODUCTION**

Planning Enforcement Officers can often find themselves in stressful and confrontational situations, and it is important that they are able to assess the risk implications, and take the necessary course of action in order to remove themselves from that risk.

Gaining experience in dealing with difficult situations is an important part of an Enforcement Officers professional development, and there are a variety of courses available to assist individuals. These include 'dealing with difficult customers', 'recognising body language' and 'development of communication skills'.

The following advice is not exhaustive, and should not be treated as a substitute for formal training courses.

Ref. Practice Advice Note (PAN) 11 'Personal Safety at Meetings and Site Visits' RTP1 1992.

### **2.2 SITE SAFETY**

In the event of entering a building, officers should ensure that an exit route is available, and position themselves so that they are not blocked from that exit at any time. In addition, officers should not adopt an aggressive pose, and should control their body language in order to prevent potentially confrontational situations from escalating into violence.

Where an officer considers a member of the public is becoming threatening, he or she should withdraw from the situation immediately, and ensure that any future meetings are held in the planning office, with more than one officer present. Where a site visit is necessary, officers should consider requesting a police presence.

It is essential that officers always leave a 'route' list of their site visits, in addition to an estimated time of return at the office. This should be left with an individual who is going to be at the office until you return. In the event of any changes to this schedule, the officer should contact the office to advise accordingly. Officers should always carry a mobile phone, and should have the office and local police station numbers on speed dial.

Preparation for site visits can play an important role in ensuring an officer's safety is not compromised. It is advisable for departments to either keep a log of potentially violent or troublesome individuals, or some form of indicator within history files. This will allow an officer to determine whether he or she requires an additional officer or even a police presence.

It is also useful to assess the site itself prior to entering the premises so that you are able to exit safely and quickly in the event of excessive confrontation or violence. It is advisable to make your presence known on site as soon as possible, as an owner/occupier can often become agitated on discovering a council officer on site without their knowledge. Officers should be firm and take control of a meeting on site without becoming domineering and overbearing. In discussions, officers should ensure that the individual is able to see that their point of view is being considered, and that the officer is not disregarding or ignoring their opinions.

In many occasions an individual, whilst not necessarily happy with a council decision, will accept it if the officer has explained the reasoning behind the decision in a calm and firm manner.

Should an officer be subjected to violence or intimidation, it is essential that the matter is reported immediately to their line manager. Depending on the nature of the incident it may be necessary to involve the police, or to have a letter sent out from the council's legal department to the individual, advising that similar behaviour in the future may result in civil or criminal action being taken. In any case, the matter should be logged and made available for other officers so that a re-occurrence of such incidents is avoided.

It is important that officers know their own temper thresholds, and are able to keep control. It is essential that they do not become involved in a verbal or physical fight, and should, instead, withdraw from the site in as safe a manner as possible.

## **2.3 ENTRY TO LAND/PROPERTY**

### **RIGHTS OF ENTRY**

Sections 156 and 157 of the Act make provision for officers to enter land to determine if any breach of planning control has taken place, whether any enforcement action should be taken in relation to a breach and to ascertain whether a statutory notice has been complied with.

Section 156 confers a right of entry to any person authorised in writing by a planning authority, and in most cases the head of department will have delegated powers to sign an authorisation form. However, it should be noted that any inspection carried out under the authority of Section 156 must be undertaken at a reasonable hour, and in the case of a dwelling house, twenty-four hours notice must be given.

Section 157 makes provision for a sheriff to issue a warrant to enter land where permission has been refused or it is considered that permission is likely to be refused. Unlike Section 156 there are no restrictions in respect of giving notice or carrying out the visit at a reasonable hour.

A warrant is valid for one month from the date of issue, and can only be used once.

## **PART 3: ENFORCEMENT**

### **3.1 ENFORCEMENT NOTICE**

#### **SECTIONS 123 and 127 - 129**

Section 127 of the "Act" states, 'that for the purposes of the Act, the issue of an Enforcement Notice, or the service of a Breach of Condition Notice (s.145) constitutes taking enforcement action.

The Enforcement Notice is the most commonly used where it is deemed necessary to proceed to taking formal action.

The decision whether it is 'expedient' to take formal enforcement action in any case, is within the planning authority's sole discretion. Ref. PAN 54 and Circular 4/1999.

Section 127 allows the Planning Authority to issue an Enforcement Notice where it appears to them that there has been a breach of planning control and that it is expedient to do so, having regard to the development plan and to any other material considerations.

Section 128 refers to the content and effect of the Notice.

Section 129 allows for the variation and withdrawal of Enforcement Notice(s), including the power to waive or relax such Notice(s).

The procedures recommended in order to serve a competent Notice are as follows:

Identify the actual breach of planning control and what the remedy is that will rectify that breach. Identify those who are responsible for the breach, the owner and occupier of the land and those who have a material interest in the land.

Obtain authority, if necessary, in order to serve the enforcement notice. (some Councils have delegated powers conferred to the Director or Head of Planning to serve Enforcement Notices) .

Have the Notice made ready for service, but have a colleague 'proof read' it for possible errors.

Several methods of service can be used: Recorded Delivery, Sheriff Officer or by personal service.

A recipient of a Notice has a Right of Appeal to Scottish Ministers. If the Appeal is submitted within the statutory time-scale, the Notice is 'held in abeyance' until the determination of that Appeal by the Scottish Executive Enquiry Reporters Unit (SEEIRU).

#### **1. The breach**

This should be clearly identified and be factual in order that the recipient(s) understands exactly what the breach consists of. Be careful not to 'under-enforce', omitting parts of the unauthorised development from the Notice, as this grants planning permission/ listed building consent for the omitted works, and can lead to problems in resolving the matter satisfactorily.

#### **2. The Section breached**

Section 123(1) defines a breach as either:-

- (a) carrying out development without the required planning permission, or
- (b) failing to comply with any condition or limitation subject to which planning permission has been granted.

### **3.2 STOP NOTICE SECTION 140**

A Stop Notice should only be served where it is considered that there is serious harm, injury or risk to the public interest.

It can be served in conjunction with (but not before) an Enforcement Notice, or before an Enforcement Notice takes effect.

This Notice prohibits the carrying out (on the Enforcement Notice land) of any activity which is within the scope of the breach of control alleged in the Enforcement Notice. It requires any such activity to cease until the date when the compliance period specified in the related Enforcement Notice expires.

In effect, the Stop Notice imposes a 'ban' on the matter it relates to.

Prior consideration must be given to the use of Stop Notices, as there is a risk of compensation to the recipient of the Notice. However, such compensation is only payable as specified in Section 143 of the Act, and the authors are unaware of any Scottish authority that has been subject to a compensation claim, successful or otherwise.

There is no Right of Appeal against a Stop Notice, but it can be legally challenged.

An example of a model Stop Notice can be seen at Annex 8 to PAN 54.

It is best practice to display a Site Notice whenever serving a Stop Notice. This advises that a Stop Notice has been served and anyone contravening it may be prosecuted. It should be displayed at, or near to the affected site.

Failure to comply with the Stop Notice is an offence and should be reported to the Procurators Fiscal as soon as the evidence is collated.

### **3.3 BREACH OF CONDITION NOTICE SECTION 145**

This relates to a development which has Planning Consent, but is subject to condition(s) which have not been complied with or discharged.

A Breach of Condition Notice may be used as an alternative to an Enforcement Notice. In addition to the details that are on a Section 127 Notice, a Breach of Condition Notice requires to inform the recipient of the relevant Planning Application Number, the date that Consent was granted, who it was granted by and the full description of the application.

There is no Right of Appeal against the service of a Breach of Condition Notice. However, if a recipient wishes to contest the validity of the Notice, they may only do so by an application to the Court of Session for Judicial Review.

An Authority cannot take Direct Action in relation to a Breach of Condition Notice, and non-compliance should be reported to the Procurator Fiscal.

### **3.4 LAND ADVERSELY AFFECTING AMENITY OF NEIGHBOURHOOD PROPER MAINTENANCE OF LAND NOTICE (Amenity Notice) SECTION 179**

The Planning Authority (PA) has the power to serve such a Notice where it appears that the amenity of any part of their district, or an adjoining district, is adversely affected by the condition of any land in their district.

Such a Notice may be served on the owner, lessee and occupier of the land that the Notice refers to. The Notice must state clearly what steps are required to be taken, in a manner acceptable to the PA, for the purpose of remedying the breach of planning control.

As with an Enforcement Notice served under Section 127, a stated period of time in order to comply with the requirements of the Notice must be included, and this time period commences from the date when the Notice takes effect.

The minimum period of time specified on the Notice in order for the recipient(s) to remedy the matter shall not be less than 28 days.

There is a "Right of Appeal" (s.180 refers) against this Notice and this is made in writing to the Scottish Ministers. Whilst an appeal is being determined, the Notice shall be held in abeyance until the final determination of that appeal.

The PA may withdraw a Section 179 Notice (without prejudice to serve another) at any time before it takes effect. If the Notice is withdrawn, it shall be necessary to withdraw the Notice on all person(s) on whom it was served.

A Section 179 Notice cannot be served on a building(s) which relate to ancient monuments, or, is included in a list of monuments published by the Scottish Ministers.

### **3.5 ENFORCEMENT OF ORDERS FOR DISCONTINUANCE OF USE ETC SECTION 71 NOTICE**

Having regard to the provisions of the Development Plan, and to any other material considerations, the Planning Authority may consider serving this Notice to discontinue the use of land, or impose conditions on the continued use of the land, or that any buildings or works should be altered or removed.

The Notice does not take effect until it has been confirmed by the Scottish Ministers.

The minimum period of time from the date of service of the Notice must be 28 days.

The recipient(s) of the Notice can request (in writing) a hearing before the Scottish Ministers.

The Notice is required to be served on the owner, lessee, occupier and any other person who in the opinion of the Council will be affected by the Notice.

### **3.6 SERVICE OF NOTICE/EXECUTION OF SERVICE/ CERTIFICATE OF INTIMATION OF ENFORCEMENT NOTICE**

Recorded Delivery can pose problems where intended recipient(s) fail to receive the Notice due to various reasons. Where this occurs, the Notice(s) are required to be withdrawn and re-served to all by other means. It should be noted that if the Notice(s) had to be withdrawn because the Authority failed to have it served on an interested party(ies), then the withdrawal letter must also be sent to the person(s) whom it should have been served on in the first instance.

When served by Sheriff Officer, a copy of the Notice(s) should be returned to the Authority and must be accompanied by an "Execution of Service" from the Sheriff Officer.

As in the above, if served by 'personal delivery' by the reporting officer, then an "Execution of Service" should be completed and kept in the file/records for the case. It should be remembered that if serving by this method, it is essential that an accompanying witness is present to provide corroboration.

### **3.7 INTERDICT SECTION 146**

An Interdict can be used where a planning authority seeks to restrain or prevent any actual or apprehended breach of control. An application to the Court is submitted on behalf of the authority by its legal services division.

On an application, the Court may grant an interdict as it thinks appropriate for the purposes of restraining or preventing the breach.

Legal advice should always be sought to determine whether the application should be presented to the Court of Session or the Sheriff Court. Advice should also be taken regarding possible costs against the Council for damages, should it subsequently be shown that no breach of planning control had occurred on the land.

Special care should ensure that the application is not frivolous and that it is supported by clear evidence that a breach of planning control has occurred, or is likely to occur in the near future. Failure to fulfill both of these requirements could render the Council liable for damages.

When considering whether to make an application to the Court, it should be based on the Council's assessment of the seriousness of the breach of control.

The planning authority can also apply for an Interim Interdict.

This application is designed to preserve the status quo or prevent temporary and imminent wrong. This is a discretionary remedy, which must be supported by a prima facie case. The Court can consider whether, upon the balance of convenience, the planning authority has sufficient facts to establish a compelling need for immediate protection for the grant of interim interdict.

In cases where the defender would be a Limited Company, it will be necessary to prove that a previous 'warning' had been made known to the Secretary of the company at the Registered address by letter.

