

# CLACKMANNANSHIRE COUNCIL

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## Report to Scrutiny Committee of 9th October 2008

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**Subject: Planning Enforcement Strategy - Annual Performance Report for 2007-2008**

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**Prepared by: Ian Duguid, Development Quality Team Leader**

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### **1.0 SUMMARY**

- 1.1. This report provides Elected Members with an annual review of performance on planning enforcement casework for 2007/2008. It draws on the outstanding recommendations of the Planning Enforcement Strategy. The remaining actions are included in the Development Quality Business Plan for 2008-2009.

### **2.0 RECOMMENDATION**

- 2.1. It is recommended that the Committee notes the contents of this report.

### **3.0 BACKGROUND**

- 3.1. The work of the Development Quality Team on the enforcement of planning control is based on legislative requirements and guided by our Planning Enforcement Strategy approved in 2000. For the past eight years, the Service has based its approach, processes and decision-making on the principles that underpin the Strategy. We have progressively been implementing the 34 recommendations of the Strategy. A report to the Regulatory Committee on 1st March, 2007 set out the progress made to date along with the first report on performance. Appendix 1 to this report describes the actions that are (partly) outstanding and the timescales for completing the work. The relevant items are Nos. 3, 5, 6, 9, 28, 29 and 30 and Members are particularly asked to note the following priorities for 2008-2009:-

- The intention to provide improved advice to customers on the need for planning permission for different types of development, including householder developments subject to any changes in the scope of "permitted development" arising from the implementation of the Planning etc. (Scotland) Act.

- The production of an Enforcement Charter which will provide Members of the public with advice on the work of the Service, the procedures followed in investigating breaches of planning control, the policies and other criteria that

will inform decisions on formal action, the types of action or notices that can be served in different circumstances and penalties for failing to comply with such Notices.

- 3.2. The principal reasons for some of the recommendations remaining outstanding are: the need to prioritise actions; increased workload arising from a rise in the number of applications and the significant complexity of some cases e.g. Forestmill; and emerging changes in legislation which is continuing to impact on timescales.

#### 4.0 ANNUAL PERFORMANCE REVIEW

- 4.1. Appendix 2 to this report is a summary of the performance of the Service in 2007-2008. To assist in setting the performance in context, comparative information is provided for the preceding two years. Members are asked to note in particular the intention to set additional and more detailed targets for key instances in the investigation of complaints against alleged unauthorised development. By measuring of performance at different stages of the process, we can obtain a better understanding of the quality and effectiveness of responses to such enquiries, which in turn should lead to speedier decisions and more effective control of development activity. These will be included in the Development Quality Business Plan Balanced Scorecard.

#### 5.0 SUSTAINABILITY IMPLICATIONS

- 5.1. None

#### 6.0 FINANCIAL IMPLICATIONS

- 6.1. None

#### 6.2. Declarations

- (1) The recommendations contained within this report support or implement Corporate Priorities, Council Policies and/or the Community Plan:

- **Corporate Priorities (Key Themes)** (Please tick )

Achieving Potential	<input type="checkbox"/>
Maximising Quality of Life	<input type="checkbox"/>
Securing Prosperity	<input type="checkbox"/>
Enhancing the Environment	<input type="checkbox"/>
Maintaining an Effective Organisation	<input type="checkbox"/>

- **Council Policies** (Please detail)

• **Community Plan (Themes)** (Please tick )

- Community Safety
- Economic Development
- Environment and Sustainability
- Health Improvement

(2) In adopting the recommendations contained in this report, the Council is acting within its legal powers. (Please tick )

(3) The full financial implications of the recommendations contained in this report are set out in the report. This includes a reference to full life cycle costs where appropriate. (Please tick )

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Head of Service

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Director

**Report to Scrutiny Committee**

To accompany all Reports to Scrutiny Committee

To: Head of Administration And Legal Services

Author: Ian Duguid, Development Quality Team Leader	Date: 28 August 2008	
Service: Development and Environmental Services		
Date of Meeting: 9th October 2008		
Title of Report: Planning Enforcement Strategy - Annual Performance Report for 2007-2008		
Recommendation that the attached report be:		
1. Given unrestricted circulation	<input checked="" type="checkbox"/>	(tick appropriate box)
2. Taken in private	<input type="checkbox"/>	
By virtue of paragraph ____ of schedule 7A, Local Government (Scotland) Act 1973.		
Appendices attached to this report (if none, state "none")		
1. Planning Enforcement Strategy Recommendation - Action Plan Update		
2. Annual Performance Report		
3.		
4.		
List of Background Papers (if none, state "none")		
1.		
2.		
3.		
4.		
Note: All documents specified must be kept available by the author for public inspection for four years from the date of the meeting at which the report is considered.		

