

AGENDA ITEM 10

APPENDIX I

DRAFT PLANNING ENFORCEMENT CHARTER

Cairngorms Planning Advice Note

Planning Enforcement Charter

Published: X 2016

Introduction

Enforcement of planning controls can be a complicated part of the planning system and affect many members of a community. This charter explains how the planning enforcement process works in the Cairngorms National Park.

It explains the roles of the Cairngorms National Park Authority (CNPA) and the local authorities who share planning powers. It should help anyone with an interest in the enforcement process to understand the procedures involved, the powers available to a planning authority as well as the limits of those powers.

The aim of this charter is to ensure that the procedures adopted by the CNPA are fair, reasonable, consistent and accountable.

What is Planning Enforcement?

Most development that takes place in Scotland needs planning permission. Sometimes, developers or householders undertake work without planning permission or don't implement work in the way that the approved plans and conditions set out. These are breaches of planning control.

The purpose of planning enforcement is to resolve those breaches of planning control. It is not used to punish the developer or householder who has breached a planning control. Most breaches of planning control are resolved by discussion between the planning authority and developer or landowner. If that does not resolve the problem, planning authorities have powers to enforce planning controls where they decide it is in the public interest.

The Scottish Government [Planning Circular 10/2009: Planning Enforcement](#) has detailed information about the use of planning enforcement powers.

Planning enforcement also covers the display of advertisements such as billboards and advertisement hoardings. The procedures for enforcement are slightly different and are explained in the appendix to this note.

The content of an advertisement is not covered by planning control. Only the Advertising Standards Authority www.asa.org.uk can consider complaints about the content of an advertisement.

Who takes enforcement action?

All the planning authorities in Cairngorms National Park have powers to investigate and take enforcement action on development that does not have planning permission, breaches of planning conditions or other environmental matters that affect general amenity of an area. In most cases, the planning authority who granted planning permission will take action. This will either be your local authority planning service or the CNPA. The contact details for the enforcement teams of each planning authority are listed on page 3.

If development is undertaken without planning permission, then the planning authority who would have considered a planning application for that development will take action. This will either be your local authority planning service or the CNPA. You can find out what types of development the CNPA is likely to call-in and determine in this Planning Advice Note: [Applying for Planning Permission in the Cairngorms National Park](#).

Enforcement powers are used at a planning authority's discretion. They will only use them where they decide it is in the public interest to correct the breach of planning control in that way. The planning authority can decide that no enforcement action is needed. Any action taken must be proportionate, balanced and reasonable.

Local authorities also have powers to resolve disputes about high hedges. This [Scottish Government guidance](#) explains more.

Has a breach of planning control taken place?

A breach of planning control can be any of the following actions that take place without planning permission:

- Development, e.g. new buildings or changes of use;
- Development that is not in accordance with approved plans or conditions;
- Carrying out works to or demolition of a listed building;
- The display of an advert;
- Felling or carrying out works to a tree protected by a Tree Preservation Order or in an a conservation area;
- Demolition of a building in a conservation area.

How to report a breach of planning control

Planning authorities monitor development and may identify breaches of planning control but members of the public play an important role in reporting breaches.

If you think a breach has taken place you can check for relevant planning or other related consents and any current enforcement cases on the planning authority's website. You may need to check both your council's planning web pages and the CNPA's website. You can also email or phone the planning authority for some quick advice.

If you decide to report a suspected breach, the planning authority will need:

- The address of the property concerned;
- The name of the owner of the property and if you know, the person responsible for the suspected breach;
- Details of the suspected breach of planning control, with times and dates if relevant;

- Your name, telephone number, address and if possible, email address;
- Information on how the breach affects you;

Although you can request that your report remains confidential, some information may be released under requests for information from the planning authority or if a case leads to court proceedings. The CNPA and local authority planning teams may also need to share a reported breach if the other authority will be responsible for any investigation. You will be asked for your permission if this is the case.

Prioritising investigation of possible breaches of planning control

While each planning authority will consider all reports of suspected breaches, they will also prioritise the most significant breaches for investigation and enforcement action.