In all other cases, it will be necessary to prove that a similar warning letter had been forwarded to individually named person(s) at their home addresses.

Where Interim Interdict has been granted by the Court and has been served, if the defendant continues to breach the matter of planning control relevant to the action, then it shall be necessary to report the matter for consideration of an action for Breach of Interdict.

If this action is pursued, the matter has to be considered by the Procurator Fiscal to determine whether criminal proceedings should be commenced. This has the effect of blocking any proposed civil action. If the Procurator Fiscal decides not to proceed with a prosecution, then a proposed civil writ can be sent back to the Local Authority to proceed with a Breach of Interdict action.

If a defender is found guilty of a Breach of Interdict, it is entirely at the discretion of the Court to decide what, if any, punishment shall be made. This can be in the form of a fine, or by a custodial sentence.

### **3.8 DIRECT ACTION (Default Powers) SECTION 135**

Section 135(1) allows the Planning Authority (PA) to take Direct Action if any steps, which are required by an Enforcement Notice, have not been taken within the stated compliance period to the Notice.

Such powers enable the PA to enter the land and take those steps, and to recover from the person who is then the owner or lessee of the land any expenses reasonably incurred by them in doing so. These costs can include administration expenses, with some authorities adding 15% of the total 'direct action' costs to the final invoice.

Administrative expenses should be reasonable and proportionate and should be based on evidence of costs.

Recovery of costs may lead to Court action being taken against the relevant party(ies). In cases where the Notice refers to property, i.e. a dwelling house, then the possibility of an

“Inhibition Order” being placed on the property can materialise, thus, ensuring that the PA will receive its costs in due course of time.

It is an offence for any person to wilfully obstruct a person acting in the exercise of such powers.

#### Practical Considerations

It is recommended that some steps be taken prior to carrying out Direct Action and these are as follows:

- Have another officer ‘proof-read’ the case, paying particular attention to the details of the Notice.
- Obtain three separate estimates (Best Practice).
- Ascertain whether the matter requires “Warning Signs” to be put in place.
- Certain works may require prior consultation with statutory undertakers, and to that ‘aim’, telephone Transco on (susiephone 0800 800 333) and they shall consult all such undertakers on behalf of the PA (free-of-charge).
- On the day prior to the date of action, visit the site (corroborated) and ascertain that the breach remains in place. Take photographs and date and sign them.
- On the day of action, prior to proceeding, take further photographs, date and sign these.
- If at any point, any person(s) behaviour appears to be aggressive and this concerns the officer(s), depart the site and call at the nearest ‘manned’ police office, or telephone the police if a mobile is available. In extreme emergency, call 999.
- If access to the land is refused (and this may be due to various reasons) depart the site and seek a Warrant to Enter from the Courts.
- In cases where items have been removed from the land (as in compliance with the requirements of the Notice) and the owner etc., is not on site at the time of the actual removal, a letter should be forwarded to same as soon as is practically possible informing them of the removal.
- Where removal of items has been necessary, it is essential that such goods/materials are stored under secure conditions for a period of three days, after which they can be disposed of. Any money obtained by their disposal should be off-set against the final ‘direct action’ invoice.

### **3.9 TIME LIMITS**

The Act recognises that in the interest of fairness, developments that have been in existence for a considerable time should be immune from enforcement action. Section 124 sets out statutory time limits for taking enforcement action.

There are different time limits in respect of building work, changes of use and breaches of conditions. It should be noted that in cases where works have been carried out on listed buildings, there is no time limit against taking action other than alterations undertaken prior to the listing of the building.

In cases involving building, engineering mining or other operations, the time limit for taking enforcement action is four years beginning on the date when operations were substantially completed.

Where an unauthorised change of use has occurred or a condition has been breached, the time limit for action is ten years, except in the case of an unauthorised change of use to a dwelling house, where the period is reduced to four years.

The term 'enforcement action' is defined as the service of an enforcement notice.

### **3.10 REGISTERS SECTION 147**

This requires every Planning Authority, with respect to Enforcement Notices, Breach of Condition Notices and Stop Notices to keep a Register, as prescribed.

Every register kept under this section shall be available for inspection at all reasonable hours.



## **PART 4: LISTED BUILDINGS, TREES AND CONSERVATION AREAS**

### **4.1 LISTED BUILDINGS**

Section 6 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 states that "no person shall execute or cause to be executed any works for the demolition of a listed building, or for its alteration... which would affect its character as a building of special architectural or historic interest, unless the works are authorised.

Unlike other forms of development, this statute also makes it a criminal offence to carry out unauthorised works on a Listed Building.

#### **Section 34 (1)**

The Act empowers planning authorities to serve a listed building enforcement notice, where it appears to the planning authority that unauthorised works have been or are being executed to a listed building.

#### **Section 34 (2)**

The Notice must specify the alleged contravention and require such steps to be taken to

- restore the building to its former state
- if restoration is either impracticable or undesirable, executing further works so as to alleviate the effect of the unauthorised works
- for bringing the building to the state it would have been in if the terms and conditions of any listed building consent for the works had been complied with

#### **Section 34 (5)**

As with a Planning Enforcement Notice, a Listed Building Enforcement Notice shall specify the date upon which it is to take effect and a period for compliance.

#### **Section 34 (6)**

The Notice shall be served on the owner, lessee and the occupier, or any other person having an interest in the building.

#### **Section 35 (1)**

The recipient of the Notice may appeal against it on the grounds that:

- the building is not of special architectural or historic interest (ie not listed)
- that the matters alleged to constitute a contravention of section 8(1) or (2) have not occurred (if a person contravenes Section 6 he shall be guilty of an offence)
- that those matters (if they occurred) do not constitute such a contravention
- that the works were urgently necessary to secure safety or health
- that listed building consent ought to be granted for the works
- that copies of the notice were not served correctly

The above is not an exhaustive register of the contents of the Act, and is intended as a guide only. Prior to initiating action, an enforcement officer should scrutinise the Act to ensure the Council has the power to serve a Notice.

Unlike the main Act, which defines development as, amongst other things, works which materially affect the external appearance of a building, the Planning (Listed Building and Conservation Areas) (Scotland) Act 1997 affords protection to the interiors as well as the exteriors of statutorily listed buildings.

A useful tool for the enforcement officer is the Memorandum of Guidance on Listed Buildings and Conservation Areas, which is produced by Historic Scotland. This provides expert guidance and advice on good practice in respect of alterations to listed buildings, and is a useful supplement to local plan policies.

The statute makes it a criminal offence to carry out such works without consent, and the planning authority is entitled to report the matter to the Procurator Fiscal in addition to serving a Listed Building Enforcement Notice. There is a tendency for conservation sections within planning authorities to insist on prosecutions, and the enforcement officer may feel under a degree of pressure to report the matter to the Procurator Fiscal. Nevertheless, it is important to remember that it will be the responsibility of the enforcement officer to justify the prosecution, and that a considerable amount of time and effort in preparing the case can be wasted should the Fiscal decline to prosecute. In accordance with Crown Office advice, reporting cases for prosecution should be seen as a last resort. The Fiscal's advice is that if direct action is available to reporting agencies, then this should be used.

In addition, the continual reporting of minor breaches may cause friction between the Fiscal and the planning authority, so careful consideration should be given as to whether it is in the *public interest* to try to obtain a conviction. The Fiscal will make his decision on that basis alone. If it is not in the public interest, simply serve a listed building enforcement notice and achieve a resolution through Section 34 of the Act.

On occasion, works will have been carried out which are irreversible, such as stone cleaning or the destruction of irreplaceable historical fabric. In these circumstances court action may be the only route through which some form of penalty can be imposed. Where a complaint of this nature is received, it is essential that a site visit is undertaken as soon as possible. Immediate intervention by the Council can often provide evidence or prevent serious damage being caused, and limit the costs of restoration.

Attitudes towards offences in respect of listed buildings will vary from Fiscal to Fiscal, as will Sheriff's. Experience suggests that even in the most serious of breaches, a Sheriff is unlikely to impose a punitive fine. In December 2001 a conviction for the removal of an 18<sup>th</sup> century Edinburgh shopfront resulted in a fine of £400, despite the offender being told by the Council prior to the alterations being carried out, that the works would not get listed building consent.

At the beginning of 2003, the owner of Lanrick Castle, near Doune was fined £1000 after a four-day trial for the unauthorised demolition of this historic 18<sup>th</sup> century castle.

However, it is the planning authority's responsibility to investigate such matters, regardless of the possible outcome of a court case. A comprehensive photographic record should be made of what has taken place, and any original materials still on site should be photographed, and if possible stored in a secure place for possible re-use. In cases of stonecleaning, it may be important to prove what method has been employed and that it is destructive. Take photographs of any machinery used, and if chemicals are being used, try to obtain details for evidence. Most Councils have access to a stone consultant, who's services should be used immediately, as they can be called as an expert witness in any subsequent trial. Ref. Historic Scotland and the Conservation Bureau.

In summation, cases involving listed buildings should receive a high priority from Enforcement sections, especially where the works are likely to be irreversible. Such investigations may result in court action, so care should be taken to collate evidence in a thorough manner, thereby avoiding embarrassment in the witness box.

However, give careful reflection as to what course should be taken prior to initiating action, so that trivial cases are not sent to the Procurator Fiscal. Take advice from your colleagues in conservation, but use your professional judgement to determine any appropriate action, remembering that it should be commensurate with the breach.

## **4.2 TREES**

Trees can be a particularly emotive subject, and can be a focus of conflict and dispute for neighbours, conservation groups and councils.

Tree Preservation Orders (T.P.O.s) are made by a planning authority under Section 160 of the Town and Country Planning (Scotland) Act 1997.

T.P.O.s are an effective means of protecting individual trees, groups of trees or woodlands. They form a legal constraint permanently attached to the title of land where the trees are located. It is an offence to cut down, lop, top, uproot or wilfully damage or destroy a protected tree without the Council's permission. Anyone committing an offence is liable to a fine of up to £20,000, and will be required to plant a replacement tree.

Trees within Conservation Areas are also afforded protection by the legislation, as anyone wishing to carry out any work to a tree within a Conservation Area is required to notify the local planning authority in writing at least 42 days before undertaking the work. This provides the planning authority with the opportunity to promote a T.P.O. if it considers the tree or trees merit protection.

As with other areas of enforcement investigations, it is essential to gather accurate evidence of an offence as rapidly as possible. Site inspections should be carried out immediately in order to identify the owner of the tree, the person(s) undertaking the work and the connection between both parties.

### **4.3 CONSERVATION AREAS**

The definition and interpretation of development requiring planning permission is the same within Conservation Areas as outwith these areas. However, the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (GPD0) removes certain forms of development from being 'permitted' within Conservation Areas, such as the erection of a satellite dish or the formation of a hard surface.

In addition, a planning authority may impose further restrictions by imposing Article 4 Direction Orders. These remove any permitted development rights which are contained within the Order, although all Orders must be ratified by the First Minister.

The aspect where development within Conservation Areas differs from other areas is that of demolition. In a 1997 House of Lords' decision, known as the Shimizu case, it was held that the partial demolition of a building should not be regarded as demolition, but as an alteration. The implications of this case brought about a number of changes to the legislation, and the following is a summary of the controls imposed by statute:

Conservation Area Consent is only required for the total or substantial destruction of an unlisted building (including walls and other means of enclosure) in a Conservation Area.

Works involving the partial demolition of buildings, including means of enclosures, in Conservation Areas can be controlled through the broader planning legislation, although only if they constitute development in terms of the Town and Country Planning (Scotland) Act 1997. It should be noted that under Class 7 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, these works constitute permitted development unless an Article 4 Direction Order removes this right.

Circular 1/2001 - Town and Country Planning (Demolition which is not Development) (Scotland) Order 2001 provides further guidance in respect of this subject.

## **PART 5: CONTROL OF ADVERTISING**

### **5.1 UNAUTHORISED ADVERTISEMENTS**

Advertisements are defined and controlled under the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984.

