
CAIRNGORMS NATIONAL PARK AUTHORITY

FOR DISCUSSION

TITLE: PLANNING MONITORING AND ENFORCEMENT IN
THE CAIRNGORMS NATIONAL PARK 2011/12

PREPARED BY: BRUCE LUFFMAN
(MONITORING & ENFORCEMENT OFFICER)

Purpose of Report:

To report on the monitoring and enforcement activities since August 2011 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

1. 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 September 2011.
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 the last 12 months, there have been 87 separate incidents or reports that have been investigated and a log with a brief description of each incident can be found at Appendix 1. You will note that there were 51 investigations in the last 12 months 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. There have been 4 notices of enforcement issued in the past 12 months.
 - i) An Enforcement Notice was issued in August 2011 following an agreement for enforcement by the Committee. This was at Granish Farm, Aviemore and will be one of the examples in the short presentation to the meeting which demonstrates full cooperation by the owner of the land.
 - ii) An Enforcement Notice was issued in September 2011 following a decision by the Committee to refuse a retrospective application at Feshiebridge. Part of this Notice has been complied with and the remainder is due to be complied with this month.
 - iii) A Temporary Stop Notice was issued in September 2011 at Waltzing Waters Newtonmore, to stop development without compliance with the suspensive conditions of the Decision Notice. This was withdrawn 6 days later following compliance by the developer.

- iv) An Advertisement Enforcement Notice was served on the developer at Highburnside in Aviemore and was withdrawn 6 weeks later following an unsuccessful appeal to the Reporter by the developer for permission to retain its advertisement signage. The signage was removed from the side of the A9.
5. Whilst protocol meetings have been held periodically between the five local authorities that make up the area of the Park, there has not been an in-depth opportunity to pursue the subject of monitoring and enforcement. The relationship between called in applications and those that are not called in, or the clarity of “who does what” where there has been a possible breach of planning control, has not yet been concluded. However, the approach to arranging shared services with the 5 local authorities will be pursued as it is a key action in the 2012/14 Service Improvement Plan.
6. The local authorities of Aberdeenshire, Angus, Moray and Perth & Kinross have dedicated MEOs or planning inspectors. The Highland Council does not have dedicated MEOs as such but the Badenoch & Strathspey area does have a professional support officer at Kingussie who is mostly employed on the validation of planning applications.
7. The CNPA does not have an agreed process of delegation of decision with regard to the issuing of enforcement notices and relies on taking a request to serve an enforcement notice to the next Planning Committee. 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 Planner to authorise the serving of that Notice.
8. 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.
9. 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.

10. Table I shows the number of investigations following MEO monitoring visits, complaints from the public and comments from other parties over the last 3.6 years. The number of complaints from the public has continued to rise, particularly this year, and it could be concluded from these figures that members of the public have an enhanced awareness of the CNPA enforcement service and are more readily responding by notifying the MEO of their concerns.

Table I

	2009	2010	2011	2012 (7mths)
Monitoring Visits	28	20	23	13
Complaints from public	22	34	32	26
Comments from DMOs	3	7	6	2
LAs , CCs & CNPA members	3	3	10	10

11. 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.
12. Whilst the public and planning committees place high importance on enforcement, it is frequently 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 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. Currently, the hours per week of the CNPA MEO have reduced to 3 days a week following the officer reaching 65 years of age and the remaining 2 days will be picked up by the recently recruited secondment of a Development Management Officer from Aberdeenshire Council. That officer is based in the Grantown on Spey office.
13. 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 public concerns.

14. 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 in the notion that it speeds up the planning process. In reality, this is frequently counterproductive and requires a higher intensity of monitoring and a slowing down of the completion of the development.

Summary of Case Studies in the Presentation

15. This summary offers a flavour of examples of possible 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 the public.
16. **Case 1** - It was a member of this Committee which brought this case to the attention of the MEO and is fairly typical of the type of case which requires investigation in order to establish whether the CNPA or the relevant local authority will deal with it. There appeared to be a new track being constructed across a very prominent hillside as seen from the A93 at the Spittal of Glenshee.

