

REPORT TO: DEVELOPMENT QUALITY COMMITTEE - 18 JUNE 2007

REPORT ON: PLANNING ENFORCEMENT CHARTER

REPORT BY: DIRECTOR OF PLANNING & TRANSPORTATION

REPORT NO: 331-2007

1 PURPOSE OF REPORT

1.1 To advise the Committee in general terms of the implications for the Planning Etc (Scotland) Act 2006 for planning enforcement and to seek approval for a Planning Enforcement Charter.

2 RECOMMENDATION

2.1 It is recommended that the Committee:

- a notes the implications of The Planning Etc (Scotland) Act 2006 for planning enforcement;
- b approves the contents of the Planning Enforcement Charter as contained in Appendix 1 to this report and agrees to make the document available on the Council's website and by other means to a range of stakeholders and the general public; and
- c agrees to receive further reports in due course outlining the full implications of the further duties which the new Act will place on the Council once the provisions of the legislation are enacted by Regulations.

3 FINANCIAL IMPLICATIONS

3.1 There are no financial implications arising directly from the contents of this report.

4 SUSTAINABILITY POLICY IMPLICATIONS

4.1 There are no sustainability policy implications arising directly from the contents of this report.

5 EQUAL OPPORTUNITIES IMPLICATIONS

5.1 There are no equal opportunity implications arising directly from the contents of this report.

6 BACKGROUND

6.1 The Planning Etc (Scotland) Act 2006 received the Royal Assent in December 2006 and its provisions are being introduced on a phased basis. The changes which the Act introduces will be substantial and will have far reaching consequences for planning authorities and the communities which they serve.

6.2 The Act's provisions are being introduced on a phased basis as secondary legislation is prepared and consulted on. Further reports to Committee will be made on various aspects of the new legislation as it becomes known.

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- 6.3 One of the first new duties which planning authorities must perform is the preparation and publication of a Planning Enforcement Charter. This document must set out the Council's policies concerning the taking of enforcement action in support of the provisions of the Act; outline how members of the public are to bring any ostensible breach of planning control to the attention of the Council; and what the Council's procedures are for dealing with such complaints.
- 6.4 The Charters are to be kept under review (within 2 years of publication or republication) and must be submitted to Scottish Ministers.
- 6.5 Since 2000, the Council has maintained, published and updated a Guide to Enforcement which contains policies and procedures relating to the effective and efficient discharge of its planning enforcement functions. Guidance on the preparation of the proposed Charter which will supersede our own existing guide has been issued by the Scottish Executive in the form of a standardised template document to ensure the adoption of a consistent and easily understood approach by all planning authorities which complies with the new legislation. The Council has participated in the preparation of the model charter through the Royal Town Planning Institute in Scotland, the Scottish Society of Directors of Planning and the Scottish Enforcement Officers Forum.
- 6.6 The proposed Charter for Dundee is presented as an Appendix to this report and sets out a series of Service Standards and explains the often complex procedures involved in enforcing planning control.
- 6.7 The new Act will deliver an extended range of enforcement powers to planning authorities with the objective of enhancing the trust and confidence which communities and individual members of the public have in the decision making activities of Councils.
- 6.8 The Scottish Executive wishes Councils not only to ensure that Enforcement Charters are drawn up and adhered to but to ensure that adequate resources are made available for taking action where necessary.
- 6.9 In addition to the introduction of mandatory Enforcement Charters the new Act will introduce several other significant enhancements to the planning enforcement function. Among these are:
- a initiation and completion of development notices - developers will be required to inform Council's when their development is to be commenced and when it has been completed. For certain categories of development the developer will be responsible for displaying on site information relating to the development underway. Failures in respect of any of these requirements will be a breach of planning control. These measures will greatly assist the monitoring of developments and the identification of potential breaches of conditions.
 - b Fixed Penalty Notices - Councils will have powers to issue Fixed Penalty Notices as an alternative to prosecution in cases where a person is in breach of an enforcement notice.
 - c Temporary Stop Notices - the new Act outlines the circumstances in which Council's may issue these Notices where there has been a breach of planning

control and where it considers that there are valid reasons for stopping the activity immediately.