The control of adverts is exercised in the interests of amenity and public safety, although amenity is not defined in the regulations, and it is the remit of the local planning authorities and the Scottish Executive (on appeal) to interpret the expression.

It should be noted that the subject matter of adverts is not a matter for the planning authorities to consider, and any potentially offensive material should be directed to the Advertising Standards Agency.

The Regulations define an advertisement as 'any word, letter, model, sign, placard, board, notice, awning, blind, device or representation, whether illuminated or not, in the nature of, and employed wholly or partly for the purposes of advertisement, announcement or direction...and includes any hoarding or similar structure...for the display of advertisements.'

The Regulations also classify the different categories of adverts, which are exempted adverts, deemed consent adverts and express consent adverts.

Exempted adverts do not fall within the control of the regulations, and these include adverts on a moving vehicle, on a balloon flown at more than 60 metres or on enclosed land which is not readily visible from outwith that land.

Adverts that enjoy the benefit of deemed consent do not require permission from the local planning authority, and the concept is similar to 'permitted development' rights within the main planning system. These include functional advertisements of local authorities, certain temporary adverts and adverts on business premises. The Regulations set out the classes of deemed consent adverts, and these should be referred to when determining whether formal consent is required for a particular sign.

Adverts that are not exempt or deemed, require the benefit of express consent. This usually expires after a period of five years, although the advert can continue to be displayed with deemed consent after the expiry of express consent.

An authority wishing to cause the removal of an advert which is being displayed with the benefit of deemed consent can serve a Discontinuance Notice. The service of this form of Notice has historically been connected with localities where significant change has occurred, meaning a display previously considered acceptable is no longer so.

## **PART 6: LICENSING**

### **6.1 GENERAL**

Planning and licensing are separate in law. The statutory regimes control functions that are distinct in nature and purpose. Licensing legislation does not restrict the jurisdiction of planning and planning enforcement cannot lawfully fetter its own discretion by deferring to the decision of a licensing authority. Planning enforcement must exercise its powers and must not use powers to regulate matters that are not the proper concern of planning, but are dealt with under other statutory regimes.

The relationship between planning enforcement and licensing varies widely between local authorities and different regulatory regimes.

### **6.2 VEHICLE OPERATING LICENCE**

The Department of Transport Regions and Environment notifies local authorities of applications for goods vehicle operating licenses. In considering applications it is necessary to ascertain whether planning permission or a certificate of lawful use has been obtained. If not, the council may consider requesting an application for change of use or objecting to the granting of the licence. The Traffic Commissioner will not consider objections purely on the basis that planning permission has not been obtained or is unlikely to be granted. Valid objections can only be based on road safety matters, and after submission, must be aired at a formal public inquiry.

### **6.3 LIQUOR LICENSING**

The Licensing (Scotland) Act 1976 (as amended) controls the manufacture, sale and supply of alcoholic liquor. Licensing boards are charged with discharging regulatory functions and cannot consider any new liquor licence applications (other than off-sales) without a certificate of suitability (section 23 certificate) from the Council, as planning authority. Failure to obtain the necessary certification renders any new licence application incompetent.

Planning authorities may also be consulted on other types of liquor licence applications such as consent to alterations, regular extension of permitted hours and are statutorily recognised as competent objectors.

Enforcement functions may wish to report matters for consideration by members of a licensing board. Care must be taken to ensure that any objections or representations are relevant to statutory provisions pertaining to determination of licence applications. For example, it would be unwise to recommend a regular extension of permitted hours application refused on the basis of unauthorised painting of the building. A decision to refuse based on such grounds would be likely to be overturned by the courts.

### **6.4 CIVIC LICENSING**

Certain activities are subject to mandatory and optional licensing under the Civic Government (Scotland) Act 1982 eg houses in multiple occupation and second-hand dealers. In considering applications for the grant or renewal of a licence, a licensing authority may make such reasonable enquiries as they think fit and include the results of these inquiries in matters they take into account.

### **6.5 PLANNING ENFORCEMENT**

Planning enforcement may wish to make objections or representations prior to any application being determined. Again care must be exercised to ensure that any reports submitted are relevant and reasonable.

## **APPENDICES**

1. General Permitted Development (Scotland) Order 1992
2. (Use Classes) Order 1997
3. Regulation of Investigatory Powers (Scotland) Act 2000
4. Integration of the Scottish Criminal Justice Information System
5. Monitoring and Enforcement Guidance

## APPENDIX 1

### THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (SCOTLAND) ORDER 1992

By its title, this section refers to what is seen as being 'permitted development'.  
Very brief detail is contained in this section as it would purely be repetition.

To understand the interpretation of the Order, refer to Part1, section 2.

The meaning of development is to be found in Part III, section 26 of the Town and Country Planning (Scotland) Act 1997.

The Order has the effect of 'granting planning permission' for those developments or classes of development specified, subject to any limitation or condition specified (Schedule 1).

The Order also relates to the Directions restricting permitted development, Notice and service of Article 4 Directions and Directions restricting development in respect of minerals under class 54 or 66.

Under Schedule 1 the classes of permitted development are as follows.

Part		Classes
1.	Development within the curtilage of a dwelling house	1-6
2.	Sundry minor operations	7-9
3.	Changes of use	10-13
4.	Temporary buildings and uses	14/15
5.	Caravan sites	16/17
6.	Agricultural buildings and operations	18-21
7.	Forestry buildings and operations	22
8.	Industrial and warehouse development	23-26
9.	Repairs to private roads and private ways	27
10.	Repairs to services	28
11.	Development under local or private Acts or Orders	29
12.	Development by local authorities	30-33
13.	Development by statutory undertakers	34-43
14.	Aviation development	44-52
15.	Mineral exploration	53/54
16.	Development ancillary to mining operations	55-57
17.	British Coal Corporation mining development	58-62
18.	Waste tipping at a mine	63/64
19.	Removal of material from mineral-working deposits	65/66
20.	Development by telecommunications code system operators	67
21.	Other telecommunications development	68
22.	Development at amusement parks	69

It is essential to read the conditions/limitations together with each class before making a decision as to whether a development benefits from permission under the Order.

## APPENDIX 2

### USE CLASSES ORDER

The Town and Country Planning (Use Classes) (Scotland) Order 1997 provides a framework of classes in which uses are defined and separated. The Act states that planning permission is normally required for material changes of use of land or buildings. However, to relieve the planning system of unnecessary applications, the Act excludes from the definition of development any change of use where both the existing and proposed use fall within the same class.

Therefore, it is not necessary to submit an application to change a post office to a hairdresser or a butchers, as all of these uses fall within Class 1 (shops) of the Order. However, there are many uses which do not readily fall into a class, or are relatively similar to another use but within a different class; cafes and hot food takeaways can have overlapping operational characteristics, although a café falls within Class 3, whilst a hot food takeaway is classed as 'sui generis', i.e. "stands as a Class in its own right".

This phrase defines uses which do not fall within any of the classes in the Order. When dealing with a sui generis use, any change from that use will automatically require the submission of a planning application.

Guidance in respect of specific uses can be found in Circular 1/1998, but this is by no means exhaustive, and individuals must use their judgement when making a determination in respect of the use of a property.



## APPENDIX 3

### REGULATION OF INVESTIGATORY POWERS (SCOTLAND) ACT 2000

In some circumstances, it may be necessary for Council employees, in the course of their duties, to make observations of a person(s) or premises in a covert manner, ie it is done so that those under observation are unaware that they are being observed. It may also be necessary to instruct third parties to do so on the Council's behalf. By their nature, actions of this sort are potentially intrusive (in the ordinary sense of the word) and may give rise to legal challenge as a potential breach of Article 8 of the European Convention on Human Rights and the Human Rights Act 1998 ('the right to respect for private and family life'). Similar considerations arise in relation to the use of undercover agents or informants who are referred to as "covert human intelligence sources".

The Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA) provides, for the first time, a legal framework for covert surveillance by public authorities and an independent inspection regime to monitor these activities.

If the procedures outlined in the 'Codes of Practice' are not followed, any evidence acquired will have been acquired unlawfully. It may therefore not be admissible in court, and the Procurator Fiscal is unlikely to take proceedings on the basis of such evidence. The Council may also be exposed to legal action.

The 'Codes' apply in all cases where "directed surveillance" is being planned or carried out and also applies to the use of covert human intelligence sources. Directed Surveillance is defined in RIPSA as undertaken "for the purposes of a specific investigation or operation" and "in such a manner as is likely to result in the obtaining of private information about a person". "Private information" means information relating to a person's private or family life.

The procedure does not apply to ad-hoc covert observations that do not involve the systematic surveillance of specific person(s). Equally, it does not apply to observations that are not carried out covertly, or to unplanned observations made as an immediate response to events. In cases of doubt, the authorisation procedures described below should however be followed.

In determining when an ad-hoc (unobserved) observation becomes covert, it is entirely at the discretion of the officer concerned. However, it should be noted that ad-hoc would normally only last for a few minutes and any longer period of (unobserved) observation would then require authorisation under the Act.

### COVERT HUMAN INTELLIGENCE SOURCES

The use of a "covert human intelligence source" (i.e. Council officers acting in an undercover capacity, or the use of informants, hereafter referred to as "sources") raises similar issues to directed surveillance. The use of such sources is covered in these procedures, to which reference must be made. Council Officers making undisclosed site visits or test purchases do not count as "covert human intelligence sources" and such activities do not require formal authorisation. Some operations may involve both the use of a source and directed surveillance, in which case both aspects require to be authorised.

### PRINCIPLES OF SURVEILLANCE

In planning and carrying out covert surveillance, officers of the Local Planning Authority shall comply with the following principles:

Lawful purposes – covert surveillance shall only be carried out where necessary to achieve one or more of the permitted purposes (as defined in RIPSAs); i.e. it must be:

- (a) for the purpose of preventing or detecting crime or the prevention of disorder;
- (b) in the interests of public safety; or
- (c) for the purpose of protecting public health.

Officers carrying out surveillance shall not cause damage to any property or harass any person in the course of conducting the surveillance.

Necessity – covert surveillance shall only be undertaken where there is no reasonable and effective alternative way of achieving the desired objective(s).

Proportionality – the use and extent of covert surveillance shall not be excessive i.e. it shall be in proportion to the significance of the matter being investigated.

Intrusive surveillance – no activity shall be undertaken that comes within the definition of “intrusive surveillance”, i.e. if it involves surveillance of anything taking place within residential premises or in a private vehicle.

Collateral intrusion – reasonable steps shall be taken to minimise the acquisition of information that is not directly necessary for the purposes of the investigation or operation being carried out.

Authorisation - all directed surveillance must be authorised in accordance with the procedures described below.

Seeking Authorisation

#### WHEN IS AUTHORISATION REQUIRED?

Authorisation is required for “directed surveillance” i.e. surveillance which is “covert” but not “intrusive”. This means surveillance for the purposes of a specific investigation or operation, whether or not the identity of those who will be observed by the surveillance is known in advance. The surveillance must be undertaken in a manner likely to acquire “private information” about a person or persons (which is not defined but includes information about their private and family life). It must be conducted in such a manner as is calculated to ensure the persons subject to the surveillance are unaware that it is or may be taking place. Thus overt CCTV systems (where the cameras are plainly visible and signs advising of the presence are displayed) is not caught; however placing a hidden camera to discover who is pilfering supplies is. The surveillance must take place otherwise than by way of an immediate response to events or circumstances the nature of which is that it would be impractical to seek authorisation before carrying out the surveillance. Authorisation is required whether the activity is done by Council officers themselves or by third parties carrying out surveillance on behalf of and under the instructions of the Council (such as private investigators or the neighbours of anti-social tenants).

#### WHO MAY SEEK AUTHORISATION?

Any officer whose duties involve activity falling within the above description may seek authorisation to do so and must seek and be granted authorisation prior to carrying out the surveillance. This is most likely to arise in services responsible for policing, enforcement or security functions. A standard application form for directed surveillance authorisation is appended.

