
CAIRNGORMS NATIONAL PARK AUTHORITY

FOR DECISION

**TITLE: PLANNING MONITORING AND ENFORCEMENT
IN THE CAIRNGORMS NATIONAL PARK 2012/2013**

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Purpose of Report:

To report on the monitoring and enforcement activities since August 2012 and seek any changes to the CNPA Planning Enforcement Charter

Summary

There is a requirement under our Service Standards within the CNPA Enforcement Charter to bring a written report annually to the Planning Committee outlining the nature and extent of enforcement activity and any recommendations to update the Charter.

Monitoring and enforcement can play a key role in taking forward many of the positive aspects of the Local Plan by providing an instrument to back-up the work to further the aims of the Park through good planning decisions and guidance and make them a reality. There is a further opportunity to work closely with applicants and the communities through pre-application discussion and training to negate the need for enforcement in the first place.

This part of development management is very diverse and this paper seeks to inform the Planning Committee of what has transpired over the last 12 months with a table of reported incidents at Appendix 1; provide some examples of actual cases and whether the CNPA Planning Enforcement Charter needs any changes in this annual review.

Background

- I. The CNPA Planning Monitoring & Enforcement Officer (MEO) post started in February 2009 and one of the first priorities was to produce a CNPA Planning Enforcement Charter as required for all planning authorities by the Planning etc. (Scotland) Act 2006. This Charter was agreed by the Planning Committee on 12th June 2009, put on the CNPA website and subsequently published in hard copy in December 2010. A copy was distributed to all 5 local authorities and libraries within the Park and a copy to each CNPA Board Member. A copy of the Charter is attached at Appendix 2 for information to seek comment from the Committee about any changes that need to be made at this required annual review. No changes were made at the annual review

in August 2012.

2. The Charter sets out the procedure and actions to be undertaken and provides a summary of the enforcement powers that are available. Throughout the Charter there are a number of Service Standards that are required to be achieved and one of the most important is the requirement to respond to any person who has made a comment or complaint within 5 working days. Members of the public play a vital role in reporting concerns about developer activities and possible breaches of planning control.

Actions

3. In 2012, there have been 79 separate incidents or reports that have been investigated and a log with a brief description of each incident can be found at Appendix 1. It should be noted that there were 47 investigations in the 12 months to December 2012 which did not relate to a planning application that the CNPA had called in i.e. no application and so a potential unauthorised development.
4. The figures for the Scottish Government statistics on enforcement run from April to March and there were 42 breaches of planning in that period of which 10 were passed to the particular local authority, 28 were resolved and 4 were still to be resolved. The corresponding figures for January to December 2012 within the statistics in Table 1 are 43 breaches of planning, 16 to the relevant local authority, 21 were resolved and 6 cases were still to be resolved.
5. Although the system for collating statistics for the Scottish Government is relatively new and this update paper's figures in previous years have been on an annual basis, future papers will be based on the financial year as per the Scottish Government system.
6. There have been 2 notices of enforcement issued in the past 12 months.
 1. An Enforcement Notice was served in September 2012 following an agreement for enforcement by the Committee. This was served on the owner of the previous Waltzing Waters site in Newtonmore (new Coop) in regard to a boundary wall that was constructed at unapproved height. The issue was raised by Highland Council Tec Services because of sight line issues at a junction.

This Enforcement Notice was rescinded 3 weeks later as the DPEA indicated that as the receiver of the Notice was on holiday he could argue on appeal that he had not had the Notice within the required timeframe.
 2. An Enforcement Notice was re-issued in October 2012 and the notice was appealed by the recipient. The appeal was dismissed by the DPEA Reporter in January 2013.

