

PLANNING ENFORCEMENT CHARTER

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 Planning Authorities have powers to enforce planning controls in such cases, when they consider it is in the public interest to do so. These Authorities 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 Cairngorms National Park Authority (CNPA) in its role as the Planning Authority and the service standards it sets itself. It also explains what happens at each stage of what can be a lengthy process.
- 1.4 This enforcement charter covers only the 'called in' applications by the CNPA Planning Committee but a protocol will be defined with the current 4 Councils in the Park area for addressing issues of planning control enforcement that may impact on the 4 statutory aims of the National Park.
- 1.5 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.
- 1.6 This is an issue that concerns many members of the public. The CNPA 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 The CNPA 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 CNPA has to consider if it is in the public interest to take enforcement action and 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 Section 6. The actual content of an advertisement is not covered by planning control. Any complaints about this should be made to the Advertising Standards Authority.

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By publishing our standards, the CNPA aims to improve our enforcement service and make it responsive to the needs of the residents in the Park. The CNPA will monitor the charter to ensure that those standards are met.

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At least once annually, a written report will go to the CNPA Planning Committee outlining the nature and extent of enforcement activity and with recommendations to update and review this Charter.

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Further copies of this Charter are available on the CNPA website at www.cairngorms.co.uk or at the CNPA offices at:-

Ground Floor, Albert Memorial Hall, Station Square, Ballater, AB35 5QB
14, The Square, Grantown-on-Spey, Morayshire, PH26 3HG

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 CNPA. You can make preliminary enquiries by telephone or in person at the CNPA offices but these must be followed up in writing or by e-mail.

3.3 Community Councils have a special role on behalf of their communities in planning as they are a statutory consultee and therefore have an extra opportunity to be more aware of possible breaches of development control.

3.4 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; and

- whether the enquiry is to be treated confidentially.

3.5 While the CNPA 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:

Bruce Luffman
Monitoring and Enforcement Officer
Ground Floor
Albert Memorial Hall,
Station Square
Ballater
AB35 5QB

Telephone: 013397 53616

E-mail: BruceLuffman@cairngorms.co.uk

3.6 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 CNPA's development control service. However, there are a significant number of permissions granted each year and it is not an effective use of resources that the CNPA monitor all conditions at all times.

3.7 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.

3.8 Information received by the CNPA's Planning Enforcement Officer is checked to ensure that it involves a possible breach of control and includes all the detail required for a possible investigation. At this stage, should the information relate to a non 'called in' application, then the information will be passed to the relevant local authority and their enforcement process. The person making the complaint will be notified of that action.

- 3.9 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.
- 3.10 Some complaints, such as neighbour disputes over boundaries, relate to matters over which the planning service has no control and cannot be investigated.

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If preliminary checking of a complaint suggests a breach of planning control, the complaint will be registered. Once registered, a written or email 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.

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

- Works being undertaken in contravention of the requirements of an Enforcement Notice;
- Unauthorised development that may lead to substantial and/or permanent damage to sites of international and national importance for example, Special Protection Areas; Special Area of Conservation; Sites of Special Scientific Interest or Scheduled Ancient Monuments;
- unauthorised felling of trees and matters affecting trees protected by Tree Preservation Orders;
- The unauthorised demolition of, or major alteration to, a Listed Building, or the unauthorised demolition of a building within a Conservation Area;
- Breaches of occupancy conditions; and
- Any other breach of planning control, including breaches of conditions causing, or likely to cause, significant harm to the Park's natural or cultural heritage or to residential amenity.

4.2 An investigation begins with a planning inspector 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.

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Members of the public who provide information will receive a formal response within 20 working days of receipt of their letter or e-mail. They will also be advised of the proposed action to be taken. 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.

- 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 CNPA recognises that delays can be a source of considerable frustration to those submitting information, particularly if they consider their amenity is affected. Consequently, the CNPA will make every effort to keep interested parties informed of significant stages in the progress of a case.