## INTRUSIVE SURVEILLANCE

Intrusive surveillance means surveillance in relation to anything taking place within any residential premises (i.e. a person's accommodation, however temporarily used, but not common areas such as common stairs and closes) or in any private vehicle. The Local Planning Authority is not authorised to conduct intrusive surveillance under any circumstances.

Some additional points should be made about intrusive surveillance. Firstly surveillance is not intrusive if directed into a home or private vehicle from outside unless the information is consistently of the same quality as the device actually present in the home or vehicle would provide. Advice from the Office of Surveillance Commissioners (OSC) suggests that the sort of surveillance undertaken by the Local Planning Authority is unlikely to reach this level of sophistication. Thus, activities such as filming goods being sold from the back of a car, or monitoring the level of noise generated by an anti-social tenant (but not the actual words) are unlikely to be classed as intrusive, and so these activities can safely be carried out (subject to appropriate authorisation).

Secondly, devices carried into a home or private vehicle by a covert human intelligence source do not constitute intrusive surveillance so long as the source has been invited in. However the device must not be left behind when the source leaves the premises or vehicle. Officers are reminded of the need to have proper authorisation under Section 4 of this Policy before any use is made of a source.

## WHEN IS COVERT SURVEILLANCE APPROPRIATE?

By its nature, covert surveillance intrudes on people's privacy. It should therefore be regarded as a final option, only to be considered when all other methods have either been tried and failed, or where the nature of the activity the surveillance relates to is such that it can reasonably be concluded that nothing else will be able to acquire the information being sought. For example, if a complaint is made alleging the use of a domestic property for the repair of motor vehicles, it can be in the best interest of the investigation to conduct a covert observation of such premises in order to identify the comings and goings of motor vehicles which would normally not be associated with the domestic enjoyment of those within that household.

Any use of covert surveillance must be proportionate to the objective being pursued.

## PROPORTIONALITY

Proportionality is a concept of Human Rights law designed to ensure that measures taken by the State (and its organs such as the Council) which impact on the rights of citizens are kept within proper bounds. It means that if the same legitimate end can be reached by means of less intrusion on people's rights (or none at all) then the less intrusive path should be taken. There should also be a reasonable relationship between the seriousness of the mischief being addressed and the degree of intrusion into people's rights.

Covert surveillance involves a potentially serious breach of individuals' rights to privacy. Compelling reasons are therefore required to justify these, particularly if the surveillance is to continue for an extended period.

It is useful to consider how serious the breach you are seeking to rectify is. For criminal offences the potential sentence may be a useful guide. However many regulatory offences, while attracting only very small fines, are designed to prevent potentially life threatening occurrences (such as sale of dangerous goods or contaminated food, or the overcrowding of licensed premises). Such factors weigh in favour of surveillance being proportionate. Another factor to consider is the impact of the breach on other people, both in terms of seriousness of the offences and the numbers affected.

## CONFIDENTIAL MATERIAL AND COLLATERAL INTRUSION

Confidential material covers a number of areas: professional legal advice given to someone, health information, spiritual counselling, and material held under an obligation of confidentiality (particularly if held for the purposes of journalism). So far as possible surveillance operations should be designed so as to minimise or eliminate the possibility of confidential information being acquired. If confidential information is acquired, special care should be taken to avoid unnecessary disclosure of it.

“Collateral Intrusion” refers to the fact that very often surveillance operations will inadvertently intrude on the privacy of persons other than those at whom the operation is directed. Operations should be planned so as to minimise or eliminate so far as possible the risk of collateral intrusion, and the extent to which it remains is a factor to consider in determining the proportionality of the operation.

## SURVEILLANCE BY OTHER PUBLIC AUTHORITIES

Council officers are occasionally asked to assist in surveillance operations being conducted by other public authorities such as the Police, the Benefits Agency, Customs and Excise etc. In such cases it is for the organisation seeking assistance from the Council to ensure that it has appropriate authorisations in place. These authorisations should be shown to the Council staff involved or else written confirmation be given that the authorisations have been duly granted. If the Council is carrying out its own surveillance as part of a joint operation however it will be appropriate for the Council to put its own authorisations in place too.

### Granting and Recording Authorisations and Refusals

#### WHO MAY GRANT AUTHORISATIONS?

In terms of the Regulations, authorisations for directive surveillance may only be granted by the Head of Service i.e. the Chief Executive, Assistant Head of Service i.e. the Solicitor to the Council or an Investigation Manager. Investigation Managers for the Council have been designated through an amendment to the Scheme of Delegated Functions. Previously, the Chief Executive authorised a number of senior officers to act as Investigation Managers as an interim measure, and may do so for operational reasons in the future. The line managers of any designated Investigation Manager may also grant authorisations.

In the absence of the Director or other designated Investigation Manager, officers should seek authorisation from the Solicitor to the Council. However, if a number of authorisations are likely to be required, the relevant Director should approach the Chief Executive in order to have additional departmental Investigation Managers designated. In general an Investigation Manager should be a third tier officer or above. Good practice dictates that the officer authorising surveillance is not operationally involved in the matter being authorised, although this may not always be practicable.

#### RECEIPT AND LOGGING OF APPLICATIONS

All services carrying out surveillance activities must maintain a record of all applications for direct surveillance, together with the relevant consent for refusal. These forms may be monitored for cross-service consistency by the Chief Executive, and may have to be produced in the event of an inspection by the OSC. These forms represent evidence of the Council's compliance with the law and Code of Practice, and as such, care should be taken in the completion and logging of them. All Services undertaking surveillance (including making applications for authorisation which are refused) must notify the Chief Executive in writing of the arrangements made locally for the storage of authorisations and refusals.

## CENTRAL REGISTER OF AUTHORISATIONS AND REFUSALS

All services undertaking surveillance activity must, at the end of each calendar month, notify the Chief Executive in writing of:

- Any new authorisations granted that month;
- Any application which have been refused; and
- Any authorisations granted previously which still subsist.

The Chief Executive shall maintain a confidential central register of such authorisations and refusals.

## GRANT OR REFUSAL OF AUTHORISATIONS

The OSC may require an Authorising Officer to justify their decision to grant a request, so authorisations should not be signed off automatically. Evidence of reasoned refusal of requests is also vital in displaying compliance with the law. If evidence obtained by surveillance is used in court, it will be the authorising officer who will be called on to justify the grant of the authorisations.

The Authorising Officer's job is to be satisfied that the Applicant Officer has correctly identified a lawful purpose for the proposed surveillance, has planned the operation properly so as to minimise collateral intrusion and the collection of confidential information, is not proposing to stray beyond the permissible bounds of directed surveillance, and has correctly applied the proportionality test. Only if he/she is satisfied on these points should the authorisation be granted. Any restrictions imposed on the authorisation should be noted as Authorising Officer comments.

## DURATION, RENEWAL AND CANCELLATION OF AUTHORISATIONS

By law an authorisation lasts for three months. However for Council purposes it is suggested that authorisations generally should only be granted on the presumption that they will be cancelled after one week. Continuous surveillance which has failed to uncover evidence within one week is a questionable use of resources, quite apart from the fact that long term surveillance is harder to justify in terms of proportionality. Longer periods of occasional surveillance may, however, be required to establish a pattern of behaviour or activity. If the reasons justifying carrying out the surveillance cease to apply, then the authorisation must be cancelled and a record kept of the cancellation and the reasons for this. If surveillance is to be continued for longer than three months, it is necessary to have a renewal authorised. Renewal applications should highlight the fact that what is sought is a renewal, and enclose the original authorisation and any previous renewals. The tests applicable to renewals are identical to those for initial applications.

There should be a review of all authorisations granted by the Authorising Officer or, in his or her absence, by their line manager. This review should note whether any significant evidence has been acquired by the activity being considered and whether, against that background, continued surveillance can still be justified. Reviews should be noted on the authorisation. As soon as a review indicates that surveillance can no longer be justified, the authorisation must be cancelled. It is not good practice to allow authorisations to continue to run once they have served their usefulness. If it is apparent at any stage that authorisation is no longer required, it should be cancelled immediately and not left to the next review. The Authorising Officer must advise the officers conducting surveillance that the authorisation has been cancelled. The date and time when this is done must be recorded on the authorisation form.

## SECURITY AND RETENTION OF DOCUMENTS

Documents created under this procedure are highly confidential and should be treated as such. Services should make proper arrangements for their retention, security and destruction, in accordance with the requirements of the Data Protection Act 1998 and the Code of Practice. It should be noted that refusals as well as approved applications must be retained. The Code of Practice recommends retention of authorisations for five years (longer if required for ongoing proceedings). Services must also make appropriate arrangements to ensure the security of the evidence acquired, which is likely to be of a sensitive nature

In accordance with the recommendations of the Office of Surveillance Commissioners (OSC), documents will be inspected periodically by the Chief Executive or his representative to ensure that a consistent approach is being adopted by different Council services. The OSC have statutory powers of inspection and all records (applications, authorisations, refusals) must be available for inspection. No records should be destroyed until after an OSC inspection has had the opportunity to see them.

Each Service carrying out surveillance activities must make appropriate arrangements for the secure storage of authorisations and refusals. As stated above, the Chief Executive should be advised of these arrangements.

### DATA PROTECTION ACT 1998:

Surveillance "product" (i.e. the evidence acquired) will, in almost all cases, constitute "personal data" and so be covered by the provisions of the Data Protection Act 1998. This Act requires that personal data should (amongst other things) be adequate, relevant, accurate, up-to-date, not excessive, and must be kept secure. Surveillance planning and retention arrangements should be designed around these issues.

In relation to the relevance of personal data, the Code of Practice advises that material acquired as a result of "collateral intrusion" should be removed from files. In applying this principle, however, services must be extremely alert to the risk of endangering the evidential value of the material to be retained.

In accordance with the normal rules, data subjects enjoy wide (but not unlimited) rights of access to the data held on them. Requests for access to material acquired by surveillance should be treated in the usual way i.e. forwarded immediately to the Data Protection Officer. Access will, in many cases, be denied on the grounds of possible prejudice to the prosecution of offenders, but this decision must be reached on a case by case basis.

## COVERT HUMAN INTELLIGENCE SOURCES

This part regulates the use of covert human intelligence sources, or "sources" for short. It must be read alongside the CHIS Code of Practice. Use of a source specifically includes inducing, asking or assisting a person to act as a source. Accordingly the procedures laid out in this should be followed before any outside party is approached with a view to having them act as a source.

### WHAT IS A COVERT HUMAN INTELLIGENCE SOURCE?

In terms of RIPSAs, a source is a person who establishes or maintains a personal or other relationship with another person and who either uses that relationship covertly to obtain information or who covertly discloses information obtained through the relationship or obtained as a consequence of its existence. The main concern generated by this is that the source effectively exploits the relationship as a means of covertly acquiring information. This should be distinguished from activities where there is no such exploitation. Therefore, an unannounced site visit by Council officers for the making of test purchases do not involve the exploitation of a relationship and so will not fall to be classified as covert source activity. Similarly asking a concerned citizen to "keep an eye" on suspicious behaviour will not (by itself) amount to source activity, although it may amount to surveillance conducted on behalf of the Council.

## WHEN IS IT APPROPRIATE TO USE A SOURCE?

The covert exploitation of a relationship is arguably a greater interference with personal privacy than covert surveillance. The deployment of a source may also expose the source himself or herself to serious danger. For these reasons the use of covert human intelligence is to be discouraged and should only be used by the Council as an absolute last resort. Activity, the nature of which would justify the use of a covert source will in the majority of cases be more appropriately dealt with by the Police. In all cases where the use of a covert source is being considered, a full risk assessment must be undertaken with a view to evaluating whether the evidence being sought (and the use it will be put to) justify exposing the source to the risks involved. Operational planning should be built around the safety and security of the source.

## WHEN CAN THE USE OF A SOURCE BE AUTHORISED?

The use of a source is only lawful in the circumstances described previously. In evaluating these criteria, it is important to note that in terms of proportionality more will be required to justify the use of a covert source than would be required to justify the use of directed surveillance.