- 6.10 Further reports will be made to the Committee in due course as further information relating to the rolling out of these powers becomes available from the Scottish Executive.

7 CONSULTATIONS

- 7.1 The Chief Executive, Depute Chief Executive (Support Services), Depute Chief Executive (Finance) and Assistant Chief Executive (Community Planning) have been consulted and are in agreement with the contents of this report.

8 BACKGROUND PAPERS

- 8.1 There are no background papers of relevance to this report.

Mike Galloway
Director of Planning & Transportation

Ian Mudie
Head of Planning

IGSM/IAR/LC/KM

1 June 2007

Dundee City Council
Tayside House
Dundee

APPENDIX 1

PLANNING ENFORCEMENT CHARTER

A GUIDE TO ENFORCING PLANNING CONTROLS

1 INTRODUCTION

- 1.1 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 without planning permission or fail to keep to the permission they have been given.
- 1.2 Councils have powers to enforce planning controls in such cases, if they consider it is in the public interest to do so. Councils monitor developments to ensure planning controls are being followed but there is also a role for the public in alerting the council to any problems they become aware of.
- 1.3 This Charter explains how the enforcement process works, the role of the Council and the service standards it sets itself. It also explains what happens at each stage of what can be a lengthy process.
- 1.4 Enforcement is one of the most complex parts of the planning system. The aim of this Charter is to ensure that adopted procedures are fair and reasonable, and that interested parties are kept informed and are made aware of what is required.
- 1.5 This is an issue that concerns many members of the public. The Council hope you will find this Charter useful and will let us know if you think we could improve the service further.

This Charter sets out the current powers available to planning authorities. The Planning Etc Scotland Act 2006 introduces a number of changes. The guidance in this Charter will be revised as necessary as these changes are introduced to keep it up to date.

2 KEY POINTS ON PLANNING ENFORCEMENT

- 2.1 A breach of planning control is not a criminal offence. The purpose of planning enforcement is to resolve the problem rather than to punish the mistake. In addition, any action taken has to be appropriate to the scale of the breach.
- 2.2 Your Council has statutory powers to investigate breaches of planning control and the conditions attached to planning consents, and to take formal action where a satisfactory outcome cannot be achieved by negotiation. However, enforcement is a discretionary power. That 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.
- 2.3 Fuller information on the use of enforcement powers can be found in the Scottish Executive publication Planning Advice Note 54 (PAN54): Planning Enforcement which can be viewed online at:
<http://www.scotland.gov.uk/Publications/1999/03/pan54>.
- 2.4 Planning enforcement also covers the physical display of advertisements such as billboards and advertisement hoardings, although slightly different procedures apply. These are set out in a separate section at the end of the document. The actual

content of an advertisement is not covered by planning control. Any complaints about this should be made to the Advertising Standards Authority.

SERVICE STANDARD

By publishing our standards and targets, we aim to improve our enforcement service and make it responsive to the needs of our customers. We will monitor the contents of this charter to ensure that standards and targets are being met.

SERVICE STANDARD

At least once annually a written report will be made to the Council outlining the nature and extent of enforcement activity with recommendations as required as to the updating or review of this Charter

SERVICE STANDARD

Further copies of this Charter are available on the Council's website www.dundee.gov.uk, in local libraries and at Main Reception, Floor 2, Tayside House, 28 Crichton Street, Dundee

3 IDENTIFYING POSSIBLE BREACHES OF PLANNING CONTROL

3.1 Possible breaches of planning control can include:

- work being carried out without planning permission or consent;
- an unauthorised change of use;
- failure to comply with conditions attached to a permission or consent; and
- departures from approved plans or consent.

3.2 Members of the public have a vital role in reporting breaches of control. Any concerns should be raised with the Council. You can make preliminary enquiries by telephone or in person at the Council offices but these must be followed up in writing or by e-mail.

3.3 The following information is essential when reporting a suspected breach:

- the address of the property concerned;
- details of the suspected breach of planning control, with times and dates if relevant;
- your name, telephone number and address;
- an e-mail address if available or if the complaint is submitted electronically;
- information on how the breach affects you; and

- whether the enquiry is to be treated confidentially.

