

West Dunbartonshire Council - Planning and Building Standards

Planning Enforcement Charter



March 2016

West
Dunbartonshire
COUNCIL

Planning Enforcement Charter

What is Planning Enforcement?

Many types of development require planning permission or other related consents. Sometimes, either by accident or intentionally, developers or householders undertake work without the necessary permission, or fail to implement correctly the permission they have been given. This is called a **breach of planning control**.

Possible breaches of planning control can include:

- carrying out physical work or changes of use without the required planning permission;
- failure to comply with conditions attached to a planning permission;
- carrying out development otherwise than in accordance with the approved plans or specifications;
- works in breach of special planning controls, including those relating to listed buildings, conservation areas, tree preservation orders and advertisement control

Councils have powers to take enforcement action, if they consider it is in the public interest to do so. The Council's planning enforcement function is administered by the **Development Management team**, within the

Planning & Building Standards service. Building Standards have separate powers under the Building (Scotland) Act 2003.

The purpose of planning enforcement is to **resolve any problems**, rather than to punish the mistake.

Key points on Planning Enforcement:

- **Enforcement is a discretionary power, and any enforcement action must be in the public interest;**
- **We will work to resolve the problem, not punish the breach;**
- **Any enforcement action will be proportionate to the scale of the breach;**
- **The Council will not act as an arbiter for neighbour or boundary disputes.**

About this Charter

This charter explains how the enforcement process works in the West Dunbartonshire Council's planning authority area*, including the enforcement powers available to the Council and the service standards which developers and objectors can expect from the Council.

The aims of this charter are to explain the enforcement process, and to ensure that our adopted procedures are fair and reasonable; that all interested parties are kept informed at each stage of the process; and that they are clearly made aware of anything which is required of them.

Breaches of planning control are an issue which concerns many members of the public. We welcome your comments on this charter, and any suggestions you may have about how we could improve the planning enforcement service further.

We will monitor the delivery of planning enforcement functions to ensure that the charter's service standards are met.

** Please note that all enforcement of planning control within the boundaries of the Loch Lomond and the Trossachs National Park is the responsibility of the Loch Lomond and the Trossachs National Park Authority, whose contact details can be found at the end of this document.*

Identifying Breaches of Planning Control

Members of the public have an important role in reporting potential breaches of planning control including the monitoring of planning conditions. Due to the large number of permissions granted each year it is not possible for the Council to actively monitor every site.

Any concerns about unauthorised work or breaches of conditions can be raised with the Council by email, or telephone. Issues can also be reported by letter or at one of the Council's One Stop Shops.



Please note that the preferred method of communicating with all parties is by email if this is possible and where there is no legal or procedural need for traditional letters.

When reporting a potential breach of planning control it is important to provide the following information:

- the address of the property concerned;
- the name and address of the person carrying out the breach (if known);
- details of the alleged breach of planning control (including any times and dates if relevant);
- an explanation of any problems arising from the alleged breach; and
- your own name, address and contact details

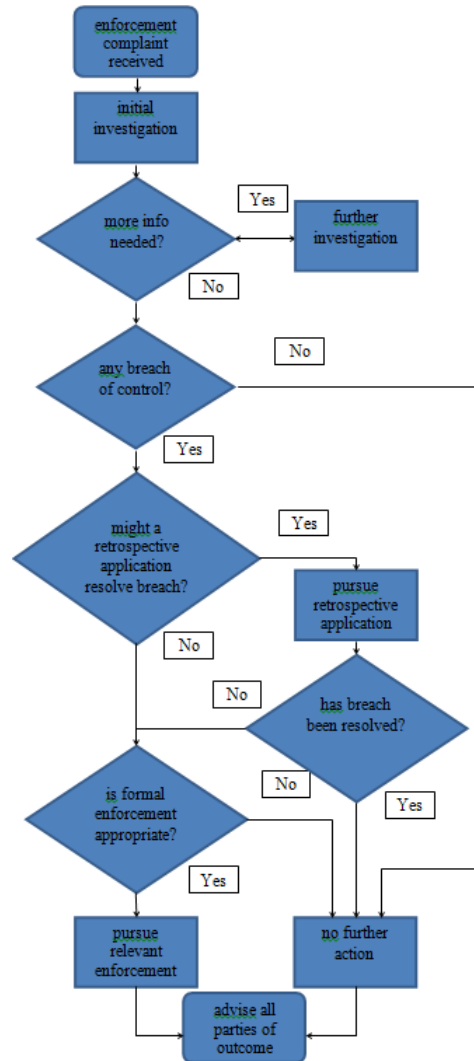
Note that anonymous complaints will not normally be investigated. The Council will not normally disclose who has made a complaint without that person's agreement, however developers do have the right to access certain information about their cases under the Environmental Information (Scotland) Regulations 2004 and the Freedom of Information (Scotland) Act 2002, and that information may include complaints correspondence.