7. It has not been a priority to make significant changes to the system of enforcement officers working across the Park within the last year. The issue of “who does what”, where there has been a possible breach of planning control in a non-called-in application, has improved because the various officers have a good working relationship. However, the approach to arranging shared services with the 5 local authorities will be pursued in line with the 2012/14 Service Improvement Plan.
8. The local authorities of Aberdeenshire, Angus, Moray and Perth & Kinross have dedicated MEOs or planning inspectors. The Highland Council has recently recruited two dedicated MEOs based in Inverness for the whole Highland Council area which is welcome. The Badenoch & Strathspey area does have a support officer at Kingussie with some enforcement experience who is mostly employed on the validation of planning applications.
9. The CNPA relies on taking a request to serve an Enforcement Notice to the next Planning Committee and this is working reasonably well as it is normally done in association with an application for refusal. It was agreed by the Committee at the 2011 update to set up a system of delegation in the case of serving a Temporary Stop Notice where speed of service to stop an activity may be paramount. It was agreed that the Chairman and Deputy Chairman of the Planning Committee can decide in conjunction with the CNPA Head of Planning to authorise the serving of that Notice.
10. In planning enforcement, a great deal of negotiation, persuasion and interpretation takes place to achieve a positive outcome and, whilst this can be time consuming, invariably it provides a better and more timeous and cost effective outcome than the formal enforcement notice route. However, the threat and need for legal enforcement notices remains a necessary tool particularly where there have been breaches of planning control such as damage to a Listed Building or by an uncooperative developer.
11. A number of interesting trends can be highlighted from Appendix I. This list only highlights instances in which there may have been a problem. Many routine monitoring visits do not provide an issue that needs looking into and are therefore not noted on this list.
12. Table I shows the number of investigations following MEO monitoring visits, complaints from the public and comments from other parties over the last 4.75 years. The number of complaints from the public has been maintained, and it can be concluded from these figures that members of the public have a good awareness of the CNPA enforcement service and are readily responding by notifying the MEO of their concerns.

13. It is worth noting the increase in complaints from LAs, CNPA Board Members and particularly community councils. The MEO gave a presentation on enforcement to the Park’s association of community councils recently at the Lecht and it was well received by the representatives. There was a clear desire by the Association that the enforcement service needed to be maintained in the Park to make sure that all development was carried out as per the planning permission and the treatment of all development should have the same emphasis whether a single house or a large development.

Table I

| | 2009 | 2010 | 2011 | 2012 | 2013 (9 mths) |
|---|------|------|------|------|------------------|
| Breaches discovered at routine monitoring visits. | 28 | 20 | 23 | 23 | 9 |
| Complaints from public | 22 | 34 | 32 | 33 | 25 |
| Comments from DMOs | 3 | 7 | 6 | 8 | 3 |
| Enquiries from LAs, CCs & CNPA members | 3 | 3 | 10 | 15 | 10 |

14. Before the MEO post was created, the enforcement of the conditions agreed by the CNPA Planning Committee at the determination of an application was the responsibility of the Development Management Officer (DMO) who handled the application and consequently insufficient time could be given to monitoring. Using the case DMO for the monitoring and enforcement role is common place in planning authorities without a MEO resource.
15. Whilst the public and planning committees place high importance on enforcement, it has, in the past, been perceived within some planning authorities as the ‘Cinderella’ of the 3 legs of development control – Development Management, Building Standards and Enforcement. In practice, monitoring and enforcement of the conditions of a determined application and the reporting of unauthorised works can be less thorough in some authorities because of the prioritisation of available resources, but the CNPA made it a priority by employing a MEO and adopting the Charter. The CNPA Planning Committee can be assured that sufficient resource is currently provided in the Park by the CNPA and that it is sufficient so long as the local authorities also resource their enforcement functions. In August 2012, the hours per week of the CNPA MEO have reduced to 3 days a week following the officer reaching 65 years of age. Currently, no further officer time has been allocated to enforcement but any acceleration in development may require further resources.
16. Appendix I offers many examples which highlight the diverse type of incidents that are dealt with under monitoring and enforcement. They range from older cases which have not yet been resolved; minor and more serious breaches of conditions; unauthorised development and responding to general public concerns.

17. Non compliance with the conditions of a Decision Notice has been common throughout Scotland and particularly with suspensive conditions where there is a requirement to do something “prior to the commencement of development”. There is a worrying trend that developers appear to demonstrate less regard to suspensive conditions whilst there is a move towards a greater use of suspensive conditions as part of the activity to speed up the planning process. In reality, this is frequently counterproductive and requires a higher intensity of monitoring and a slowing down of the commencement of the development.
18. Detailed pre application discussions and a more positive approach to providing the required information by the applicant prior to determination would accelerate the start of development. However the applicant is often unwilling to engage in detailed and costly investigations into aspects of the development before there is an intention to start the development and the requirement is thereby conditioned as a suspensive condition in the Decision Notice.
19. Unauthorised tracks, and particularly hill tracks, are still a cause of continuing concern and the MEO has given a recent presentation to a SNH seminar on the subject from the CNPA perspective. Photographs, case histories and outcomes provided a resource which effectively demonstrated the need and guidance for more legislation on the subject in sensitive areas like the Cairngorms National Park. Representatives from the Scottish Government were in the audience and confirmed that further work was on-going and an intention to bring forward new guidance and legislation. This follows on from the consultation when changes were not made, as originally intended, during the recent revision of the Non-Householder Permitted Development Rights.