## APPENDIX 1

### PROGRESS ON ACTIONS AND FURTHER IMPLEMENTATION PROPOSALS

ACTION	PROGRESS	FURTHER ACTION	TIMESCALE (RESPONSIBILITY)
<ol style="list-style-type: none"> <li>1. In consultation with Legal services, the Development Control Manager will carry out a review of the procedure for offering advice on whether planning permission is required for development.</li> <li>2. Advice to persons on whether or not planning permission is required should, in all cases, be confirmed in writing and authorised by the Development Control manager.</li> </ol>	<p>Review of procedures carried out. Standard and quality of advice given is monitored closely by the Development Quality Team Leader (DQTL). Training and development of new starts and junior staff highlights this issue and the potential for complaint/ombudsman case. Action complete.</p>	<p>None</p>	<p>N/A</p>
<ol style="list-style-type: none"> <li>3. Development Services should give consideration to the production of a Supplementary Advice Note that sets out the need for planning permission for various forms of development, particularly aimed at householders, small businesses and the self-employed.</li> </ol>	<p>The Supplementary Advice Note has not been issued but advice on FAQ's has been posted on the website with additional information on service delivery.</p>	<p>The Supplementary Advice Note on Householder Development will be updated to incorporate changes in permitted development rights and provide improved advice to householders on design.</p>	<p>March 2009, subject to the publication of legislation on Permitted Development Rights (DQTL and SC)</p>
<ol style="list-style-type: none"> <li>4. Model Planning Conditions</li> </ol>	<p>Standard "model" planning conditions have been completed.</p>	<p>None</p>	<p>N/A</p>

<b>ACTION</b>	<b>PROGRESS</b>	<b>FURTHER ACTION</b>	<b>TIMESCALE (RESPONSIBILITY)</b>
5. Development Services should finalise the draft Supplementary Advice Note on Landscaping and Open space and its clear requirement, in appropriate circumstances, for financial bonds to be in place to ensure that planning obligations are met.	The SAN remains in draft form, but is being used to provide/negotiate improved standards of open space. The use of conditions rather than legal agreements with attendant monitoring has reduced problems.	Finalise SAN and continue to use well worded conditions.	December 2008 (DQTL)
6. Pre-paid postcards will be sent out with all planning permissions for applicants to use to notify the Service of commencement of development.	New legislation will require developer to notify start of development to Council. DMO has worked increasingly closely with Building Standards.	Await implementation of new legislation through regulations.	2008 (SC)
7. Monitoring for unauthorised development should be a matter for all staff and take place in the course of routine duties and site visits by staff of Development Services.	Staff monitor development during site inspections and if a development is identified which is believed to be unauthorised and raises planning issues, a case is be opened. Implemenetd/complete.	None	N/A
8. Developments with planning permission will be inspected as the development proceeds on the basis of an informal "assessment of risk" undertaken when permission is granted. Those developments which are likely to have the most significant effect on the environment, or on the amenity of local residents, will be inspected most frequently.	Implemented/complete	None	N/A

<b>ACTION</b>	<b>PROGRESS</b>	<b>FURTHER ACTION</b>	<b>TIMESCALE (RESPONSIBILITY)</b>
9. Development Services should produce a Supplementary Advice Note on Planning Enforcement incorporating the enforcement policies set out in Section 7 of this report.	Action not progressed. The guidance in the Strategy and advice provided on a case by case basis has been considered sufficient hitherto.	An Enforcement Charter will be published this year.	September 2008 (DQTL)
10. Development Services should incorporate appropriate enforcement policies within the development plan when it is reviewed.	Implemented/Complete.	None	N/A
11. The Development Control Manager should assume full responsibility for managing all monitoring and enforcement work and directly supervising all delegated monitoring and enforcement work to case officers.	Implemented/Complete	None	N/A
12. The Development Control Manager will prepare a monthly update report on enforcement cases for the Head of Planning Services, in order to be able to agree clear priorities and deadlines for casework	Implemented/Complete	None	N/A
13. The Development Control Manager will hold a weekly operational meeting with staff to review progress and agree action on current cases involving a breach of planning control in order to ensure that agreed priorities and deadlines are being met.	Implemented/Complete	None	N/A