The MEO visited the site and climbed to where the digger was working and found that the track was in fact a new water pipe being installed for a new water supply to the farm down at the A93. The MEO walked to the source of the spring and back down to the supply tank which had been set at about 30m above the road. The overflow had been arranged with back pressure to be at the spring about 120m above the road and not making a new wet mark down the hillside because there was no watercourse close by into which to run the overflow.

The contractor was clearly sympathetic to the landscape aspects but unfortunately had used a far too large slew digger and had to build a roadway for it to sit on not to slide down the hillside. The point was made that appropriate equipment should be considered when working in sensitive areas. The estate factor agreed to seed the reinstated ground and no action was taken. The MEO in Perth & Kinross Council was informed of the case and the outcome.

17. **Case 2** - A complaint came in from an expert in wood ants to say that several ants' nests had been destroyed in woodland near Carrbridge by a contractor. On investigation, it was clear that a contractor had improved the forestry track but had not increased the width of the track or brought in new material. The track had been scraped and the material spread very neatly onto the sides of the track. Unfortunately, the wood

ants' nests were on the sides of the track and were destroyed. The contractor was under the impression that the works were permitted development, however work had been done on the entrance to the track off the public road and that is not permitted development under Class 22 of the Order which permits forestry tracks to be constructed and therefore requires prior notification to Highland Council. Once the work has been carried out, it then becomes unauthorised development and may require a planning application. The case was referred to Highland Council for them to decide on what action may be necessary: no decision has yet been made.

However, because of the rarity of the ants, particularly the Shining Guest Ant (*Formicoxenus nitidulus*) which lives in a symbiotic relationship with another species of wood ant and this was one of the most northerly places that they exist - talks have taken place at a high level with the Forestry Commission Scotland (FCS) SNH and the CNPA. The FCS is aware of these ants in their publications and that they have protection under the UKBAP Special Action Plans but this information does not seem to have trickled down to the agents and the contractors on the ground. It is agreed that more work needs to be done in the way of awareness as well as more monitoring by FC of forestry plans.

Since this incident, CNPA and FCS have worked together to arrange a seminar on 11th September in Boat of Garten for foresters. This will fully inform them of their obligations to protect biodiversity and in particular, UKBAP species.

18. **Case 3** - Last August following the last update, the Committee agreed on enforcement action against a local developer who was using his farm near Aviemore for storing construction materials and machines. A planning application was submitted but withdrawn and an Enforcement Notice was issued giving 100 days to clear up the site and initiate landscaping proposals.

The developer worked with the CNPA to bring forward a proposal to reinstate the area and completed the works and the landscaping and fencing well within the timeframe of the Notice. The issuing of an Enforcement Notice forced the developer to address the problem and whilst it can be a confrontational process, in this case, cooperation and trust brought a good outcome.

19. **Case 4** - This case involves the development of a new hill track near Laggan. The CNPA received a complaint from a tourist walking in the area that a very prominent track was being constructed up a hillside and sent two photographs. A site visit was made and the Highland Council was contacted about the track and asked if they had been made aware of it.

Highland Council had taken the view that the track was being constructed under Class 18 of the PDR Order which permits farmers to construct tracks for agricultural purposes. Further investigation revealed that this track was for sporting purposes and therefore does not have permitted development rights and would have required a planning application. Unfortunately, the decision to view this as an agricultural track means that no influence can be brought to bear by the CNPA about the best means of construction to ameliorate the damage to the landscape.

The details of the case with the photographs were sent to the Scottish Government when they were seeking examples of track construction from planning authorities during their recent consultation into tracks and the need for planning applications for works such as this in sensitive areas.

20. These 4 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.
21. All cases outlined in Appendix 1 and including these 4 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

22. 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.
23. 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.

24. 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.

Recommendation

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