- 3.4 While the Council will do its best to honour requests for confidentiality, it is subject to the requirements of the Freedom of Information (Scotland) Act 2002). Requests for total confidentiality may limit the ability of the authority to take formal action and cannot be guaranteed if the case leads to court proceedings.

All enquiries relating to Enforcement issues should be addressed in the first instance to:

Lesley Campbell
Enforcement Officer (West)
Dundee City Council
Floor 14, Tayside House
28 Crichton Street
Dundee DD1 3RB

Amanda Vaughan
Enforcement Officer (East)
Dundee City Council
Floor 14, Tayside House
28 Crichton Street
Dundee DD1 3RB

Telephone: 01382 433019

Fax: 01382 433013

E-mail: lesley.campbell@dundeecity.gov.uk

Telephone: 01382 433315

Fax: 01382 433013

E-mail: amanda.vaughan@dundeecity.gov.uk

- 3.5 Members of the public also have an important role in monitoring the conditions that are placed on certain planning consents. Details of the conditions are included within the decision notice attached to the permission. Monitoring is undertaken by the Council's development control service. However, there are a large number of permissions granted each year and it is not practical, nor is it expected, that Councils monitor all conditions at all times.
- 3.6 Your involvement is therefore invaluable in providing information where it is believed that conditions attached to the consent are not being complied with or have not been discharged in a satisfactory way. Breaches of conditions are investigated in the same way as breaches of planning control.
- 3.7 Information received by the Council's Planning Enforcement Officers is checked to ensure that it involves a possible breach of control and includes all the detail required for a possible investigation. After preliminary checking and compliance with the requirements for investigation, the complaint will be registered. Once registered, a written or e-mail acknowledgement will be sent to the person who made the complaint.
- 3.8 Some complaints, such as neighbour disputes over boundaries, relate to matters over which the planning service has no control and cannot be investigated.

SERVICE STANDARD

If preliminary checking of a complaint suggests a breach of planning control, the complaint will be registered. Once registered, a written or e-mail acknowledgement will be sent to the person who made the complaint within 5 working days. The acknowledgement will include a reference number and contact details for the investigating officer.

4 INVESTIGATING POSSIBLE BREACHES OF PLANNING CONTROL

- 4.1 A priority system is used for investigating complaints based on matters such as the effect of the breach and the significance of the site.

SERVICE STANDARD

Priority will be given to significant breaches of planning control, including:

- breaches of condition for major development;
- irreversible damage to listed buildings;
- unauthorised felling of trees and matters affecting trees protected by Tree Protection Orders; and
- significant detrimental impact on amenity.

- 4.2 An investigation begins with an enforcement officer visiting the site. Following this visit, the individual who has made the complaint will be informed of what action, if any, is proposed. In some cases, additional investigation may be needed.
- 4.3 The length of time required to resolve a case or take action can be affected by a number of factors. Progress can be delayed for the gathering of further evidence, to allow negotiations to take place or for formal procedures to be concluded. Similarly, an application to regularise the breach of control or an appeal against a decision of the planning authority can also delay resolution of the case.
- 4.4 The Council recognises that delays can be a source of considerable frustration to those submitting information, particularly if they consider their amenity is affected. Consequently, we will try to keep interested parties informed of significant stages in the progress of a case but they may wish to contact the Enforcement Officer for a more regular update. If there has been no progress for a period of 6 weeks, the Council will write to complainants to explain the delay.

5 ACTING ON BREACHES OF PLANNING CONTROL

- 5.1 In some cases action may not be appropriate, even though planning controls have been breached. As stated previously, the purpose of planning enforcement is to resolve problems, not punish mistakes. The planning authority has to consider each case on its merits and decide on the best solution. The Council is unlikely to take formal action, for example, over developments which, in planning terms, are seen as acceptable. It may be more appropriate, in such cases, to seek the submission of a retrospective planning application.
- 5.2 Only a relatively small number of cases require formal enforcement action. This begins with either an Enforcement or Breach of Condition notice being served on those involved in the development. Both notices include the following information:
- a description of the breach of control that has taken place;
 - the steps that should be taken to remedy the breach;
 - the timescale for taking these steps;

- the consequences of failure to comply with the notice; and
- where appropriate, any rights of appeal the recipient has and how to lodge an appeal.