<b>ACTION</b>	<b>PROGRESS</b>	<b>FURTHER ACTION</b>	<b>TIMESCALE (RESPONSIBILITY)</b>
14. Case officers should have responsibility and accountability for resolving all outstanding details to secure the implementation of consents.	Implemented/Complete	None	N/A
15. Resources should be used from the existing approved professional fees budget of Development Services to allow for the recruitment of an additional junior member of staff for monitoring and enforcement work.	Implemented/Complete	None	N/A
16. Development Control staff should be trained in monitoring, enforcement procedures and good practice.	Implemented/Complete	None	N/A
17. Development Control staff should receive specific high quality training in the following skill areas “dealing with conflict”, “negotiating and mediation”, “team building/team working”, “customer care” and “personal safety”.	Specific training needs included in individual officers Training and Development Plans as required.	None	N/A
18. The Development Control Manager, in consultation with Legal Services, should undertake a review of liaison procedures with Legal services and the prosecution authorities on enforcement matters. The aim should be jointly to agree templates for formal notices and procedures and responsibilities to be applied, particularly in emergency situations, such as Stop Notices and interdicts.	Implemented/Complete	None	N/A

<b>ACTION</b>	<b>PROGRESS</b>	<b>FURTHER ACTION</b>	<b>TIMESCALE (RESPONSIBILITY)</b>
19. The Council should make use of the standard notices and forms for formal enforcement action as set out in Scottish Office Circular 4/1999.	Implemented/Complete		N/A
20. Development Services should produce an "Enforcement Manual" of written procedures on good practice to be followed by planning staff in dealing with breaches of planning control. This Manual should be based on the draft text included as Appendix 3 of this report, together with the Procedural "Flow Chart" in Appendix 4; the Enforcement Policy summary table included in Appendix 5; and the Enforcement Prioritisation Matrix included as Appendix 6.	Implemented/Complete	None	N/A
21. Development Services will make greater use of Planning Contravention Notices as a means of securing information about breaches of planning control.	Implemented/Complete	None	N/A
22. When undertaking site visits, all staff will carry identity cards and will identify themselves and explain the purpose of their visit to the owner/occupier.	Implemented/Complete	None	N/A

<b>ACTION</b>	<b>PROGRESS</b>	<b>FURTHER ACTION</b>	<b>TIMESCALE (RESPONSIBILITY)</b>
23. The Development Control Manager should liaise with Legal Services about the requirement (or otherwise) for staff to carry specific evidence of authorisation to enter land or premises, for the purpose of investigating breaches (and alleged breaches) of planning control.	Implemented/Complete	None	N/A
24. Wherever site visits require entry onto land, or into premises, Development Services staff will give advanced notification of the visit, unless there are justifiable reasons for making a visit unannounced.	Implemented/Complete	None	N/A
25. An immediate investigation should be taken by the Development Control Manager of how better use can be made of IT to standardise correspondence; record complaints; monitor deadlines for taking action and for securing compliance and for keeping customers, complainants and Members of the Council informed.	Implemented (CAPS/Uniform System). Recent audit of use of computerised administration system identified a number of potential improvements that could be achieved through greater use of the functionality of the system.	The recommendations of the audit are substantially complete.	N/A
26. Development Services should ensure that "plain language" is used in all notices and letters.	Plain English is used in correspondence from DMO checked by Team Leader.  Review complete.	None	N/A
27. Where the Council uses its discretion not to take formal enforcement action to enforce a breach of planning control, an explanation of the	Implemented/complete.	None	N/A

<b>ACTION</b>	<b>PROGRESS</b>	<b>FURTHER ACTION</b>	<b>TIMESCALE (RESPONSIBILITY)</b>
reasons should be given to the complainant and to other parties.			
28. The Head of Planning Services and the Development Control Manager should examine opportunities to keep Members of the Council and the Community Council informed of progress on current enforcement cases within their areas. The scope for including information within the new style "Planning Bulletin" issued each week, should be explored.	Arrangements for informing elected members and community councils of cases has changed on several occasions including Committee reporting, and use of information bulletin and Members bulletin.	Further review of procedure planned, to include new procedures for community engagement in forthcoming Planning Act. Consultation with Community Councils planned for Summer 2008.	September 2008 (DQTL)
29. Development Services should publish and make available a "Charter" for Planning Enforcement, based upon the draft attached as Appendix 1 to this report.	Customers are made aware of the Strategy and the Charter but specific wider publication has not been progressed thus far.	See Action 8 above	September 2008 (DQTL)
30. Development Services should publish standards for investigating complaints about breaches of planning control and for seeking to remedy those breaches, based upon the draft attached as Appendix 2 to this report.	Customers are made aware of the Standards but specific wider publication has not been progressed thus far	Performance and other information will be published in the information bulletin on a quarterly basis.	September 2008 (DQTL)
31. An annual review of performance should be published in relation to the targets and standards set out. This could be published in an appropriate	Performance standards set up early 2005 and monitored since. The annual report on	None	N/A