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 CNPA, as the planning authority, has to consider each case on its merits and decide on the best solution. The CNPA 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 often begins with a Planning Contravention Notice seeking information and then an Enforcement or a Breach of Condition Notice being served on those involved in the development if a resolution is not forthcoming. The Enforcement and Breach of Condition 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 Government's Directorate for Planning and Environmental Appeals. 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.

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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 CNPA 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.

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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 CNPA. Options include:

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

5.5 Details of enforcement notices, breach of condition notices and stop notices are entered into an Enforcement Register. You can inspect these documents at CNPA Planning Office at:

Ground Floor, Albert Memorial Hall, Station Square, Ballater. AB35 5QB

5.6 The CNPA has powers to enter land, if there are reasonable grounds, 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.

It is important to note that admission to any building used as a dwelling house shall not be demanded as of right unless 24 hours notice of intended entry has been given to the occupier.

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 dwellinghouse. 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 dwellinghouse) and breaches of condition. After ten years, the development becomes lawful if no enforcement action has begun.
 - There is no limit for breaches of Listed Building control.

6 ENFORCEMENT AND ADVERTISING

- 6.1 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.
- 6.2 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.
- 6.3 The CNPA 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 CNPA 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.
- 6.4 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.
- 6.5 The CNPA 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 CNPA intends to take the poster down. If they cannot be readily identified, then the advert can be removed immediately.

6.6 CNPA 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.

7 MAKING A SUGGESTION OR COMPLAINT

7.1 The CNPA 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.

7.2 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.

7.2 In the first instance, complaints should be discussed with the Enforcement Officer involved. If you are still dissatisfied, talk to the Head of Planning of the CNPA at the Ballater Planning Office (see 5.5 above for contact).

7.3 Written complaints will be acknowledged within 5 working days and every effort will be made to fully investigate the complaint within 20 working days. The complainant will be given a written response explaining the outcome of the investigation and any action that the CNPA proposes to take. If no action is proposed, the reasons will be explained.

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We will get in touch with you within 5 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.

7.5 If you are not happy with the initial response, you can take the complaint further under the CNPA's Complaints Procedure. You can complete a Complaints Form (available at the CNPA's Grantown-on-

Spey and Ballater offices) and return it to the CNPA's Head of Corporate Services at the Grantown-on-Spey office. If that fails to resolve the problem, you can seek the advice and help of the Chief Executive of the CNPA. Lastly, if you are not satisfied with the CNPA's Complaints Procedure, you have the right to take your complaint to the Scottish Public Services Ombudsman (SPSO), at:

SPSO 4 Melville Street, Edinburgh. EH3 7NS

Tel 0800 377 7330

Email: ask@spsso.org.uk

Generally, you must contact the Ombudsman within 12 months.

8 ENFORCEMENT POWERS

8.1 The Planning Enforcement powers available to a planning authority are set out in Part VI of the Town and Country Planning (Scotland) Act 1997 and in Chapter IV of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and Planning etc. (Scotland) Act 2006. The Planning Acts are available from:

HMSO, 71 Lothian Road, Edinburgh and at www.scotlandlegislation.hmso.gov.uk.

8.2 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

8.3 Whilst the above Planning Acts provide a range of planning control enforcement powers, the planning enforcement powers of the CNPA lie within the National Parks (Scotland) Act 2000 and the Cairngorms National Park Designation Order 2003.

8.4 The Planning etc (Scotland) Act 2006 contains new and additional enforcement powers for the CNPA and will be incorporated after the secondary legislation is agreed.

8.5 Types of Notice

- **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. Contravening a breach of condition notice can result in the CNPA deciding to prosecute, with a fine of up to £1,000.

There is no right of appeal to this notice.

- **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 Section 6 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 CNPA taking Direct Action to correct the breach (see other powers below).

- **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.

- **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 CNPA may face claims for compensation. The use of stop notices therefore needs to be carefully assessed by the CNPA.

8.6 Other Powers

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.

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.

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.

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 the CNPA would normally only seek interdicts in serious cases or where enforcement notices have been ignored in the past. However the CNPA 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.

Direct Action – failure to comply with the terms of an enforcement notice within the time specified can result in the CNPA carrying out the

specified work. The CNPA may recover any costs it incurs from the landowner.