5.3 Appeals against enforcement notices are considered by Scottish Ministers and dealt with, in most cases, by Reporters from the Scottish Executive Inquiry Reporters Unit. Anyone who has submitted information on a breach of planning control is advised of the appeal.

There is no right of appeal against a breach of condition notice.

SERVICE STANDARD

Where a planning breach cannot be resolved and action is justified, a formal notice will be served. This will be either an enforcement notice or a breach of condition notice. The Council will write to the recipient of the notice to explain what is required, the timescales involved and the available options to resolve the issue.

5.4 Failure to comply with a notice may result in the planning authority taking further action. This can include a range of possible options including:

- referring the case to the Procurator Fiscal for possible prosecution;
- carrying out work and charging the person for the costs involved; and
- seeking a Court interdict to stop or prevent a breach of planning controls.

For more details, see the 'Enforcement Powers'" section at the end of the Charter.

SERVICE STANDARD

Where the terms of any enforcement notice are not complied with, every effort will be made to resolve the case to the satisfaction of the Council. Options include:

- direct action by the Council; and/or
- the matter being referred to the Procurator Fiscal for possible prosecution.

5.5 Details of enforcement notices, breach of condition notices, wasteland notices and stop notices are entered into an Enforcement Register. You can inspect these documents at the Planning and Transportation Reception, Floor 2, Tayside House, 28 Crichton Street, Dundee.

5.6 The Council has powers to enter land to:

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

This power applies to any land and may involve officials entering land adjacent to the site of the breach.

5.7 Enforcement action has to be taken within strict time limits:

- a four year limit – this applies to “unauthorised operational development” (the carrying out of building, engineering, mining or other operations in, on, over or under land) and change of use to a single dwelling house. After four years following the breach of planning control, the development becomes lawful, and no enforcement action can be taken;
- a ten year limit – this applies to all other development including change of use (other than to a single dwelling house) and breaches of condition. After ten years, the development becomes lawful if no enforcement action has begun; and
- there is no time limit for breaches of Listed Building control.

6 MAKING A SUGGESTION OR COMPLAINT

6.1 The Council hopes the public will be satisfied with the planning enforcement service. However, if you have any suggestions, concerns or difficulties, we want to hear from you. We are committed to improving our service and dealing promptly with any failures.

6.2 We will consider all complaints made about the way an enforcement enquiry was dealt with. Some people may disagree with the outcome of an investigation but, of itself, that is not grounds for complaint. As noted above there is a separate appeals' procedure for a recipient of an enforcement notice.

6.3 In the first instance, complaints should be discussed with the member of staff involved. If you are still dissatisfied, talk to the Team Leader, Development Quality (see list of contacts). At that stage if he is unable to help, you will be given the name of the Director of Planning and Transportation who will investigate the matter.

6.4 Written complaints will be acknowledged within 5 working days and then fully and promptly investigated. The complainant will be given a written response explaining the outcome of the investigation and any action that the Council proposes to take. If no action is proposed, the reasons will be explained.

SERVICE STANDARD

We will get in touch with you within 10 working days of receiving a complaint or suggestion to let you know what is happening. We will monitor all complaints and suggestions made and use them to review and improve the service we provide.

6.5 If you are not happy with the initial response, you can take the complaint further. You can complete a Complaints Form (available from all Council public offices and buildings) and return it to the Council's Customer Services Team –see list of contacts. If that fails to resolve the problem, you can seek the advice and help of your local councillor or the Chief Executive of Dundee City Council. Lastly, if you are

unsatisfied with the Council's complaints process, you have the right to take your complaint to the Scottish Public Services Ombudsman, at:

SPSO
FREEPOST EH641
Edinburgh
EH3 0BR

Telephone: 0800 377 7339 or e-mail: ask@spsso.org.uk

Generally, you must contact the Ombudsman within 12 months.