## AUTHORISATION PROCESS

The authorisation process for covert source use is similar to that for directed surveillance. An application must be made in writing to a designated investigation manager. While all investigations managers are permitted in law to authorise the use of a covert source, for purposes of this Policy authorisations may only be granted by directors (or in their absence by depute directors), the Chief Executive, Solicitor to the Council and Head of Internal Audit. Applications must be made on the form attached to this Policy.

## HANDLERS AND CONTROLLERS

It is a legal pre-requisite to the use of a covert source that proper arrangements have been put in place for handling the source's case. RIPSAs requires two officers to be designated for this purpose: the "handler" who has day to day responsibility for dealing with the source on behalf of the Council, and for dealing with the source's security and welfare. Secondly there must be a "controller" who has general oversight of the use made of the source. In terms of this Policy the controller must be more senior in post than the handler. All applications for covert source authorisation must indicate who the proposed handler and controller are. Both handler and controller must agree to be so designated and indicate their willingness to perform their respective duties. Only the handler, controller and authorising officer will know the identity of the source, whose identity should be carefully protected.

## SOURCE RECORDS

RIPSA requires that there be a person having specific responsibility for maintaining a record of the use of a source. In terms of this Policy this responsibility lies with the authorising officer. By law any records which disclose the identity of the source must only be made available to those having a need to access them. Use of covert sources must be informed to the Chief Executive of the arrangements being made for the security of such records. The requirements for record keeping and central notification of authorisations apply equally to authorisations, renewals and cancellations. The Chief Executive should not normally be advised as to the identity of the source.

## COMPLAINTS AND REVIEW

### COMPLAINTS

Anyone who wishes to complain about surveillance which they believe the Council is carrying out or any use by the Council of a CHIS should write, in the first instance, to the Director of the Service which is thought to be conducting the surveillance. If this is not known, the complaint should be addressed to the Chief Executive.

## EXTERNAL REVIEW

The legislation sets up a system whereby complaints about surveillance (or alleged surveillance) or the use/alleged use of a Covert Human Intelligence Source can be made to an independent body, the Investigatory Powers Tribunal. Anyone making a complaint to the Council should be advised of this option. Complaints should be made in writing to:

The Investigatory Powers Tribunal  
PO Box 33220  
London SW1H 9ZQ

Explanatory leaflets, complaint forms and copies of the Code of Practice should be available at public offices of services conducting surveillance.



## **APPENDIX 4**

### **INTEGRATION OF THE SCOTTISH CRIMINAL JUSTICE INFORMATION SYSTEM (ISCJIS)**

The criminal justice system and the technology on which its efficient administration depends, will not remain static – both will continue to evolve, and changes to procedures will be inevitable.

The object of ISCJIS is to facilitate communication between the IT systems of the various Scottish Criminal Justice Organisations (SCJOs), so that agreed information can be passed electronically from one organisation to another.

In order to report a case to the Procurator Fiscal (PF), you shall require to have an “S” number (formerly SCRO number). A reporting authority shall first complete Form ‘C’ (ISCJIS – SCRO Record) and send this to the local police Records Office for registration. This form registers with the police an individual Council officer who is then termed as being an ‘authorised signatory’.

The ‘case officer’ shall thereafter, complete form ‘A’ when ready to report the matter to the PF. At the same time, form ‘B’ must also be completed. (Charge Details)

The PF will not take a case if the “S” number is not on it.

Where an “S” number has been issued, a case MUST be submitted to the PF. It is not sufficient just to close the case.

Style charges are contained within the ISCJIS programme, but new charges can be added as required.

It is envisaged by the Scottish Executive (SE) that due to the cost involved in setting-up the required ISCJIS programme, smaller authorities may be reluctant to acquire it. The SE is considering a web access to facilitate such authorities.

The ISCJIS reporting system is to be followed strictly by all users.

## **APPENDIX 5**

The following document has been produced by South Lanarkshire Council for its Enforcement Officers; it is not the policy of the Scottish Planning Enforcement Forum or the Scottish Executive, but is included as guidance only, providing possible solutions and courses of action in respect of given circumstances.

### **MONITORING AND ENFORCEMENT GUIDANCE**

Monitoring and Enforcement Guidelines ENF1 – ENF13  
Guidance on Specific Types of Development/ Change of Use

### **MONITORING AND ENFORCEMENT GUIDELINES: ENF1-ENF13**

ENF1	General Enforcement Policy
ENF2	General Monitoring Policy
ENF3	Refusal of retrospective applications
ENF4	Minor or technical breaches of planning control
ENF5	Time limits for taking enforcement action
ENF6	Granting development carried out without permission
ENF7	Slight or minor variations to works undertaken under GPDO provisions
ENF8	Unauthorised development by private householders
ENF9	Imposition of conditions to make development more acceptable
ENF10	Non compliance with planning conditions
ENF11	Unauthorised development is unacceptable and relocation is not feasible
ENF12	Unauthorised development is unacceptable and immediate remedial action is required
ENF13	Enforcement of planning controls over minerals

## GUIDANCE ON SPECIFIC TYPES OF DEVELOPMENT/CHANGES OF USE

- SD1 Erection of radio masts and aerials on dwellings/garden ground
- SD2 Erection of buildings within the curtilage of a dwelling
- SD3 Material change of use
- SD4 Use of dwelling unit as a house in multiple occupation
- SD5 Part use of dwelling for breeding animals
- SD6 Part use of curtilage of dwelling for the storage and parking of motorvehicles for sale
- SD7 Part use of curtilage of dwelling for the repair of motor vehicles
- SD8 Part use of dwelling for the provision of medical or health services
- SD9 Part use of dwelling for the provision of education or tutorial services
- SD10 Part use of dwelling for hairdressing, beauty therapy, massaging or other services, including animal grooming
- SD11 Part use of dwelling as an office
- SD12 Part use of dwelling for childminding
- SD13 Change of use of dwellinghouse to two or more residential units
- SD14 Part use of dwelling or domestic outbuilding as a granny annex or as additional accommodation
- SD15 Stationing of caravan or mobile home within the curtilage of a dwelling
- SD16 Parking of a commercial vehicle within the curtilage of a dwelling
- SD17 Parking of commercial vehicles in connection with a business operated from a dwelling
- SD18 Use of dwelling for business purposes
- SD19 Part use of dwelling for retail or warehousing distribution
- SD20 Part use of dwelling for the purpose of operating a taxi or private car hire business
- SD21 Part use of dwelling for the hiring out of motor vehicles, plant, machinery or other products
- SD22 Part use of dwelling for retail sales
- SD23 Change from ancillary use to primary or an independent use
- SD24 Unauthorised works to a listed building
- SD25 Display of illegal advertisements
- SD26 Retrospective application for express advertisement consent
- SD27 Discontinuance Action
- SD28 Controls over fly posting
- SD29 Continued display of advertisements displayed on expiration of specified time
- SD30 Advertisement displayed on a listed building or scheduled monument
- SD31 Retrospective Advertisement Applications
- SD32 Continued use of land or buildings on expiration of temporary period granted under the provisions of the GPDO
- SD33 Use of land as a caravan site
- SD34 Condition of buildings or other land
- SD35 Certificate of lawfulness of existing use or activity
- SD36 Development carried out not in accordance with approved plans - amendment
- SD37 Unauthorised development on Crown Land
- SD38 Effective control over entry onto land
- SD39 Initiating prosecution proceedings
- SD40 Direct Action
- SD41 Unauthorised development by Council tenants

## **MONITORING AND ENFORCING PLANNING CONTROL**

### **ENF1 General Enforcement Statement**

The Council can take enforcement action against any unauthorised development that unacceptably harms public amenity, public safety or the existing use of land and buildings meriting protection in the public interest. In considering whether to take enforcement action, the Council will assess the breach against the following:

- Local Plan/City Plan and Enforcement Policies
- impact on residential amenity
- impact on road safety
- magnitude of the breach
- sensitivity of the location
- severity of harm to the environment

The type of enforcement action taken shall be in proportion to the seriousness of the breach and formal action against trivial or technical breaches that cause no harm to amenity or safety shall not normally be taken.

The Council will attempt to persuade an owner or occupier of land to voluntarily remedy any harmful effects of unauthorised development. However, it will not allow negotiations to delay formal enforcement action being taken in order to make the development acceptable on planning grounds, or to compel it to stop.

Circular 4/1999 para 6

### **ENF2 General Monitoring**

Monitoring is undertaken to ensure that development is carried out in accordance with planning legislation, approved plans and conditions. Priority for monitoring shall be given to those developments which are most likely to have an impact on the environment or on neighbours and shall be in accordance with priorities as stated.

Effective controls are necessary to ensure development is carried out in accordance with planning legislation and planning consents. Problems may arise if development does not comply with an approval, for example; incorrect siting; inadequate protection to existing trees and hedgerows; inappropriate use of materials and inadequate hard and soft landscaping/boundary treatment.

In addition, conditions may have been imposed on a planning permission to address potential problems arising from a development. Effective monitoring is therefore required to ensure that development takes place in accordance with approved plans and conditions.

Effective monitoring benefits from close liaison with Building Control.

An agreement under S75 of the T&CP(S)A 1997 may have been entered into for the development. This agreement may require certain works, conditions or payment of monies before, during or on completion of development. Monitoring of compliance with the terms of S75 Agreements must also be undertaken.

### **ENF3 Refusal of retrospective applications**

Where unauthorised development has been carried out which causes serious harm to amenity, the submission of a retrospective application shall not preclude enforcement action being taken.

The submission of a retrospective application by a person(s) shall not be encouraged where development is unacceptable, causes serious harm to amenity and where the Council is likely to recommend an unfavourable recommendation to a planning application, or initiate enforcement

action. The submission of a retrospective application shall not deter the Council from taking enforcement action.

When a retrospective application has been refused and enforcement action has not already been taken, the applicant shall be advised that an enforcement notice will be issued.

#### **ENF4 Minor or technical breaches of planning control**

Formal enforcement action may not be taken where a trivial or technical breach of planning control has occurred which causes no harm to amenity in the locality of the site.

Enforcement action shall always be proportionate to the breach of planning control to which it relates and formal enforcement action against trivial or technical breaches of planning control which cause no harm to amenity in the locality of the site will not normally be taken.

The power for the Council to take enforcement action is discretionary and will only be taken where it is considered necessary to do so.

Circular 4/1999 para 6

#### **ENF5 Time limits for taking enforcement action**

Where required, enforcement action shall be initiated within the time limits imposed to ensure unacceptable unauthorised development does not become lawful for planning purposes.

Time limits for taking enforcement action need to be considered before enforcement proceedings are taken. Particular regard needs to be paid to the 4 year (operational development and change of use to a building as a single dwellinghouse) and 10 year (change of use or breach of condition) time limits within which any enforcement action must be started. Unauthorised development which has become immune from enforcement action becomes lawful for planning purposes.

S124 T&CP(S)A 1997

#### **ENF6 Granting development carried out without permission**

Where development has been carried out without planning permission and it is considered that planning permission is likely to receive a favourable recommendation/decision, a retrospective planning application shall be requested. A Planning Contravention Notice may firstly be served, the intention of which will be to establish what has taken place on the land and to invite the person(s) responsible to submit an application for it.

Where development requiring planning permission has been carried out, or is in the process of being carried out, an assessment shall be made to establish if it is likely that planning permission would be granted for the development. If planning permission is likely to be granted, a retrospective planning application shall be requested.

The owner or occupier should be advised that without specific planning permission for the development, they may be at a disadvantage if they subsequently wish to sell the land and have no evidence of planning permission having been granted.

Circular 4/1999 para 10

#### **ENF7 Slight or minor variations to works undertaken under GPDO provisions**

Where development has been carried out under GPDO provisions, and only a slight variation in excess of the specified limitations has occurred, a planning application shall be requested. If no harm to amenity has been caused by the excess, formal enforcement proceedings will not normally be initiated.