The CNPA prioritises the following factors:

- Works undertaken in contravention of an enforcement notice;
- Unauthorised development that could lead to damage to designated sites of national and international importance;
- Unauthorised works to trees in a Conservation Area or protected by Tree Preservation Orders;
- Unauthorised works to listed buildings or demolition of a building in a Conservation Area
- Breaches of planning control that cause significant harm to the aims of the National Park.

There are two stages of assessment:

- Whether there is a breach of planning control
- Whether it is in the public interest to take action

What happens if a breach of planning control has taken place?

If a breach of planning control is confirmed and action considered necessary, the case will be considered against the policies of the [Cairngorms](#)

[National Park Local Development Plan](#) to decide whether permission would be considered acceptable with the imposition of conditions or other limitations. The developer or householder may need to simply change part of their development to comply with their planning permission. In some cases, they may need to submit a planning application to correct the breach. This is known as a retrospective planning application. The public can comment on the planning application and anyone who had reported the suspected breach would be asked for their views. The fact that the development has already been carried out has no bearing upon the decision made on the application.

If the breach cannot be resolved through discussion, the planning authority will consider serving a formal notice. Formal action will only be taken for serious breaches of planning control where harm to public amenity is significant.

Formal Enforcement Notices

There are a number of different formal notices that can be used by a planning authority to enforce planning controls. They are listed in Appendix I. The planning authority will write to the recipient of the notice to explain:

- A description of the breach of control;
- The options available to the recipient to resolve the breach of control;
- The timescales involved;
- The consequences of failure to comply with the notice;
- If the recipient has any rights of appeal against the notice and how to lodge one.

If you receive a formal notice on planning enforcement from a planning authority you should seek legal or independent professional advice.

Service Standards

Each planning authority has service standards for planning enforcement. The CNPA's service standards for enforcement are available in our [Planning Service Charter](#).

Complaints about Planning Enforcement

Each planning authority aims to satisfy customers and welcomes suggestions to improve their service. If you are dissatisfied about the service provided by the planning authority dealing with an enforcement case you can provide feedback or make a complaint direct to the enforcement and planning service or via the planning authority's formal complaints procedures.

The CNPA's complaints procedure is available at <http://cairngorms.co.uk/authority/complaints/>.

Further advice

This Planning Enforcement Charter has been produced to explain how the planning enforcement process works in the Cairngorms National Park.

You can get more advice on planning enforcement from the planning department of the relevant local authority. You can also get advice and further copies of this Charter from the Cairngorms National Park Authority planning team in Grantown on Spey at planning@cairngorms.co.uk. Tel: 01479 873535

Planning Enforcement Contacts

Cairngorms National Park Authority

Monitoring & Enforcement Officer
14 The Square, Granttown on Spey PH26 3HG
Telephone: 01479 870 5512 or 01479 873 535
Email: planning@cairngorms.co.uk

Aberdeenshire Council

Planning Enforcement Office
Gordon House, Blackhall Road, Inverurie, AB51
3WA
Telephone: 01467 628 586
Email:
planningenforcement@aberdeenshire.gov.uk

Angus Council

Planning Enforcement
County Buildings
Market Street, Forfar, DD8 3LG.
Telephone: 01307 473360 or 08452 777 778
Email – planning@angus.gov.uk
or accessline@angus.gov.uk

Highland Council

Glenurquhart Road, Inverness, IV3 5NX
Telephone: 01349 886608
www.highland.gov.uk/planningenforcement

Moray Council

Development Management
Moray Council Office, High Street, Elgin, Moray
IV30 1BX
Telephone: 03001234561
Email: planning.enforcement@moray.gov.uk

Perth and Kinross

Development Management
Environment Service, 35 Kinnoull Street, Perth,
PH1 5GD
Telephone: 01738 475300
Email: DevelopmentManagement@pkc.gov.uk

Appendix I Enforcement Powers

The 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
EH3 9AZ

or can be viewed at:

www.scotlandlegislation.hmso.gov.uk

Government policy on enforcement is set out in Planning Circular 10/2009: Planning Enforcement.

Planning legislation is complex. If you a formal notice from a planning authority, you are advised to seek legal or independent professional advice.