Sometimes complaints arise over matters such as disputes over ownership boundaries, rights of access or damage to property. These are private legal matters over which the Council has no remit, in which case we will not investigate further. However, the Council operates a Mediation Service which may be of assistance in such situations, and details can be found at:

www.west-dunbarton.gov.uk/community-life-and-leisure/crime-prevention-and-community-safety/neighbourhood-mediation-service



Stages of Enforcement



Investigating Possible Breaches of Planning Control

The information received will be first checked to ensure that it involves a possible breach of planning control. It is important that members of the public reporting breaches provide as much information about it as possible in order to help speed up the investigation. The Council will acknowledge receipt of enforcement complaints by email or letter within 5 working days, providing contact details for the investigating officer.

For most enforcement cases it is necessary for the planning officer to visit the site and to discuss the situation with the developer. Site visits will take place as soon as practical, but may take several days depending on resources. Priority will be given to urgent situations such as a clear public safety concern or damage to a listed building. In cases where we have not been provided with the developer's contact details it can also take time to track down and make contact with whoever is responsible for the alleged breach, especially in the case of vacant sites and absentee landlords. We aim to carry out at least a preliminary investigation of the breach within 10 working days of receiving a complaint, including making contact with the

developer to explain the alleged breach and request any further information that may be necessary.

Council planning officers have powers to enter land or buildings to:

- establish whether there has been a breach of planning control;
- check if there has been compliance with a formal notice;
- check if a breach has been satisfactorily resolved.

In many cases the investigation can be concluded fairly quickly as it will be clear whether or not a breach of planning control has taken place, but in some situations this will take significant longer. Officers may have to monitor a site over an extended period to establish what is taking place or to gather evidence for any enforcement proceedings. Depending on the circumstances, occasionally complainants may be asked to keep a diary of events. The Council will keep interested parties informed of progress in such cases, and they should feel free to contact the case officer for an update. Clear recording of progress at each stage of the process and the decisions which have been reached will take place.

Determining whether there is a Breach of Planning Control

It is important that the Council establish whether or not any breach of planning control has actually occurred, and precisely what any breach is.

Sometimes the investigation will reveal that only part of the development is actually a breach of planning control. In such circumstances, the Council's enforcement powers are limited to those aspects of the development which require planning permission.

The extent to which enforcement action will be pursued will depend on whether the development complies with the policies of the local development plan. The decision to pursue enforcement action rests with the Council.

Time Limits for Enforcement

In determining whether a breach of planning control has taken place, the Council is bound by statutory time limits. If an unauthorised development or activity has existed for a long period of time it effectively becomes immune

from enforcement action.

The main time limits are known as the **Four Year Rule** and the **Ten Year Rule**:

- the Four Year Rule applies to "unauthorized operational development" (i.e. the carrying out of building, engineering, mining or other physical works), and also the change of use to a single dwellinghouse.
- the Ten Year Rule applies to all other development, including other changes of use and breaches of conditions.

If there has been no formal enforcement action during this time, after these time periods expire the development becomes



lawful and no further enforcement action can be taken. However, these rules may not apply in cases where there has been deception on the part of the developer (such as deliberate efforts to hide an unauthorised development or to mislead the planning authority about its use), and development which becomes lawful under these rules may not be able to intensify or expand without the need for further planning permission.

These time limits for enforcement **do not apply** to breaches of listed building, conservation area or advertising controls.

Retrospective Applications

The outcome of many enforcement cases may be the submission of a retrospective planning application. They are dealt with in the same way as other planning applications and are subject to the same consideration.

The invitation to submit a retrospective application, in no way implies that permission will necessarily be granted.

In cases where planning officers consider that a development is clearly unacceptable or that it is giving rise to negative impacts upon

the environment or local amenity which require to be addressed immediately, a retrospective application will not normally be sought. However, the Council cannot prevent a developer submitting a retrospective application should they so wish.

If the changes are minor it may be possible for the developer to apply retrospectively for a non-material variation however it is for the Council to determine what constitutes a non-material variation and whether it is acceptable or not.