Development may be carried out under permitted development rights given in the provisions of the General Permitted Development (Scotland) Order 1992 (GPDO). Where a specified limitation imposed by the GPDO has been exceeded, the Council will not take enforcement action solely to remedy a slight variation in excess of what would be permitted unless the excess unacceptably affects or causes serious harm to public amenity. A Planning Contravention Notice may firstly be served on the owner or occupier of the land to establish what has taken place. The owner or occupier should be advised that without specific planning permission for the development, they may be at a disadvantage if they subsequently wish to sell the land and have no evidence of planning permission having been granted.

### **ENF8 Unauthorised development by private householders**

Where householder development has been carried out under Parts 1 and 2 of the GPDO provisions and only a slight variation in excess of the specified limitations has occurred, formal enforcement proceedings will not normally be initiated if no harm to amenity has been caused by the excess, but a planning application may be requested.

Householder development may be carried out under permitted development rights given under Parts 1 and 2 of the General Permitted Development (Scotland) Order 1992 (GPDO). Where a specified limitation imposed by the GPDO has been exceeded, the Council may not take enforcement action solely to remedy a slight variation in excess of what would be permitted unless the excess unacceptably affects or causes serious harm to public amenity.

Circular 4/1999 para 28

### **ENF9 Imposition of Conditions to make development acceptable**

Development acceptable in current form

Where development has been carried out without planning permission and it is considered permission could be granted subject to conditions, a retrospective planning application shall be requested. Where necessary, a Planning Contravention Notice may firstly be served on the owner or occupier of the land to establish what has taken place. The owner or occupier should be advised that without specific planning permission for the development, they may be at a disadvantage if they subsequently wish to sell the land and have no evidence of planning permission having been granted.

Development acceptable subject to conditions to remedy injury

Where development has been carried out without planning permission and the development could be made acceptable by imposing conditions to remedy any injury the development may have caused, an application for retrospective planning permission shall be requested for submission within a reasonable period.

A Planning Contravention may firstly require to be served to establish exactly what has taken place on the site and to establish all persons with an interest in the land, should formal action subsequently have to be initiated.

If, after a reasonable period, the owner or occupier of the land refuses to submit a planning application, an enforcement notice may be issued. The notice will have the effect of granting planning permission subject to full compliance with those steps specified in the notice that will remedy or alleviate the injury caused by the development. Planning permission will be deemed to be granted at the time when, in the Council's view, the terms of the Notice have been fully complied with.

Circular 4/1999 paras 12-14

### **ENF10 Non-compliance with planning conditions**

Where conditional planning permission has been granted for development but conditions have not been complied with, a Breach of Condition Notice or Enforcement Notice may be served, depending

upon the extent to which non-compliance with the condition will result in harm to public amenity or safety.

Where planning permission has been granted for development and conditions have been imposed which are designed to protect amenity or address public safety issues resulting from the development and/or to improve its visual appearance, and those conditions have not been complied with within a specified period, consideration will be given to issuing an Enforcement Notice for non-compliance with the planning conditions imposed or the issuing of a Breach of Condition Notice.

The advantage of serving a Breach of Condition Notice is that there is no right of appeal to the Scottish Ministers against the notice and, unlike an Enforcement Notice, its effect cannot be suspended by means of an appeal. The failure to comply with a Breach of Condition Notice is a criminal offence. (Direct Action cannot be taken as the result of having served a Breach of Condition Notice).

The advantage of serving an Enforcement Notice is that the notice can be corrected by the Scottish Ministers if it contains some significant defect and, where an Enforcement Notice has not been complied with, the Council can exercise its default powers by entering the land to carry out any works required by the notice.

### **ENF11 Unauthorised development is unacceptable and relocation is not feasible**

Where unacceptable unauthorised development has been carried out and there is no prospect of relocation to a suitable alternative site, but the activity provides valued local employment, the owner or occupier shall be advised how long the Council shall permit the unauthorised development or activity to continue at its present level, or (if this is the case) at all. Where the activity continues after the expiry of this period, an Enforcement Notice shall be issued, allowing a realistic compliance period for the activity to cease, or its scale to be acceptably reduced.

Where, in the Council's view, unacceptable unauthorised development has been carried out and there is no realistic prospect of it being relocated to a more suitable site, the owner or occupier of the land shall be informed that the Council are not prepared to allow the operation or activity to continue at its present level of activity, or (if this is the case) at all.

### **ENF12 Unauthorised development is unacceptable and immediate remedial action is required**

Where unauthorised development has been carried out which causes serious harm to public amenity or safety in the vicinity of the site, immediate enforcement action will be initiated in order to remedy the breach or prevent further harm (including, where appropriate, the service of a Stop Notice or an application for an Interdict).

Where unauthorised development has been carried out and the Council consider that:

- the person responsible for the breach will not submit a planning application despite being advised to do so; and
- the breach is causing serious harm to public amenity in the vicinity of the site

enforcement action will be taken to remedy the breach or prevent further harm to public amenity (including, if appropriate, the service of a Stop Notice or an application for an Interdict).

Circular 4/1999 para 19

### **ENF13 Enforcement of planning control over minerals**

Where unauthorised development or activity takes place in relation to mineral working which is causing serious damage to the site or to the surrounding area, immediate enforcement action will be initiated to prevent further serious harm to amenity (including, where appropriate, the issue of an Enforcement Notice and Stop Notice or an application for Interdict).

Where unauthorised development has been carried out in relation to mineral working and the Council consider that the breach is causing harm to public amenity in the vicinity of the site, vigorous enforcement action may be taken to urgently remedy the breach or to prevent further harm to public amenity (including, if appropriate, the service of a Stop Notice or an application for Interdict).



## **GUIDANCE ON SPECIFIC TYPES OF DEVELOPMENT/ CHANGES OF USE**

The following *guidance* should be considered in conjunction when assessing a particular breach of control. Action should always be taken in accordance with Policies ENF1-ENF13, but with the following guidance being used to assist in relation to specific types of breach. In some instances, the guidance may be used as a starting point in determining indicative thresholds beyond which planning permission may be required.

### **GUIDANCE ON UNAUTHORISED OPERATIONAL DEVELOPMENT**

#### **SD1 Erection of radio masts and aerials on dwellings/in garden ground**

Planning permission for the erection of masts or aerials for radio amateurs on the roof of a dwelling shall be required if the height of the mast or aerial exceeds 10cm above the plane of the roof. If the aerial is to be erected in the garden ground, any aerial over 3 metres in height (or 4 metres if attached to a pitched roof of a garden building) shall require planning permission. If the aerial is erected forward of the forwardmost part of the building it shall require permission if it exceeds one metre in height.

Where the occupier of a dwelling requires a mast or aerial to be erected, planning permission will be required if the mast or aerial exceeds 10cm above the plane of the roof. TV aerials are considered 'de minimus' and will not require planning permission. The need for planning permission for aerials in garden ground should be assessed against Part 1, Class 3 (The provision within the curtilage of a dwellinghouse of any building or enclosure, swimming pool required for a purpose incidental to the enjoyment of the dwellinghouse, or the maintenance, improvement or other alteration of such a building or enclosure).

#### **SD2 Erection of buildings within the domestic curtilage of a dwellinghouse**

Where a building has been erected within the curtilage of a dwellinghouse under the provisions of the GPDO, but is used for a purpose other than for the domestic enjoyment of the occupiers of the dwellinghouse, consideration shall be given to initiating enforcement proceedings in accordance with the general enforcement ENF1 to ENF13.

Buildings of certain sizes may be erected within the curtilage of a dwellinghouse under the provisions of the GPDO provided the proposed use of the building is "incidental to the enjoyment of the occupiers of the dwellinghouse".

Where buildings are proposed to be built for a purpose not "incidental to the enjoyment of the dwellinghouse" planning permission will be required.

### **GUIDANCE ON UNAUTHORISED MATERIAL CHANGE OF USE**

#### **SD3 Material change of use**

Where an unauthorised material change of use has taken place without planning permission, the requirement for enforcement action shall be considered in accordance with the general enforcement ENF1 to ENF13.

Where a change of use has occurred that does not fall within the provisions of the GPDO or T&CP (Use Classes)(Scotland) Order 1997, and planning permission has not been obtained, a breach of planning control will have occurred. The change of use may have implications for traffic generation, noise and disturbance or for other planning considerations. Enforcement action will be considered accordingly.

## **GUIDANCE RELATING TO CERTAIN CLASSES OF UNAUTHORISED CHANGE OF USE**

### **SD4 Use of dwelling as a house in multiple occupation**

Where an unauthorised change of use to a house in multiple occupation has taken place that conflicts with City/Local Plan policies and causes a loss of residential amenity, enforcement action shall be considered in accordance with the general enforcement ENF1 to ENF13.

Unauthorised change of use of a dwelling into a house in multiple occupation could result in a loss of residential amenity to occupiers of adjoining properties by reasons of increased noise and general disturbance.

In assessing whether a change of use has occurred, careful consideration will be given to the method of occupation, the number of tenants and the communal facilities available. The assessment shall be made having regard to the provisions of Class 8 of the Use Classes Order where it is permissible for a dwellinghouse to be occupied by not more than 5 residents living together, including a household where care is provided for residents.

### **SD5 Part use of dwelling for the breeding of animals**

Where a dwelling or its curtilage is used for the breeding and sale of animals as a business operation, planning permission for a partial change of use shall normally be required.

The breeding and sale of animals from a dwelling could lead to loss of residential amenity by virtue of noise, increased traffic generation and general disturbance.

### **SD6 Part use of the curtilage of a dwelling for the storage and parking of motor vehicles for sale**

The commercial sale of vehicles from domestic premises will always require planning permission. Where this has occurred, enforcement action will be considered in accordance with the general enforcement policies ENF1 to ENF13.

The use of a domestic curtilage for the parking and sale of a vehicle belonging to a member of the household is an accepted use. However, where a number of vehicles are stored for sale within the curtilage of the dwelling and/or there is a regular turn-over of vehicles, such an activity cannot be considered as being incidental to the enjoyment of the dwelling (irrespective of whether the use is being conducted for personal or for commercial purposes) and planning permission will be required.

### **SD7 Part use of the curtilage of a dwelling for the repair, maintenance, restoration and renovation of motor vehicles**

The commercial repair, maintenance, restoration or renovation of vehicles from the curtilage of a dwelling will always require planning permission. Similarly, where the repairs are being carried out as a hobby, but where the intensity of the activity results in a change in the character of the use of the property, planning permission will also be required. Where this has occurred, enforcement action shall be considered in accordance with the general enforcement policies ENF1 to ENF13.

The use of a domestic garage/building or the use of the domestic curtilage of a dwelling for vehicle repairs by the occupier of a dwelling to meet his own domestic needs is an accepted use, being incidental to the enjoyment of the dwelling.

Where an occupier uses a domestic garage/ building or curtilage for repairs to vehicles not owned by a member of the household, or where, by virtue of the numbers and frequency of vehicles undergoing repair or renovation, a change in the character of the use of the dwelling may occur (irrespective of whether the activity is being undertaken purely as a hobby) and planning permission may be required.

Several factors need to be considered when assessing whether a material change of use has occurred. The main considerations will include the number of vehicles parked, the frequency of vehicles undergoing repair and whether the activity causes harm to the amenity of adjoining residential occupiers.

#### **SD8 Part use of dwelling for the provision of medical or other health services (excluding doctors and dentists)**

Where an occupier of a dwelling undertakes medical or other health consultations/treatment and only one room is used for that purpose, no additional staff are employed and the dwelling is retained as the family home, such use shall not normally require planning permission.

An occupier of a dwelling often uses his own family residence for consultations or treatment in the medical or health service field. This includes physiotherapists, acupuncturists, chiropractors and other alternative medical practices.

Where one room in a dwelling is set aside for these services and the main dwelling is retained as a family residence with no other staff employed, such use would not normally require planning permission.

#### **SD9 Part use of dwelling for the provision of education or tutorial services**

Where the occupier of a dwelling carries out tutorials or other educational services on a one-to-one basis and the dwelling is retained as the family home, such use shall not normally require planning permission.

