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**COMMITTEE:** East Lothian Council

**MEETING DATE:** 17 February 2026

**BY:** Depute Chief Executive – Resources and Economy

**REPORT TITLE:** Planning Enforcement

**REPORT STATUS:** Public

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## **1 PURPOSE OF REPORT**

1.1 This report responds to the requirements of the Planning Enforcement Powers Motion approved at Council on 28 October 2025.

## **2 RECOMMENDATIONS**

Members are recommended to:

2.1 Agree that a wider report on the performance and activity of the Council's Planning Service, to include planning enforcement, is brought to PPRC on an annual basis; and

2.2 Instruct the Chief Planning Officer to continue to monitor planning enforcement activity and adjust resource accordingly within the wider Planning Service.

## **3 BACKGROUND**

3.1 Councillors approved a motion at its meeting on 28 October 2025 requiring the Chief Planning Officer bring a report back to Council on Planning Enforcement powers, their use, case statistics, resourcing, Council standards and working with other authorities and CoSLA. Details of the motion are available as a Background Paper.

3.2 Planning permission is required for most development that takes place in Scotland, with the exception of some minor works. Sometimes, however, developers or householders undertake work or changes of use without planning permission or fail to keep to the permission they have

been given. Councils have powers to enforce planning controls in such cases, if they consider it is in the public interest to do so.

- 3.3 Enforcement powers in Scotland are taken from the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc. (Scotland) Act 2006 and the Planning (Scotland) Act 2019. There are separate acts and regulations relating to listed buildings and advertisements. Guidance on use of these powers is set out in the Scottish Government's Planning Enforcement Circular 10/2009.
- 3.4 It is important to note that a breach of planning control does not constitute a criminal offence. ELC aims to amicably resolve breaches of planning control, rather than punish those who carried out the unauthorised breach. The question of expediency is key and whether there is harm being done by one of the above breaches and whether it is then appropriate to take action.
- 3.5 Dependant on the type of breach, the enforcement powers open to the Council are:
  - Section 33A Notice: requires the submission of an application for retrospective planning permission.
  - Planning Contravention Notice: used to obtain information about activities on land where a breach of planning control is suspected. It is served on the owner or occupier, on a person with any other interest in the land or who is carrying out operations on the land.
  - Enforcement Notice: generally used to deal with unauthorised development and comes with a notification period, sets out steps required to remedy breach and a compliance period to undertake any work required. Failure to comply with an Enforcement Notice can lead to up to a £50K fine in the Sheriff Court. Also, versions apply to Listed Buildings and Advertisements.
  - Breach of Condition Notice: as an alternative to an Enforcement Notice when terms of a planning condition have been breached. The level of harm caused by a breach of condition must be considered.
  - Stop Notices: this is used in urgent or serious cases where an unauthorised activity must be stopped, usually on the grounds of public safety. When a Stop Notice is served, the planning authority must also issue an Enforcement Notice. If a Stop Notice is served without due cause, or an appeal against the Enforcement Notice is successful, the Stop Notice may be quashed and the Council may face claims for compensation. The use of Stop Notices therefore needs to be carefully assessed by the Council.
  - Temporary Stop Notice: 28-day version of a stop notice but does not require an Enforcement Notice to be served first.

- Fixed Penalty Notice (FPN): a fine-based alternative when an Enforcement Notice has not been complied with. Value of fine is £2,000 for breach of an enforcement notice and only £300 for a breach of a breach of condition notice. If paid within 15 days, the value of the fine is reduced by 25%. By paying the penalty imposed by the FPN, the person will discharge any liability for prosecution for the offence. They will not, however, discharge the obligation to comply with the terms of the Enforcement Notice or Breach of Conditions Notice and the planning authority will retain the power to take direct action to remedy the breach and recover the costs of such work from that person.

3.6 Other powers available include court proceedings to impose an Interdict, although court action can provide costs and should only be used in the most serious of cases. Direct action (e.g. removing unauthorised development) can be taken when an Enforcement Notice has not been complied with. Failing to comply with the requirements of a Breach of Condition Notice or an Enforcement Notice could also result in the Council seeking to prosecute the offender.

3.7 Taking formal enforcement action is a discretionary power issued by the Scottish Government to each respective local authority/national park in Scotland. Where a satisfactory outcome cannot be achieved through negotiation, formal enforcement action may be exercised.

3.8 A planning authority is not required to take formal enforcement action on a breach of planning control. Where enforcement action is taken, it must be expedient to do so, having regard to the Development Plan and to any other material planning considerations. Any action taken must be reasonable and proportionate to the breach of planning control. In terms of taking enforcement action, in that expediency decision, the level of harm caused by the breach must be considered.