Exercising Enforcement Powers

The pursuit of formal enforcement action is only considered once the existence of the breach has been established and the possibility of resolving the problem by other means has been explored. It is preferable to resolve problems through negotiation in the first instance. In general, the Council will only pursue enforcement where there is a clear breach of planning control and significantly affects public safety and public amenity. In many cases this approach is successful, so only a relatively small proportion of cases result in formal enforcement action.

Even where it is has not been possible to resolve the breach through negotiation or a retrospective application; this does not necessarily mean that formal enforcement proceedings will be expedient. The purpose of planning enforcement is to resolve the problems, not to punish the mistake. In situations where the developer has failed to submit a retrospective application but the unauthorised development is considered to be acceptable in planning terms, enforcement is unlikely to be taken. Equally, for minor contraventions where the impacts of the breach are negligible it may be judged that the situation does not merit further action. If the Council decides that no further action is

merited, it will write to objectors and advise of the outcome. In such circumstances the Council would reserve its right to revisit the issue in the event of any significant change in circumstances in the future. Failing to obtain the necessary permissions may result in the developer experiencing legal and time difficulties should they attempt to sell their property in the future.



Enforcement of Advertisement Control

The display of advertisements is covered by the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984. Many advertisements are displayed with 'deemed consent' which means they do not require consent provided they meet the various criteria and conditions set out in the regulations. One of these conditions is that the landowner has given permission for the advertisement to be displayed on their land.

Displaying an advertisement in contravention of the regulations is an offence and, if convicted in court, an offender can be fined up to £200 plus £20 per day for each day that the offence continues after conviction.

Where advertisements are displayed without the required advertisement consent, or in breach of the conditions of such consent, the Council can serve an advertisement enforcement notice. This specifies what is required (such as removal of the advertisement) and the time period for compliance (usually at least 28 days, although this can be reduced to 7 days where the advertisement is detrimental to public



safety, or where it can be removed without any other work being required). There is a right of appeal against the notice to the Scottish Ministers.

An advertisement enforcement notice can also require that a particular piece of land should not be used to display advertisements. This remains in force even after the original advertisement is removed, so any subsequent advertising on this site would amount to a breach of the notice.

In the event of failure to comply with advertisement enforcement notice the Council has powers to remove the advertisement concerned and to seek recovery of the costs of so doing from the

owner as a civil debt.

Where ad hoc banners and signs are displayed remotely from the business premises or activity to which they relate, limited opportunity will be given to the party responsible to remedy the matter voluntarily, if they can be readily identified. Direct action may be taken as the first response if there are traffic safety or site sensitivity issues.



Monitoring of our Quarries and Landfill Sites

Quarries and landfill sites have major impacts on the landscape and restoration requirements require regular monitoring. There are two quarries within the area (Sheephill and Dumbuckhill) and two landfill site (Auchencarroch and Rigangower) it has been agreed by the Council that these sites will be formally monitored on an annual basis during the month of May, in order to allow the preparation of an annual report. These sites would be visited more frequently should this be needed, for example if complaints are received or if compliance issues come to light during the formal monitoring visit. Compliance monitoring guidance has been produced and during these site visits the current progress of the operations will be recorded and compliance with the conditions of the relevant permissions will be monitored. Also the progress of the restoration scheme will be recorded and discussed with the operator. Notes of the site visit and updated information on the compliance with conditions will be recorded in the case records.



Statutory Enforcement Powers and Notices

If it is decided to pursue formal enforcement action, there are various different statutory notices and powers which the Council can employ, depending upon the circumstances. The main types of statutory enforcement powers are described below. Most statutory notices are served on the owners, occupiers and any other persons believed to have in interest the site or to be carrying out operations on it, but they are referred to simply as the “developers” below.

Town & Country Planning (Scotland) Act 1997

Notice Requiring a Retrospective Application for Planning Permission (Section 33A Notice)

Such notices can be served on developers who have carried out work without the necessary planning permission, and the effect of the notice is to require the submission of a retrospective application for the unauthorised work. If the developer fails to comply with this notice this fact will serve as evidence in any further enforcement action (such as an enforcement notice). Additionally, until it is complied with or withdrawn the Section 33A Notice remains on the Councils’ enforcement register and will show up on property searches if the developer tries to sell the property.