Summary of Case Studies in the Presentation

20. This summary offers three examples of enforcement activity in more detail. The examples chosen represent a cross section of the type of investigations which were prompted by monitoring visits, complaints from residents and comments from CNPA officers.
21. **Case I** – This planning application was lodged in 2007 and planning permission was finally given for 25 houses on Glen Shee road in Braemar in 2011 following a protracted period of little activity and then negotiations for a Section 75. Development started in early 2012 but in April, following particularly heavy rain, a neighbour to the site raised concerns about possible flooding of Balnellan Road. The attenuation basin at the corner of the site had filled up and a barrier was speedily constructed to try and contain the water that was running off the site.

One of the conditions of the planning permission required adoption by Scottish Water of the outflow from the attenuation basin and this outflow was intended to go underground to a drain under the houses in Balnellan Road. Unfortunately there was

no drain and the water was gradually flooding the garden ground of some of the houses.

The MEO conducted complicated negotiations over the last 15 months with the developers, house owners and Aberdeenshire Council, who own some of the houses, which has produced a solution which Scottish Water and SEPA can accept.

22. **Case 2** – The works for this planning application for a new waste water treatment works at Kingussie were progressing well when the MEO received a complaint from a CNPA officer about the felling of trees on the site.

The officer was travelling on a train by the site which is adjacent to the railway line and noticed that the trees had been felled. This was a fortuitous coincidence as the felling had only just occurred and the officer is the CNPA Landscape Officer and knew that the trees were to remain and not be felled.

The MEO visited the site and following the likelihood of enforcement action, the construction firm agreed through the applicant, Scottish Water, that extra compensatory planting would be provided.

23. **Case 3** – This case followed a visit by a CNPA officer to an adjacent site at Pitmain Estate near Kingussie. A new track had been excavated which had neither planning permission or permitted development rights to form the track. In this case, Class 18 of the PDR Order which permits new tracks to be formed for agricultural purposes following a prior notification process did not apply as this track was to provide a new access away from the main house for walkers and fishermen.

The CNPA Landscape Officer and the MEO were able to arrange a meeting of all the participating parties and advise on the further improvements that would be required to the unauthorised track. The estate has submitted a retrospective planning application which will formalise the works and the improvements required by the CNPA as well as the signage for directing the public. This cooperation by the applicant to ameliorate the unauthorised works and swiftly submit a planning application is a good example of how the CNPA is attempting to get the estates in the Park to understand that it is better to come to us before undertaking works as we are willing to work with them to overcome a perceived problem.

24. These 3 cases demonstrate a small sample of the different types of complaints and comments and the resulting action by the CNPA MEO and show that with the help of the public and others, persuasion and negotiation can often get the desired result but the use of formal enforcement action has to be considered on a case by case basis.

25. All cases outlined in Appendix 1 and including these 3 cases were responded to in terms of contacting the complainant within the 5 day period outlined in our Service Standards in the Charter and most were also initially investigated within that timeframe.

The CNPA Planning Enforcement Charter

26. Although the Charter was agreed by the Committee in 2009 and has been available on the CNPA website since that time, it was decided not to publish the Charter in hard copy until December 2010. This was decided by the need to wait until after October 2010 when the Park boundary changed to incorporate part of Perth and Kinross Council area and the changes in the size and make-up of the Committee.
27. The Charter is required to be reviewed annually and therefore it has been included at Appendix 2 so that comments can be sought from the Committee on any changes that need to be incorporated.
28. There have been no changes in the enforcement legislation since the 2011 review. It is recommended that no changes are made to the Charter until the next annual review, but before then, there will be further discussions with the five local authorities on a more integrated approach to enforcement in the Park which can inform the review.

Recommendation

- a) That Members accept this report for information.
- b) That Members agree that no changes are required for the Charter following this review.