7 ENFORCEMENT POWERS

7.1 The Planning Enforcement powers available to your local 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 HMSO, 71 Lothian Road, Edinburgh and at www.scotland-legislation.hmsso.gov.uk.

7.2 Government policy on planning enforcement is set out in Circular 4/1999, "Planning Enforcement." Advice on good practice is given in Planning Advice Note 54 (PAN 54), "Planning Enforcement." Both documents are available from the Scottish Executive and can be viewed electronically at www.scotland.gov.uk/planning

7.3 Types of Notice

a **Breach of Condition Notice** – this is used to enforce the conditions applied to any planning permission. It is effective from the date it is served. It may be used as an alternative to an enforcement notice (see below), and is served on any person carrying out the development and/or any person having control of the land. There is no right of appeal. Contravening a breach of condition notice can result in the Council deciding to prosecute, with a fine of up to £1,000.

b **Enforcement Notice** – this is generally used to deal with unauthorised development, but can also apply to breach of planning conditions. There are similar notices and powers to deal with listed buildings (see below), and advertisements. An enforcement notice will specify a time period to take effect (a minimum of 28 days –but see the section below on advertisements); the steps that must be taken to remedy the breach and the time for this to be completed.

There is a right of appeal and the terms of the notice are suspended until a decision is reached. Failure to comply with an enforcement notice within the time specified is an offence, and may lead to a fine of up to £20,000 in the Sheriff Court. Failure to comply may also result in the Council taking Direct Action to correct the breach (see other powers below).

c **Listed Building Enforcement Notice** – this must be served on the current owner, occupier and anyone else with an interest in the property. The procedures are similar to those outlined above. The notice must specify the steps to be taken to remedy the breach and a final date for compliance. Failure to meet the terms of the notice by the date specified is an offence. There is the right of appeal to Scottish Ministers against the notice. Breaches of listed

building control are a serious matter. It is a criminal offence to undertake unauthorised works to demolish, significantly alter, or extend a listed building. In certain circumstances, this can lead either to an unlimited fine or imprisonment.

- d **Stop Notice** – this is used in urgent or serious cases where unauthorised activity must be stopped, usually on grounds of public safety. When a stop notice is served, the planning authority must also issue an enforcement notice. There is no right of appeal against a stop notice and failure to comply is an offence. An appeal can be made against the accompanying enforcement notice. If a stop notice is served without due cause, or an appeal against the enforcement notice is successful, the Council may face claims for compensation. The use of stop notices therefore needs to be carefully assessed by the Council.

7.4 Other Powers

- a **Planning Contravention Notice** – this is 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. They are required to provide information about operations being carried out on the land and any conditions or limitations applying to any planning permission already granted. Failure to comply with the notice within 21 days of it being served is an offence and can lead to a fine in the Courts.
- b **Notice under Section 272 (of the Town and Country Planning (Scotland) Act 1997)** – this provides limited powers to obtain information on interests in land and the use of land. Failure to provide the information required is an offence.
- c **Notice under Section 179 (of the Town and Country Planning (Scotland) Act 1997)** – this allows planning authorities to serve a notice on the owner, lessee or occupier of land which is adversely affecting the amenity of the area. This is also known as an ‘Amenity Notice’ and sets out the action that needs to be taken to resolve the problem within a specified period.
- d **Interdict and Interim Interdict** – an interdict is imposed by the courts and is used to stop or prevent a breach of planning control. Court proceedings can prove costly and Councils normally only seek interdicts in serious cases or where enforcement notices have been ignored in the past. However a Council can seek an interdict in relation to any breach without having to use other powers first. Breaching an interdict is treated as a contempt of court and carries heavy penalties.
- e **Direct Action** – failure to comply with the terms of an enforcement notice within the time specified can result in the Council carrying out the specified work. The Council may recover any costs it incurs from the landowner.