Planning Contravention Notice (PCN)

Such notices are used as part of the investigation process, to obtain information about activities on land where a breach of planning control is suspected. Such notices are used where the ownership of a site is not clear, if the developer does not provide information willingly, or in cases where evidence is being gathered as a prelude to formal enforcement action. The notice specifies information which the recipient is required to provide to the Council in writing

within 21 days. This may include such questions as what their interest is in the land, or what they are using the land for. Failure to comply with the notice is an offence punishable on conviction by a fine of up to £1,000, or up to £5,000 for the provision of false or misleading information.

Enforcement Notice

This is the most commonly used type of statutory enforcement action. An enforcement notice can be used where development has taken place without the benefit of the required planning permission including breach of planning conditions. An enforcement notice will specify what the alleged breach of planning control is, and what steps must be taken to comply with the notice (for example cessation of an unauthorised use or the alteration or demolition of an unauthorised structure).

An enforcement notice will also specify the time periods for when the notice will take effect (which cannot be less than 28 days after its date of issue), and also the period for compliance with the notice after it has taken effect. There is a right of appeal to the Scottish Ministers against an enforcement notice, but this must be lodged prior to the

notice taking effect. In the event of an appeal the requirements of the notice are suspended until a decision is reached. The compliance period allowed will depend upon the circumstances of the case.

Failure to comply with an enforcement notice is an offence, and on summary conviction may lead to a fine of up to £20,000. For the most serious cases a conviction on indictment is punishable by an unlimited fine. Alternatively, the Council can issue a fixed penalty notice of £2,000 (reduced to £1,500 if paid within 15 days), the non-payment of which within 30 days would result in the matter being referred to the courts. In addition to the potential fine, the Council may also take direct action to secure compliance with the requirements of the notice.

Breach of Condition Notice (BCN)

In situations where the conditions of a planning permission have not been complied with the Council has the option of serving a Breach of Condition Notice as an alternative to an enforcement notice. It will specify the steps which the developer is required to take in order to comply with the notice, and the period for compliance (a

minimum of 28 days from the date of the notice). The advantage is there is no right of appeal against a Breach of Condition Notice. Failure to comply is an offence, with a fine on conviction of up to £1,000. Alternatively, the Council can issue a fixed penalty notice of £300 (reduced to £225 if paid within 15 days), the non-payment of which within 30 days would result in the matter being referred to the courts.

Direct Action

Failure to comply with the terms of an enforcement notice can result in the Council carrying out the specified work itself, for example by arranging the demolition of unauthorised building. The Council may recover the costs of this from the landowner or lessee however direct action is only taken for the more significant cases.

Stop Notice and Temporary Stop Notice

Occasionally a breach of planning control gives rise to such serious or irreversible negative impacts that it is necessary to halt the breach immediately, without the 28 day delay involved in an enforcement notice. In such circumstances the Council can serve both an enforcement notice and a stop notice. The stop notice is able to specify a

shorter period for taking effect (a minimum of 3 days from service of the notice).

Temporary stop notices are for circumstances of such urgency that even a delay of a few days in prohibiting the unauthorised works or use would be unacceptable. A Temporary Stop Notice takes effect immediately (i.e. without the 3 day delay involved in a normal stop notice) and does not need to be accompanied by an enforcement notice, but it only applies for a limited duration (up to 28 days) after which it ceases to apply. This requires an immediate stop to the harmful activity whilst giving the Council time to carry out further investigation and to issue an enforcement notice and stop notice.

A stop notice or Temporary Stop Notice will specify what activity must cease. This will typically only cover the most serious aspects of the breach of control which are required to stop immediately, whereas an associated enforcement notice will address the whole of the breach.

There is no right of appeal against a stop notice or Temporary Stop Notice, and failure to comply is an offence punishable by a fine of up to £20,000 on summary conviction or

an unlimited fine if convicted on indictment. However, the developer can seek a judicial review of the notice, and they can also appeal to the Scottish Ministers against the accompanying enforcement notice. If the courts consider that a stop notice or TSN was served without due cause, or if the enforcement notice is quashed on appeal, the Council may be required to compensate the developer for the costs of having to stop work. The use of stop notices and Temporary Stop Notices is therefore reserved for only the most serious and urgent situations.

Interdict and Interim Interdict

The Council can apply to the courts for an interdict to restrain or prevent an actual or apprehended breach of planning control. An interim interdict is a temporary interdict made until the court reaches a final decision on whether to grant an interdict. Breaching an interdict or interim interdict is treated as a contempt of court, which is an offence carrying heavy penalties including possible imprisonment.