<b>ACTION</b>	<b>PROGRESS</b>	<b>FURTHER ACTION</b>	<b>TIMESCALE (RESPONSIBILITY)</b>
issue of the Development Service's Planning Bulletin and reported to the Service Advisory Group and Enterprise and Environment Committee in the Annual Performance Review report.	performance against these standards is shown in Appendix 4 to this report.		
32. An annual review of enforcement performance should be undertaken in accordance with the procedures set out in the COSLA draft Guidance. The audit Proforma attached to the draft Guidance should be used in an annual audit. The results of this audit and the appropriate performance indicators will be reported annually to the Service Advisory Group and to the Enterprise and Environment Committee.	See Action 31 above.  Implemented/complete.	None	N/A
33. The Service will review the operation of enforcement practice and will take account of comments received from individuals, businesses and the Development Services Advisory Group.	Implemented/Complete	None	N/A
34. The Service should undertake periodic reviews of particular areas of planning control. The aim should be and prioritise particular types of	Review undertaken of impact of horse related development resulted in specific policy in Local Plan	SAN on Householder Development	N/A

<b>ACTION</b>	<b>PROGRESS</b>	<b>FURTHER ACTION</b>	<b>TIMESCALE (RESPONSIBILITY)</b>
<p>enforcement problems that are serious or widespread across Clackmannanshire, with the objective of enabling coherent action to be taken, consistently applying control and enforcement action across the whole county. Priority areas for review should be identified in the Service Plan.</p>	<p>and a SAN. Advice on the enforcement of householder developments applying the policy set out in Appendix 1 will be incorporated in the revised SAN on Householder Development (See Action 3).</p>		



## APPENDIX 2

### ANNUAL PERFORMANCE REPORT ON PLANNING ENFORCEMENT 2007-2008

- 1.0 The Development Quality Team records all enforcement enquiries it receives, either in relation to alleged unauthorised developments, or separately in connection with the approved drawings or conditions attached to a planning permission granted by the Council. In accordance with the enforcement manual, the team proceeds with its investigation of each individual case. While a variety of steps are taken as part of our investigative work which will include a site visit, subsequent correspondence, a check on the planning history and consultation with relevant Council Services, two key stages occur against which performance is measured. These are
- a) An initial decision on whether the alleged unauthorised development is a breach of planning control i.e. is it or is it not development as defined in the planning legislation and if it is:-
    - \* Is it permitted development?
    - \* Has planning permission been granted?
    - \* Is it in accordance with the terms of the planning permission?
  - b) A second decision on the resolution of cases, i.e. whether action will or will not be taken to remedy those cases where a breach of planning control has occurred.
- 2.0 From the information in the table below, it will be noted that there has been a significant escalation in enforcement activity and notices served since 2005-2006 and that this level of activity has been maintained in 2007-2008. In particular, this last year has seen an increased use of formal notices, albeit perhaps still of modest proportions when compared to the overall number of complaints which the Service receives.

**Enforcement Activity in Clackmannanshire**  
**Table 1 - Cases taken up to 2000-2008**

	<u>00/01</u>	<u>01/02</u>	<u>02/03</u>	<u>03/04</u>	<u>04/05</u>	<u>05/06</u>	<u>06/07</u>	<u>07/08</u>
Householder	6	11	4	15	17	35	23	21
Minerals	0	1	0	0	1	0	0	0
All Other Dev'ts	12	15	8	28	34	26	28	26
LB's/CA's	0	0	0	7	5	2	2	4
Adverts	0	3	6	0	2	5	10	5
Others	0	0	0	3	0	0	2	2
<b>Total</b>	<b>18</b>	<b>29</b>	<b>18</b>	<b>53</b>	<b>59</b>	<b>68</b>	<b>65</b>	<b>58</b>

**Table 2 – Formal Notices Served 2000-2008**

	<u>00/01</u>	<u>01/02</u>	<u>02/03</u>	<u>03/04</u>	<u>04/05</u>	<u>05/06</u>	<u>06/07</u>	<u>07/08</u>
Enforcement Notices	1	3	3	0	0	0	1	3
Breach of Conditions	1	1	1	2	0	3	1	4
PCN's	0	0	0	0	3	3	5	4
Stop Notices	0	0	0	0	0	0	0	0
<b>Total</b>	<b>2</b>	<b>4</b>	<b>4</b>	<b>2</b>	<b>3</b>	<b>6</b>	<b>7</b>	<b>11</b>