Tutorials, music teaching and other educational activities are often conducted from residential dwellings by the occupier. Where one room is set aside for these activities and provided the use does not cause harm to residential amenity of adjoining occupiers and the main dwelling is retained as a family home, such use would not normally require planning permission.

#### **SD10 Part use of dwelling for hairdressing, beauty therapy, massaging or other services, including animal grooming**

Where the occupier carries out a service from a dwelling on a one-to-one basis, no additional staff are employed and the dwelling is retained as the family home, such use shall not require planning permission.

Where the occupier of a dwelling provides a service in their own home to customers, no additional staff are employed and the main dwelling is retained as a family home, provided the activity does not cause harm to the amenity of adjoining residential occupiers, such use will not need planning permission.

#### **SD11 Part use of dwelling as an office**

Where the occupier of a dwelling uses one room as an office in connection with his business, provided no additional staff are employed and the dwelling is retained as the family home, this shall not normally require planning permission.

The use of one room in a dwelling by the occupier as an office in connection with his business activities is a generally accepted use not requiring planning permission. Provided no additional staff are employed and the main dwelling is retained for family use, such use shall not constitute development.

## **SD12 Part use of dwelling for child minding**

Where the occupier of a dwelling provides a child minding service, planning permission will not be required where the childminder:

- will not employ an assistant
- will not work on a co-operative basis with another childminder
- will not look after more than the following number of children (including the childminder's own children up to the age of 14):
- Not more than 6 children in total under the age of 14 years
- Up to 6 children under the age of 8 years, of which there should be:
- No more than 3 under the age of 5 years
- No more than 2 under the age of 2 years

Flats:

Planning permission will not be required where the following applies:

- the childminder will look after no more than 4 children under the age of 8 years (including the childminders own children up to the age of 14)

Note: the ages are not inclusive – e.g. under the age of 5 years means 1-4 years, under the age of 8 years means 1-7 years etc.

The use of a dwelling for child minding could give rise to complaints from adjoining residential occupiers by reasons of increased noise, additional traffic generation and general disturbance. When the occupier of the dwelling provides such a service, no additional staff are employed, the number of children cared for is limited, no road safety issue arise and the main dwelling is retained as a family home, planning permission shall not normally be required.

## **SD13 Change of use of dwelling house into two or more residential units**

Where it has been established a change of use has occurred without planning permission within a period of 4 years, enforcement shall be considered in accordance with the general enforcement ENF1 to ENF13. If an element of doubt exists as to when the unauthorised change of use had occurred, an application for a Certificate of Lawful Use under S150 of the T&CP(S)A 1997 shall be invited.

Where a single dwellinghouse has been converted into two or more residential flats which are separately occupied or let, planning permission will be required unless the use as two or more flats commenced more than four years ago.<sup>4</sup>

## **SD14 Part use of dwelling or domestic outbuilding as a granny annex or as additional living accommodation**

Where part of a dwelling or domestic outbuilding is being used as an independent unit for family members of the main household, or is separately let or occupied by persons unrelated to the occupiers of the main household as an independent residential unit, planning permission shall be required. Enforcement action shall be considered in accordance with the general enforcement ENF1 to ENF13.

Where part of a dwelling or a domestic outbuilding has been converted for occupation as separate, independent living accommodation for a member of the main household's family, planning permission will normally be required. Only where the accommodation remains dependent on the main dwelling through the use of shared facilities will it be considered as incidental to the use of the existing dwelling and will not require planning permission.

### **SD15 Stationing of caravan or mobile home within the curtilage of a dwelling**

Where a mobile caravan or mobile home is parked within the curtilage of a dwelling and is used as independent accommodation for family members of the main dwelling, or where the caravan or mobile home is separately let or occupied by persons unrelated to the occupiers of the main household, planning permission shall be required. Enforcement action shall be considered in accordance with the general enforcement policies ENF1 to ENF13.

The stationing of a family caravan within the garden curtilage for use as additional accommodation for family members of the main dwelling where facilities remain shared with the existing dwelling, will not require planning permission. An individual assessment of circumstances will be required to determine the extent to which the caravan depends on existing facilities within the house (such as toilet, shower, washing facilities etc). Where a caravan is separately let to occupiers who are not related to the main household, or where the caravan is occupied by members of the household but there is no sharing of facilities, a material change of use of the land will have occurred and planning permission will normally be required.

### **SD16 Parking of commercial vehicle (including taxi or private hire vehicle) within the curtilage of a dwelling**

Where one light goods commercial vehicle is parked within the curtilage of a dwelling and the vehicle is used solely by the occupier to convey himself to and from his place of work, and the vehicle is not connected with any trade or business conducted from the dwelling, planning permission shall not normally be required.

The parking of a commercial vehicle within the domestic curtilage of a dwelling, where it is used solely as a means of transport to and from the place of work, is normally regarded as being incidental to the enjoyment of the dwelling and as such, planning permission will not be required (on the proviso that the vehicle is no larger than a light goods vehicle).

Where more than one commercial vehicle is parked within the domestic curtilage, the need for planning permission will be considered on its merits.

### **SD17 Parking of commercial vehicles in connection with a business operated from the dwelling**

Where one or more commercial vehicles are parked within the curtilage of a dwelling in connection with a trade or business operated from the dwelling, planning permission will be required and enforcement action shall be considered in accordance with the general enforcement policies ENF1 to ENF13.

It is not uncommon for businesses to operate from a dwelling, but where the main activity is conducted away from it. This particularly applies to mobile ice-cream vans and mobile hot-food vans. Where part of the dwelling or domestic outbuilding is used for storage and preparation of food products in connection with the mobile business, such use will require planning permission.

### **SD18 Use of dwelling for business purposes**

Where a dwelling is used for business purposes and the activity gives rise to a loss of residential amenity by virtue of increased noise, smell or general disturbance, enforcement action shall be considered in accordance with the general enforcement policies ENF1 to ENF13.

Planning permission is not always required to use a dwelling for business purposes. Consideration as to whether a change of use has occurred will include: whether the dwelling is still used mainly as a private residence, whether the business results in a marked rise in traffic or people calling; whether the business activity is unusual in a residential area; whether the activity will disturb neighbours at unreasonable hours and whether the business activity creates other forms of nuisance such as noise, smell or general disturbance.

### **SD19 Part use of dwelling for retail or warehouse distribution**

Where part of a dwelling, residential curtilage or domestic outbuilding is used for the reception, storage and redistribution of products, regardless of whether or not the activity involves retailing or wholesaling directly to visiting members of the public or traders, planning permission shall be required and enforcement action shall be considered in accordance with the general enforcement ENF1 to ENF13.

An occupier of a dwelling may wish to undertake the storage and distribution of goods. This may include the storage of newspapers, periodicals, mail-order goods or other products which have been delivered for redistribution. This type of use could lead to a loss of residential amenity by virtue of noise, increased traffic generation and general disturbance and such an activity cannot be considered as being incidental to the enjoyment of the dwelling and planning permission shall be required.

### **SD20 Part use of dwelling for the purpose of operating a taxi or private hire car business**

Where the occupier of a dwelling operates a taxi or private hire car from a dwelling, such use shall require planning permission.

The operation of a taxi or private hire car business from a dwelling usually generates increased traffic and may cause a nuisance by virtue of noise and general disturbance often during unsocial hours.

The operation of a taxi or private hire car business from a dwelling usually generates increased traffic and may cause a nuisance by virtue of noise and general disturbance often during unsocial hours.

Where the occupier of a dwelling operates a taxi or private hire car business from the dwelling, being the main operating centre, a material change of use will normally have occurred and planning permission shall be required.

### **SD21 Part use of dwelling for the hiring out of motor vehicles, plant, machinery or other products**

Where the occupier of a dwelling has one or more vehicles available for hire to the general public and/or undertakes the storage of plant, machinery or other products for hire to the general public, planning permission shall be required and enforcement action shall be considered in accordance with the general enforcement ENF1 to ENF13.

The use of a dwelling or its curtilage for the hiring out of motor vehicles or as a hire depot would generate additional traffic and may cause serious harm to the amenities of residential. Where the occupier of a dwelling provides storage facilities within the curtilage of the dwelling for the hiring out of plant, machinery or other products, such use would not normally be considered as being incidental to the enjoyment of the dwelling and planning permission would be required.

### **SD22 Part use of dwelling for retail sales**

Where an occupier of a dwelling undertakes retail sales to the general public, planning permission shall be required and enforcement action shall be considered in accordance with the general enforcement policies ENF1 to ENF13.

Retailing from a dwelling cannot be regarded as incidental to the use of the property and planning permission shall be required.

### **SD23 Change from ancillary use to primary or independent use**

Where an ancillary use intensifies to become the primary use (and such use does not fall within the same use class as the former primary use, or the new use has become a 'sui generis' use), planning

permission will be required and enforcement action shall be considered in accordance with the general enforcement policies ENF1 to ENF13.

Where an undertaking is lawfully being conducted from premises, there may be certain ancillary uses which are considered to be incidental to the primary use which may be carried on without specific planning permission.

When an ancillary use intensifies to a degree which then becomes the primary use and does not fall within the same class as the former primary use, or represents a 'sui generis use, a material change of use will have occurred requiring planning permission.

## **GUIDANCE ON UNAUTHORISED DEVELOPMENT TO LISTED BUILDINGS**

### **SD24 Demolition of or unauthorised works to a Listed Building**

Where demolition or unauthorised works have been undertaken to a Listed Building which materially affects its character and appearance either internally or externally, consideration shall be given to issuing a Listed Building Enforcement Notice and/or instituting criminal proceedings.

Any alteration or extension which affects the character of a listed building requires Listed Building Consent. Where such works have been undertaken without obtaining consent, an offence will have been committed. Depending on the nature and the severity of the works undertaken, consideration will be given to initiating criminal proceedings and/or serving a Listed Building Enforcement Notice to ensure remedial works are undertaken.

## **GUIDANCE ON THE DISPLAY OF ILLEGAL ADVERTISEMENTS**

### **SD25 Display of illegal advertisements**

Where an advertisement has been displayed without express consent and causes harm to amenity or public safety and where express consent is required but would not be granted for the advertisement, the owner/occupier shall be requested to remove the advertisement within a specified period. Where the advertisement continues to be displayed, proceedings shall be initiated against all persons responsible for its display to secure its removal.

The Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984 permits the display of certain classes of advertisements without the need to obtain specific express consent. The display of advertisements not requiring express consent may be displayed under the deemed consent provisions.

Where an advertisement has been displayed which requires express consent but has not been obtained, the advertisement contravenes the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984. Under the provisions of S186 of the Town and Country Planning (Scotland) Act 1997, an advertisement which is displayed in contravention of the Regulations constitutes an offence. Where the advertisement causes harm to the amenity or in the interests of public safety, a request will be made to secure its removal within a specified period. If the advertisement continues to be displayed after this period, formal proceedings will be initiated.

### **SD26 Retrospective application for express consent**

Where an advertisement has been displayed without express consent and the advertisement is considered to be acceptable, or could be made more acceptable in the interests of amenity or public safety through the imposition of conditions, an application for express consent shall be requested. Where an application has not been submitted or where the advertisement continues to be displayed without compliance with conditions imposed on an advertisement consent, proceedings may be initiated against all persons responsible for its display.

Where an advertisement has been displayed without express consent and it is considered acceptable, or could be made more acceptable in terms of amenity or public safety through the imposition of conditions, a request will be made for the submission of a retrospective application for advertisement consent. If an application is not submitted and the advertisement continues to be displayed after this period, formal proceedings may be initiated.

### **SD27 Discontinuance Action**

Where an advertisement is displayed with deemed consent and it is considered that the continued display harms the amenity of an area or affects public safety, a Discontinuance Notice may be served requiring the removal of the advertisement.

Where harm is being caused to amenity or public safety and it is considered that the removal of certain deemed consent advertisements is required, a Discontinuance Notice will be served.