Although the Council can seek an interdict in relation to any breach without having to use other powers first, in practice such proceedings involve significant legal costs so

would only be employed as a last resort for the most serious cases or where enforcement notices have been ignored in the past.



Auchentoshan Woods.

[Planning \(Listed Buildings & Conservation Areas\) \(Scotland\) Act 1997](#)

Prosecution

In extreme cases of unauthorised works to a listed building or within a conservation area the damage may not be capable of being remedied by the Council's enforcement powers, for example if the building has been completely destroyed. As it is an offence to carry out work to a listed building without

the required listed building or conservation area consent, the Council can report such cases directly to the Procurator Fiscal without the need for any prior enforcement action. The offence is punishable by up to a £50,000 fine or six months imprisonment on summary conviction, or an unlimited fine and/or two years imprisonment if convicted on indictment. As with all fines imposed by the court for breaches of planning control, the level of any fine will be determined with regard to any financial benefits accrued by the guilty party as a result of the offence.

Listed Building Enforcement Notice

This is used for works being carried out to a listed building or within a conservation area without the required consent or in breach of a condition of such a consent. A Listed Building Enforcement Notice can require that the building/site be restored either to its former state, to the state required by the condition which has not been complied, or to such other state as the Council may consider sufficient to alleviate the effect of the breach. There is a right of appeal to the Scottish Ministers.

Failure to comply is an offence, and may lead to a fine of up to £20,000 on summary

conviction or an unlimited fine for conviction on indictment. Alternatively, the Council can issue a fixed penalty notice of £2,000 for the first Listed Building Enforcement Notice. Continued non-compliance attract escalating fines of £3,500 for a second notice and £5,000 for a third or any subsequent notices. The level of fixed penalty fines is reduced by 25% if paid within 15 days, whereas non-payment with 30 days would result in the matter being referred to the courts.

Listed Building Stop Notice and Listed Building Temporary Stop Notice

These are similar to planning stop notices as described above, but relate to development in breach of listed building and conservation area controls.

Listed Building Repairs Notice and Compulsory Purchase

If the Council considers that the owner of a listed building is not taking reasonable steps to properly maintain a listed building, it may initiate a process leading to compulsory purchase of the building.

The first step is the service of a repairs notice on the owner of the building. It advises the owner of the steps which the Council

considers necessary for the proper preservation of the building, and explains that if these are not carried out within a specified timescale the Council may initiate compulsory purchase proceedings. There is no right of appeal against the Repairs Notice and no offence of non-compliance. However, owners and other interested parties can challenge an application for compulsory purchase.

In the event of the owner failing to carry out the works specified, the Council may seek a compulsory purchase order from the Scottish Ministers. If this is granted, the compensation payable to the owner will have regard not only to the market value of the building but also to the costs likely to be incurred by the Council in restoring the building to an appropriate condition. If it is judged that the owners have deliberately allowed the listed building to fall into disrepair in an attempt to justify its demolition then minimal compensation may be payable.

These procedures would involve significant legal costs and financial risks for the Council, so they would only be used in the most serious cases.

Urgent Works to Unoccupied Listed Buildings

If it appears that works are urgently required to preserve an unoccupied listed building, the Council may serve notice on the owner giving them 7 days to undertake these works. Should the owner fail to carry these works then the Council can arrange to have the works carried out itself, and may subsequently seek to recover the costs of doing so from the owner. The owner can challenge the payment or the amount of these costs, in which case a decision on the issue will be made by the Scottish Ministers.



Tree Preservation Orders (TPO) and Trees in Conservation Areas

It is an offence to wilfully cut down, uproot, destroy or damage a tree which is subject to a Tree Preservation Order or within a conservation area. Prosecution may be sought in serious cases, in which case the offence is punishable by a fine of up to £20,000 on summary conviction or an unlimited fine if convicted on indictment.

Any person who has removed or damaged a protected tree without the necessary consent must plant a replacement tree of an appropriate size and species as soon as reasonably possible, unless otherwise agreed with the Council. Should they fail to do so, the Council may serve a notice requiring appropriate re-planting. There is a right of appeal against such a notice. Failure to comply with the notice may result in the Council taking direct action to carry out the re-planting and recovering the costs of doing so from the owner. Wilful obstruction of this would be an offence liable to a fine of up to £1,000 on summary conviction.