3.9 The Council has published an Enforcement Charter which summarises its enforcement powers, how they can be used and service standards to responding to breaches of planning control raised by the public and how they will be investigated. At the January meeting of the Association of East Lothian Community Councils, the Head of Development summarised and signposted the charter to attendees. This has also been signposted to attendees at a Community Council training event on 28 January. The Council's Planning Enforcement Charter is reviewed and updated every two years, and the next review is due in spring 2026. The updated Charter will be shared on the Council's social media channels. It is the responsibility of the Council's Chief Planning Officer to undertake this review every two years, in order to comply with legislative requirements.

3.10 The Council's Enforcement Charter sets out the following service standards:

- Registered complaints will receive an acknowledgement via post or email within 10 days and be given a reference and officer details;

- Person(s) making the complaint will be advised of the findings and any proposed action to be taken within 30 working days of the complaint being registered. This may include the need for additional investigation prior to deciding on a course of action. They will be advised if the matter does not involve a breach of planning control; and
- If there has been no progress for a period of 30 working days, we will write to complainants to explain the delay.

3.11 Given the time that can be taken to undertake an investigation into cases, it is not felt that it would be reasonable to shorten either of these timescale service standards in the Enforcement Charter. Exact times to investigate and resolve cases is case specific. Some cases are very simple and can be closed after a short investigation. Others which are more complex, or which lead to Enforcement Notices and corrective action can take much longer.

3.12 The following tables set out Planning Enforcement Statistics for the last five years:

	2021	2022	2023	2024	2025
<b>Enforcement cases opened</b>	368	377	409	430	230
<b>Enforcement notices issued</b>	35	46	50	28	13
<b>Enforcement cases closed</b>	335	366	324	316	140

Reasons Cased Closed	2021	2022	2023	2024	2025
<b>Case unfounded</b>	90	107	83	86	54
<b>Planning App Approved</b>	100	97	94	58	34
<b>Permitted Development</b>	44	48	37	18	0
<b>Completed</b>	94	100	104	119	38
<b>Closed</b>	7	14	6	35	14
<b>Totals</b>	335	366	324	316	140

3.13 Note that the statistics for 2025 are not complete yet and so they are not yet fully comparable in scale with previous years. However, there has been a significant drop in complaints received compared to 2024 and 2023. Part of this decrease can be identified due to the reduction in short-term let-related complaints. These were related to the change in planning requirements on this matter which led to a corresponding increase in number of complaints and subsequent applications for short term lets. These short-term let complaints numbered 50-60 cases per annum.

3.14 What can be seen is that vast majority of enforcement cases are closed and the second table sets out the reasoning for these. In the majority of instances, the case is unfounded (not a matter for planning enforcement), it is permitted development or a planning application is subsequently submitted and the matter resolved in that manner.

3.15 Cases are marked closed by completion when breaches of planning control are remediated either through the reconstruction of the unauthorised to make the development fit within permitted development limits, the removal of unauthorised development in full, the evident cessation of an unauthorised use or the tidying up of land causing a loss of amenity.

3.16 As suggested in the motion, PPRC would be the most appropriate forum to monitor and review enforcement activity. However, rather than as indicated on a quarterly basis, it is suggested that a wider scope on the performance and activity of the whole Planning Service, including enforcement, is incorporated into updated performance reporting that is brought to PPRC on an annual basis. Enforcement activity can be linked to the overall level of development and planning activity within the county and therefore they are best seen in comparison to each other. An annual basis is suggested as planning statistics are gathered and submitted to Scottish Government on an annual basis and enforcement statistics are not finalised on a quarterly basis. The Council's externally scrutinised Planning Performance Improvement Framework could also be brought to that meeting of PPRC.

3.17 Enforcement is a discretionary power. This means that, even where there is a breach of planning control, the Council has to consider if it is in the public interest to take enforcement action. The Council is not required to take any particular action on a specific breach of planning control and, indeed, can decide that no action is necessary. In the vast majority of cases, it is not necessary for the Council to serve Stop and Temporary Stop Notices and Fixed Penalty Notices. The Council has served a Stop Notice in the past. No Temporary Stop Notices or Fixed Penalty Notices have yet been served, as these are relatively new powers, and there have been no cases that have necessitated such action to be taken. Planning legislation also contains provision for a developer to potentially claim compensation from the planning authority when a Stop or Temporary Stop Notice has been served. The planning authority needs to carefully consider this when considering whether or

not to serve such a Notice. Solutions may be better achieved through engagement and negotiation with the developer.