### **SD28 Controls over fly posting**

Where resources permit, posters, placards or freestanding signboards which are illegally displayed shall be removed after giving initial warning to the owner, occupier or person responsible for displaying the poster. Where fly-posting has been undertaken on sensitive sites where harm is being caused to the character or amenity of the area, proceedings shall be instituted against all those responsible for its display.

Fly posting on buildings, street furniture and other structures usually has a visually detrimental impact. Action can be taken either by securing the removal of the poster or placard or by initiating proceedings against all those responsible for its display.

Where an unauthorised advert/poster or placard is being displayed upon street furniture (i.e. owned by the Council) such can be removed without consultation with the particular offender.

### **SD29 Continued display of advertisements on expiration of specified time limits**

Where an advertisement is required to be removed after a specified time limit, but continues to be displayed, a request to secure its removal within a specified period may be made. If the advertisement continues to be displayed, proceedings may be instituted against all persons responsible for its display.

Certain advertisements may be displayed with deemed consent subject to their removal after a specified time limit. Also, advertisements displayed with express consent may have conditions imposed requiring their removal after a specified period.

Where advertisements are displayed under these provisions but continue to be displayed on expiration of the time limit, an offence will have been committed and action will be taken to secure their removal.

### **SD30 Advertisement displayed on a Listed Building or Ancient Monument**

Where an advertisement has been displayed on a Listed Building or Ancient Monument without express consent, and that advertisement detracts from the integrity of the building's design, historical character or structure, or spoils or compromises its setting, a request for the removal of the advertisement within a specified period shall be made.

Where the advertisement continues to be displayed, a report can be submitted to the Procurators Fiscal against all persons responsible for its display. However, if the advertisement is likely to be acceptable, retrospective applications shall be requested.



Advertisements displayed on Listed Buildings or Ancient Monuments will constitute an alteration to that building or monument site and will require Listed Building or Scheduled Monument Consent. Where an advertisement is not displayed with deemed consent and does not have Listed Building or Scheduled Monument Consent, consideration will be given to reporting the matter to the PF, or initiating proceedings to secure its removal.

### **SD31 Retrospective Advertisement Applications**

Where a retrospective application for express consent has been refused, the applicant shall be requested to remove the advertisement within a specified period. If the advertisement continues to be displayed, proceedings shall be instituted against all persons responsible for its display.

Where a retrospective application for express consent has been refused for an advertisement, the applicant shall be given a reasonable period to secure its removal. If the advertisement continues to be displayed after this period, proceedings shall be instituted.

## **GUIDANCE ON THE TEMPORARY USE OF LAND OR BUILDINGS**

### **SD32 Continued use of land or buildings on expiration of temporary period granted under the provisions of the GPDO**

Where land or buildings have been used for a temporary period under the provisions of Part 4 to Schedule 1 of the GPDO and, if on expiry of that period the use continues, an Enforcement Notice may be issued for non-compliance with the limitations imposed under Part 4 of the Order.

The GPDO permits the temporary use of land and buildings for specified purposes of limited duration. Where on expiration of that period, the use continues without planning permission, a breach of planning control will have occurred.

## **GUIDANCE ON THE USE OF LAND FOR THE STATIONING OF CARAVANS**

### **SD33 Use of land as a caravan site**

Where land has been used as a caravan site under the provisions of Part 5 to Schedule 1 of the GPDO and specified conditions have not been complied with, or the land is being used as a caravan site not in accordance with the provisions of the GPDO, enforcement action shall be considered in accordance with the general enforcement policies ENF1 to ENF13.

The GPDO permits the use of land as a caravan site subject to certain conditions. Where those conditions have not been complied with and the use of the land as a caravan site continues, a breach of planning control will have occurred. The creation of a caravan site, when not permitted by the provisions granted under the GPDO, may often have a harmful visual effect on the open countryside and have a detrimental effect on the amenities and appearance of the adjoining area.

## **GUIDANCE ON DERELICT OR UNSIGHTLY LAND OR BUILDINGS**

### **SD34 Condition of land or buildings (Amenity Notice)**

Where a building or land is in a condition which seriously detracts from, or harms the character of an area, the owner or occupier of the land may be requested to carry out improvement works within a specified time limit. Where the owner or occupier fails to carry out those works, a notice shall be served under the provisions of S179 of the Town and Country Planning (Scotland) Act 1997. Where the notice has not been complied with, consideration shall be given by the Council to entering the land and carrying out the works.

The condition of certain buildings or land often causes serious harm to the visual amenity of an area. Where the Council considers that amenity is seriously affected by the condition of any land or building(s), consideration will be given to serving a notice under the provisions of S179 of the Town and Country Planning (Scotland) Act 1997, which will specify those steps required to remedy the appearance of the building or land. If those steps are not undertaken within a specified period, the Council may enter the land and carry out those works.

All relevant costs incurred by the Council can be retrieved.

## **GUIDANCE ON LAWFUL USES OR ACTIVITIES**

### **SD35 Certificate of Lawfulness (Existing Use or Activity)**

Where unauthorised development has taken place and the owner or occupier of the land considers that such use or activity is now lawful, the submission of an application for Certificate of Lawful Use shall be invited. Where a certificate has not been granted, Enforcement action shall be considered in accordance with the general enforcement ENF1 to ENF13, subject to the time limits imposed for initiating enforcement action. A lawful use or activity shall not be conclusively established unless a certificate has been granted.

Section 150 of the Town and Country Planning (Scotland) Act 1997 provides for the Council to issue a Certificate of Lawfulness for an existing use or activity, certifying its lawfulness for planning purposes and making it immune from enforcement action.

Where the Council are considering enforcement action for an unauthorised use or activity, but an owner or occupier considers it is now lawful by virtue of S150 of the Town and Country Planning (Scotland) Act 1997, an application for a Certificate of Lawful Use shall be invited in order to prove such use or activity as being lawful.

Following the submission of an application, if the applicant fails to submit sufficient evidence to enable the Council to grant a certificate, enforcement action will then be considered in accordance with the general enforcement policies ENF1 to ENF13, if the Council are satisfied that the period to initiate enforcement action has not expired.

## **GUIDANCE ON DEVELOPMENT NOT IN ACCORDANCE WITH APPROVED PLANS**

### **SD36 Development not in accordance with approved plans – amendment**

Where development is carried out which is materially different from the approved plans, an amended application shall be requested.

If the changes are or will cause serious harm to public amenity and/or detract from the visual appearance of the area, immediate enforcement action maybe taken, including the issue of a Stop Notice or application for an Interdict in order to secure the cessation of the unauthorised development.

Where development is carried out with planning permission, but not in accordance with the approved plans, an assessment will be made to establish whether the changes from the approved plans are significantly material to constitute new development requiring a further planning application. Where the changes are minor and not considered to materially alter the development as a whole, such changes may be considered as a non-material variation to consent and no action shall be taken, although it will be necessary to submit amended plans for written approval showing the variation.

Any assessment must have due regard to the site and its surroundings, the scale and massing of the development and the consequences of those changes after the development has been completed, which may affect public amenity and/or detract from the visual appearance of the area.

## **GUIDANCE ON UNAUTHORISED DEVELOPMENT ON CROWN LAND**

### **SD37 Unauthorised development on Crown Land**

Where unauthorised development has been carried out on Crown Land, enforcement action shall be considered in accordance with the general enforcement policies ENF1 to ENF13. A special enforcement notice shall only be issued after obtaining the necessary consent from the Government department or other Crown bodies.

Where unauthorised development has occurred on Crown Land, the Council may propose to instigate enforcement proceedings to secure the cessation of a use or activity, for example the siting of a mobile snack-van on a trunk road lay-by.

Provided consent to issue an Enforcement Notice has been given by the appropriate Government Department and other Crown bodies, a special Enforcement Notice may be issued.

## **GUIDANCE ON EFFECTING ENTRY ONTO LAND**

### **SD38 Effective control over entry onto land**

To maintain effective planning enforcement control, officers shall be authorised to enter land under the provisions of S156 of the T&CP(S)A 1997. Where entry has been refused following the issue of a 'Notice of Intended Entry', a warrant shall be obtained from a sheriff. Where any person wilfully obstructs an authorised officer from effecting entry, prosecution proceedings shall be considered, subject to the circumstances of each case.

In pursuit of carrying out effective planning control, entry onto land will often be required. Officers shall be authorised to have a specific right of entry for planning enforcement purposes under the provisions of 156, 157 and 158 of the T&CP(S)A 1997. Evidence of authorisation to enter land shall be issued and retained by the authorised officer.

Where entry is refused, a Notice of Intended Entry shall be served stating a date and time when entry shall be effected. If entry is again refused, entry by warrant issued by a sheriff shall be obtained. Any person who wilfully obstructs an authorised officer acting in the exercise of a right of entry shall be guilty of an offence.

Similar provisions shall apply for entry to listed buildings under S76, 77 and 78 of the Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997, and for tree preservation enforcement purposes under S176, 177 and 178 of the T& CP(S)A 1997.

## **GUIDANCE ON INITIATING PROSECUTION PROCEEDINGS**

### **SD39 Initiating prosecution proceedings**

It is recognised that criminal proceedings shall be initiated as a last resort. Where an offence has been committed and all avenues have been exhausted to remedy a breach of planning control, prosecution proceedings shall be considered in the following circumstance:

- Where the alleged breach of planning control involves a failure to comply either fully or in part with a statutory notice and where it is the public interest to pursue prosecution in the interests of amenity, public safety or protection of the environment

Instituting criminal proceedings shall be considered a last resort. Every attempt shall be made to remedy a breach of planning control through negotiation and, where necessary, appropriate enforcement action.

Where an illegal act has been committed and all avenues to remedy a breach of planning control have been exhausted, including consideration of taking Direct Action, the Council may exercise its full

powers and initiate prosecution proceedings. The Council will only pursue prosecution where it has appropriate justification in the public interest.

## **GUIDANCE ON DIRECT ACTION**

### **SD40 Direct Action**

Where the terms of an Enforcement Notice have not been complied with, the Council will consider the use of Direct Action to execute any works required to remedy the breach, where this would be both effective, practical and where resources permit.

Section 135 of the Town and Country Planning (Scotland) Act 1997 allows the Council to enter land or buildings subject to an Enforcement Notice and carry out any requirements of the Notice themselves. These powers enable the Council to carry out any steps required by an Enforcement Notice, to make a development comply with the terms of any planning permission granted for the land and/or buildings, or to remove /alleviate any injury to amenity caused by the development. The costs of executing these works and added reasonable administration costs can then be sought from the persons on whom the notice was served.

Direct Action can ensure relatively quick compliance with an Enforcement Notice, it gives a clear indication that the Council takes a serious view of enforcement and the threat of its use can, in itself, be a potent stimulant to securing compliance with a Notice.

Procurators Fiscal are reluctant to proceed with cases where the Council has not exhausted, or considered all of its powers and Courts may be reluctant to convict where the Council has not made full use of all enforcement powers available to them.

Direct Action will not be a realistic option in all cases, mainly due to the costs involved and the likelihood of their recovery. However, where such action would be both effective and practical, the use of Direct Action may be pursued as an alternative to prosecution.

It is advisable to first consult with appropriate Legal advisors on the matter prior to taking any Direct Action. Consideration should also be given to Human Rights issues.

## **GUIDANCE ON UNAUTHORISED DEVELOPMENT CARRIED OUT BY COUNCIL TENANTS**

### **SD41 Unauthorised development by council tenants**

Where unauthorised development has been carried out by a council tenant, appropriate liaison shall take place between the appropriate Council Service to ensure that the most appropriate course of action is pursued to regularise the breach.

Where unauthorised development has been carried out by a Council tenant, all relevant Council departments shall each advise the other of their intended action to be taken to regularise the breach. Depending on the nature of the breach, the appropriate Service may pursue action against the tenant to ensure compliance with planning regulations. Discussion between the Services shall determine how any action is to be pursued.

It is not recommended that a Council take enforcement proceedings against itself.