Other Relevant Planning Powers

Amenity Notice or Wasteland Notice

The Council to serve a notice on the owner, lessee or occupier of land, if it considers that the condition of the land is adversely affecting the amenity of any part of their area. The Notice specifies the steps considered necessary to reduce the adverse effect within a specified timescale. This notice can be used for buildings as well as land. There is a right of appeal to the Scottish Ministers against such notices. In the event of non-compliance the Council can enter the land, undertake the steps necessary to comply with the notice, and seek recovery of its costs from the owner.



Notification of Initiation of Development(NID); Notification of Completion of Development(NCD) and Display of Notices while Development is carried out

While these are not planning enforcement notices, these Notices are intended to improve the monitoring of development by requiring confirmation that development has commenced and been completed. For example this will allow planning conditions to be checked for compliance.

Site Notices which apply to major developments help to raise awareness of proposed developments in the area. They contain basic information about the site and the proposed development. It provides contact details where further details of the development can be found or reporting alleged breaches of planning control. It is a breach of planning control of failing to display a site notice when required to do so.

Starting a development without submitting a Notice of Initiation of Development is a breach of planning control and the Council may consider enforcement action. The Notice of Completion of Development requires a developer to submit a further Notice after



development has been completed.

Certificates of Lawful Use or Development (CLUD)

This allows the developer to establish the planning status of land. A Certificate of Lawfulness of Existing Use or Development can be used to confirm that an existing use or activity or in breach of a condition has already taken place is lawful. It is defined as lawful if enforcement action cannot be taken against it. This may be that planning permission is not required or the use or operation took place and the time for enforcement action has expired. Time Limits for enforcement are outlined above.

A Certificate of Lawfulness of Proposed Use or Development confirms that what is being proposed would be lawful and would not require planning permission ie it is permitted development or already has planning permission.

In both cases the onus of proof lies with the applicant. Certificates can be revoked if it subsequently appears that false or misleading information has been submitted with an application. The above Certificates do not mean that planning permission has been granted but the use of development is lawful and immune from enforcement action.

Responsibility for Exercise of Enforcement Powers

The majority of enforcement proceedings are undertaken by planning officers under delegated powers; however in a small number of more significant cases authority may be sought from the Planning Committee.

Appeals against enforcement proceedings are to the Scottish Ministers, but in most cases the determination of appeals is delegated to Reporters from the Scottish Government's Directorate of Planning & Environmental Appeals.



Information on Current Enforcement Proceedings

Details of outstanding enforcement notices, Breach of Condition Notice and Stop Notices and other formal enforcement proceedings are recorded in the Council's Enforcement Register. You can inspect the register and the documents online [www](http://www.....)

Enforcement Powers

The Planning Enforcement powers available to the Council are set out in Part IV of the Town and Country Planning (Scotland) Act 1997 and in Chapter IV of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. The Planning Acts are available from The Office of Public Sector Information (OPSI) at www.opsi.gov.uk.

Government policy on planning enforcement is set out in Circular 10/2009, "Planning Enforcement". This document is available from the Scottish Government and can be viewed electronically at www.scotland.gov.uk/planning.

Enforcement Contacts

Contact details for reporting suspected breaches of Planning control:
Development Management Team
West Dunbartonshire Council
Email: development.management@west-dunbarton.gov.uk
Tel: 0141 951 7941
Address: Aurora House
3 Aurora Avenue
Clydebank
G81 1BF

Contact details for general enquiries on Planning issues:
Planning & Building Standards West
Dunbartonshire Council
Email: buildingandplanning@west-dunbarton.gov.uk
Tel: 0141 951 7941

Contact details for complaints regarding the level of service:
Ms Pamela Clifford
Manager of Planning & Building Standards
Email: Pamela.clifford@west-dunbarton.gov.uk
Tel: 0141 951 7938

Other useful contacts – enquiries regarding building warrants:

Building Standards Team
West Dunbartonshire Council
Email: building.standards@west-dunbarton.gov.uk
Tel: 0141 951 7941

Loch Lomond and The Trossachs National Park and Planning Authority
Planning Information Officer
Email: planning@lochlomond-trossachs.org
Tel: 01389 722 024

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For general enquiries regarding the Planning system:
The Scottish Government – Planning helpline
Tel: 0845 774 1741

Planning Aid for Scotland provides a free and independent advice Service for individuals and community groups across Scotland - [http:// www.planning-aid-scotland.org.uk](http://www.planning-aid-scotland.org.uk) or call the helpline 0845 603 7602.