- 3.0 For the purposes of examining our performance in meeting the two stages of the enquiry process, tables 3, 4 and 5 and illustrate the time taken to resolve cases in each of the subsequent three years. The tables highlight an improvement in performance in 2007-2008 particularly in relation to the percentage of cases resolved within 8 and 16 weeks. The diagram shows the same information graphically to illustrate the improved performance.
- 4.0 In order to measure our performance at the various stages of the monitoring and enforcement enquiry process, it is intended to introduce a further series of performance targets. These will relate to:-
- a) The acknowledgement of complaints - % within a specified time period
  - b) Undertaking site visits - % within a specified time period
  - c) Sending an initial letter of enquiry % within a specified time period
  - d) Deciding on whether a breach has occurred – target % within specified time period
  - e) Deciding an action to remedy a breach or close a case – target % within specified time period

**TABLE 3**

<b>ENFORCEMENT CASES 1<sup>ST</sup> APRIL 2005 – 31<sup>ST</sup> MARCH 2006</b>			
		Number	
	No of cases in hand at 1 <sup>st</sup> April 2005	57	
	No of cases received between 1 <sup>st</sup> April 2005 & 31 <sup>st</sup> March 2006	68	
	No of cases resolved 1 <sup>st</sup> April 2005 – 31 <sup>st</sup> March 2006	100	
	No of cases in hand at 1 <sup>st</sup> April 2006	25	
			Cumulative %
	No of cases taking less than 4 weeks to resolve	13	13
	No of cases taking less than 8 weeks to resolve	14	27
	No of cases taking less than 12 weeks to resolve	17	44
	No of cases taking less than 16 weeks to resolve	7	51
	No of cases taking less than 20 weeks to resolve	19	70
	No of cases taking more than 20 weeks to resolve	30	100
		Number	%
	% of cases meeting deadlines for decision on whether or not a breach exists (4 weeks from date of enquiry / monitoring trigger)	64/84	76
	% of cases meeting deadlines for decision on whether or not action is warranted (8 weeks from date of decision on breach)	53/94	56

**TABLE 4**

<b>ENFORCEMENT CASES 1<sup>ST</sup> APRIL 2006 – 31ST MARCH 2007</b>			
		Number	
	No of cases in hand at 1 <sup>st</sup> April 2006	25	
	No of cases received between 1 <sup>st</sup> April 2006 & 31st December 2006	65	
	No of cases resolved 1 <sup>st</sup> April 2006 – 31st December 2006	53	
	No of cases in hand at 1 <sup>st</sup> January 2007	37	
			Cumulative %
	No of cases taking less than 4 weeks to resolve	5	9
	No of cases taking less than 8 weeks to resolve	18	43
	No of cases taking less than 12 weeks to resolve	6	55
	No of cases taking less than 16 weeks to resolve	8	70
	No of cases taking less than 20 weeks to resolve	4	77
	No of cases taking more than 20 weeks to resolve	12	100
		Number	%
	% of cases meeting deadlines for decision on whether or not a breach exists (4 weeks from date of enquiry / monitoring trigger)	28/58	48
	% of cases meeting deadlines for decision on whether or not action is warranted (8 weeks from date of decision on breach)	36/46	78

**TABLE 4**

<b>ENFORCEMENT CASES 1<sup>ST</sup> APRIL 2007 – 31<sup>ST</sup> MARCH 2008</b>			
		Number	
	No of cases in hand at 1 <sup>st</sup> April 2007	37	
	No of cases received between 1 <sup>st</sup> April 2007 & 31 <sup>st</sup> March 2008	58	
	No of cases resolved 1 <sup>st</sup> April 2007 – 31 <sup>st</sup> March 2008	69	
	No of cases in hand at 1 <sup>st</sup> April 2008	26	
			Cumulative %
	No of cases taking less than 4 weeks to resolve	15	22
	No of cases taking less than 8 weeks to resolve	18	48
	No of cases taking less than 12 weeks to resolve	10	62
	No of cases taking less than 16 weeks to resolve	4	68
	No of cases taking less than 20 weeks to resolve	2	71
	No of cases taking more than 20 weeks to resolve	20	100
		Number	%
	% of cases meeting deadlines for decision on whether or not a breach exists (4 weeks from date of enquiry / monitoring trigger)	41/66	62
	% of cases meeting deadlines for decision on whether or not action is warranted (8 weeks from date of decision on breach)	49/69	71

### Resolution of Enforcement Cases