Types of Notice

Breach of Condition Notice (BCN) - this enforces 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 anyone carrying out development and/or any person having control of the land. There is no right of appeal to this notice. Anyone who contravenes a Breach of Condition notice can be fined in the Sheriff Court.

Enforcement Notice - this generally deals with unauthorised development, but can also apply to breach of planning conditions. An Enforcement Notice will specify a time period (a minimum of 28 days), 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 notice is suspended until a decision is reached. Failure to comply with an Enforcement Notice within time is an offence and may lead to a fine in the Sheriff Court. Failure to comply may also result in the planning authority taking Direct Action to correct the breach.

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 planning authority may face claims for compensation. Therefore, the use of Stop Notices needs to be carefully assessed by the planning authority.

Temporary Stop Notice (TSN) – this requires the immediate halt of an activity which breaches planning control. The provisions make an exception in that a TSN cannot prohibit the use of a building or caravan as a dwellinghouse. TSNs are enforceable for 28 days, after which time, they expire. They may, however, be followed by further enforcement action such as an Enforcement Notice and Stop Notice. There is no provision to appeal against a TSN.

Fixed Penalty Notice (FPN) - this provides the planning authority with an alternative process, in addition to the option to seek prosecution, to address situations where a person has failed to comply with an Enforcement Notice (EN) or a Breach of Condition Notice (BCN). By paying the penalty imposed by the FPN, the person will discharge any liability for prosecution for the offence. They will not, however, discharge the obligation to comply with the terms of the EN or BCN, and the planning authority will retain the power to take direct action to remedy the breach and recover the costs of such from that person. The planning authority is not required to offer the option of a fixed penalty. Any decision to do so would be dependent on considerations such as the scale of the breach and its impact on local amenity.

Notice requiring application for planning permission for development already carried

out (S33A) - where the planning authority considers that a development which does not have planning permission may be acceptable, i.e. the planning authority considers that it might be granted planning permission, the planning authority may issue a S33A requiring the landowner or developer to submit a retrospective planning application. This application will be considered on its planning merits and handled in the same way as any other planning application. Issuing a S33A does not guarantee that permission will be granted; the planning authority may, on consideration of the application, decide instead to refuse permission, or grant permission subject to conditions or alterations to make the development acceptable.

Control of Advertisements

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 advertisement consent if they meet the criteria set out in the regulations. One of the most common of these permissive 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, can lead to a fine. The court can impose further fines for each day the breach of the regulations continues.

Planning authorities have the power to serve an Advertisement 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 planning authority 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.

An Enforcement Notice can also state 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.

Planning authorities also have powers to remove or destroy placards and posters that do not have advertisement consent. If the person who put up the poster can be identified, they have to be given at least two days' notice that the planning authority intends to take the poster down. If they cannot be identified, then the advert can be removed immediately.

If necessary, the planning authority officers can enter unoccupied land to remove an advertisement but have no powers to remove advertisements displayed within a building which has no public access.

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 applied 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 for planning authorities to obtain information on interests in land and the use of land. Failure to provide the information required is an offence.

Amenity 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 – planning authorities can apply for the courts to impose an interdict to stop or prevent a breach of planning control. Court proceedings can be expensive and the planning authority would normally only seek interdicts in serious cases or where Enforcement Notices have previously been ignored. However, the planning authority 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 planning authority carrying out the specified work. The planning authority can recover any costs it incurs from the landowner.

Notification of Initiation and Completion

of Development (NID/NCD) and display of notices while development is carried out

- are not enforcement powers. They are intended to improve planning enforcement by requiring confirmation that development has started and been completed, and in the case of on site notices, to raise community awareness of developments in the local area. They help planning authorities be made aware of active development in their areas.

A NID must be submitted to the planning authority for any development which has been granted permission and state when development will start. It must be submitted after planning permission has been granted and before development has commenced. Starting development without submitting an NID is a breach of planning control and the Planning authority may consider enforcement action.

The NCD requires a developer to submit a further notice as soon as practicable after development had been completed. Depending on the nature and scale of a development, the developer may also be required to display on-site notices while development is taking place. These notices contain basic information about the site and the development. They also provide contact details where members of the public may find out more information or report alleged breaches of planning control. It is a breach of planning control to fail to display such a notice when it is required to do so.