- 3.18 In terms of resources, the Council has one full-time Enforcement Officer, who only deals with enforcement cases, and they sit within the Development Delivery Team. The Council has only had one full-time equivalent (FTE) Enforcement Planning Officer for at least 10 years now and so that level of resource has not changed.
- 3.19 In terms of comparisons, Midlothian Council have two staff who deal with enforcement issues, but they also are responsible for other planning matters. They estimate that they have 1.2 FTE level of enforcement staffing resource. West Lothian Council and Fife Council have 2 and 3 FTE planning enforcement resource; however, they have populations of circa 186K and 374K, respectively, and would therefore be expected to have greater levels of resource.
- 3.20 Given the reduction in cases in 2025, it is not considered appropriate that additional explicit planning enforcement resource is required at present. This matter will, however, be kept under review by the Council's Chief Planning Officer. It should be noted that the Planning Delivery Team does contain two former ELC Enforcement Planners and their expertise is drawn upon at times of increased numbers of cases, complex cases or during staff leave and absence. There is also the opportunity that the Council's Chief Planning Officer (appointed in August 2025) could undertake a wider planning service structure review and look to make additional flexible enforcement resources and oversight available from the existing overall level of planning resource. The Chief Planning Officer will also review whether there may be other sources of funding should there be a need to bolster resource for planning enforcement.
- 3.21 The Planning Service does not liaise directly with COSLA in terms of powers. However, the Council's Chief Planning Officer is a member of Heads of Planning Scotland where high level discussion on planning enforcement can be had, including feeding back on difficulties in using existing enforcement legislation and fines to Scottish Government planning staff. The Enforcement Planning Officer is a member of the Scottish Planning Enforcement Forum, where issues of use of powers, their uses and case studies are shared to enhance learning and practice. This Forum is crucial for professional development and sharing best practice in a complex part of the planning system.

## **4 POLICY IMPLICATIONS**

- 4.1 None

## 5 RESOURCE AND OTHER IMPLICATIONS

- 5.1 Finance: None at this time
- 5.2 Human Resources: N/A
- 5.3 Other (e.g. Legal/IT): N/A
- 5.4 Risk: A/A

## 6 INTEGRATED IMPACT ASSESSMENT

- 6.1 ***Select the statement that is appropriate to your report by placing an 'X' in the relevant box.***

An Integrated Impact Assessment screening process has been undertaken and the subject of this report does not affect the wellbeing of the community or have a significant impact on: equality and human rights; tackling socio-economic disadvantages and poverty; climate change, the environment and sustainability; the Council's role as a corporate parent; or the storage/collection of personal data.

X

**or**

The subject of this report has been through the Integrated Impact Assessment process and impacts have been identified as follows:

Subject	Impacts identified (Yes, No or N/A)
Equality and human rights	
Socio-economic disadvantage/poverty	
Climate change, the environment and sustainability	
Corporate parenting and care-experienced young people	
Storage/collection of personal data	
Other	

***[Enter information on impacts that have been identified]***

The Integrated Impact Assessment relating to this report has been published and can be accessed via the Council's website:

[https://www.eastlothian.gov.uk/info/210602/equality\\_and\\_diversity/12014/integrated\\_impact\\_assessments](https://www.eastlothian.gov.uk/info/210602/equality_and_diversity/12014/integrated_impact_assessments)

## 7 APPENDICES

7.1 None

## 8 BACKGROUND PAPERS

8.1 Minutes of the Council meeting of 28 October 2025:

[https://www.eastlothian.gov.uk/download/meetings/id/26406/public\\_minute\\_of\\_east\\_lothian\\_council\\_meeting\\_of\\_28\\_10\\_25](https://www.eastlothian.gov.uk/download/meetings/id/26406/public_minute_of_east_lothian_council_meeting_of_28_10_25)

8.2 East Lothian Council Planning Enforcement Charter:

[https://www.eastlothian.gov.uk/downloads/download/12865/planning\\_enforcement\\_charter](https://www.eastlothian.gov.uk/downloads/download/12865/planning_enforcement_charter)

## 9 AUTHOR AND APPROVAL DETAILS

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<b>Date</b>	27 January 2026

### Head of Service Approval

<b>Name</b>	Keith Dingwall
<b>Designation</b>	Head of Development
<b>Confirmation that IIA and other relevant checks (e.g. finance/legal) have been completed</b>	Yes
<b>Approval Date</b>	2 February 2026