8 CONTACTS

8.1 The contacts for the Department are as follows:

Mike Galloway
Director of Planning and Transportation
Floor 15, Tayside House
28 Crichton Street
Dundee
DD1 3RB

Iain Ross
Team Leader (Development Quality)
Floor 15, Tayside House
28 Crichton Street
Dundee
DD1 3RB

Telephone: 01382 433216
Fax: 01382 433013

Development Quality Services
Floor 2, Tayside House
28 Crichton Street
Dundee
DD1 3RB

Telephone: 01382 433022
Fax: 01382 433013

Customer Services Team
Floor 2, Tayside House
28 Crichton Street
Dundee
DD1 3RB

Telephone: 01382 434800

Online Complaint Forms are available on our website - www.dundee.gov.uk

9 A GUIDE TO PLANNING ENFORCEMENT

9.1 Planning permission is required for most development that takes place in Scotland. Sometimes, however, developers or householders undertake work without planning permission or fail to keep to the permission they have been given. Local councils have powers to act in such cases.

9.2 The Council will investigate breaches of planning control. These can include:

- work being carried out without planning permission;
- an unauthorised change of use;

- not following conditions imposed by a planning consent; and
 - not following plans approved by a planning consent.
- 9.3 The public can play a vital role in reporting such incidents to their Council. This will need to include:
- the address of the property concerned;
 - details of the suspected breach of planning control, (with times and dates if relevant);
 - contact details for the person providing the information; and
 - whether that person wishes the matter to be treated confidentially. Councils will do their best to honour such requests but anonymity cannot be guaranteed where statutory enforcement action is undertaken.
- 9.4 The purpose of planning enforcement is to resolve the problem rather than to punish the mistake. Action can involve negotiating a solution, asking for a retrospective planning application to be made, or more formal action such as the issue of an enforcement notice or a breach of condition notice.
- 9.5 Formal action may require the agreement of the Council's Planning Committee. This can include serving an enforcement notice on the relevant people, spelling out the action they are required to take. They can challenge this notice, through an appeal to Scottish Ministers. If so, enforcement action is suspended until a decision is issued. Failure to comply with an enforcement notice can result in prosecution.
- 9.6 In some cases, the Council is time-barred from taking action. Generally, work carried out more than four years ago or a change of use that took place more than 10 years ago is considered lawful and immune from action.
- 9.7 It is not always possible to anticipate how a particular case will develop, nor how long it will take. The Council will try to keep people informed of progress. The Council has set down the procedures, its service standards, and contact details in its Charter for Planning Enforcement. All enquiries relating to Enforcement issues should be addressed in the first instance to:

Lesley Campbell
Enforcement Officer (West)
Dundee City Council
Floor 14, Tayside House
28 Crichton Street
Dundee DD1 3RB

Telephone: 01382 433019
Fax: 01382 433013
E-mail: lesley.campbell@dundeecity.gov.uk

Amanda Vaughan
Enforcement Officer (East)
Dundee City Council
Floor 14, Tayside House
28 Crichton Street
Dundee DD1 3RB

Telephone: 01382 433315
Fax: 01382 433013
E-mail: amanda.vaughan@dundeecity.gov.uk

10 ENFORCEMENT AND ADVERTISING

- 10.1 The display of advertisements is covered by the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984. Many advertisements are displayed with what is called 'deemed consent' which means they do not require planning permission if they meet the 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.
- 10.2 Displaying an advertisement in contravention of the regulations is an offence and, if convicted in court, an offender can be fined. The court can impose further fines for each day the breach of the regulations continues.
- 10.3 The Council has the power to serve an enforcement notice. This specifies a time period (normally 28 days) for compliance with the notice. However, this period can be reduced to seven days if the Council believes there is an urgent need for the advertisement to be removed or altered in the interests of public safety, or if the advertisement can be removed without any other work being required.
- 10.4 An enforcement notice can also require that a particular piece of land should not be used to display advertisements. This remains in force even if the original advertisement is removed. Any subsequent advertising on this site would amount to a breach of the notice.
- 10.5 The Council also has powers to remove or destroy placards and posters that do not have planning permission or deemed consent. If the person who put up the poster can be identified, they have to be given at least two days' notice that the Council intends to take the poster down. If they cannot be readily identified, then the advert can be removed immediately.
- 10.6 Council officials can enter unoccupied land, if necessary, to remove an advertisement. However they have no powers to remove advertisements displayed within a building to which there is no public access.

31 May 2007

LC/KM

planningservices/guidancenotes/Enforce2