

AGENDA ITEM 11

APPENDIX 1

DRAFT ENFORCEMENT CHARTER

Planning Enforcement Charter for Cairngorms National Park

INTRODUCTION

Planning permission is required for most development that takes place in Scotland, with the exception of some minor works. However, sometimes developers or householders undertake work without planning permission or fail to keep to the permission they have been given.

Planning Authorities have powers to enforce planning controls in such cases, if they consider it is in the public interest to do so. They monitor developments to ensure planning controls are being followed but there is also a role for the public as to any problems they become aware of. For the purposes of this Charter, the planning authorities are Cairngorms National Park Authority (CNPA) and the five Councils; Aberdeenshire, Angus, Highland, Moray and Perth and Kinross.

This Charter explains:

- the roles of the Cairngorms National Park Authority and the five Councils
- how to report a breach of planning control
- what happens at each stage of the enforcement process
- what are our priorities
- how to complain or make suggestions about the planning enforcement service
- details of the contacts and where to find information relating to planning enforcement
- current powers available to planning authorities as set out in the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc. (Scotland) Act 2006.

Enforcement is one of the most complex parts of the planning system. It is also the most controversial. 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.

We hope you will find this Charter useful and will let us know if you think we could improve the service further.

KEY POINTS ON PLANNING ENFORCEMENT

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.

CNPA and the five Councils all have statutory powers to investigate breaches of planning control and the conditions attached to planning permissions, 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 planning authority has to consider if it is in the public interest to take enforcement action. They are not required to take any particular action on a specific breach of planning control and, indeed, can decide that no action is necessary.

The six planning authorities listed above are committed to working closely together on planning enforcement matters. However, to provide an effective and efficient planning enforcement service, we have agreed how the work will be distributed. In cases where a breach directly relates to a planning permission, the planning authority which granted that permission will deal with the enforcement complaint. If it is an unrelated complaint relating to development that has taken place without permission, then it will generally be dealt with by the relevant local authority. If the potential breach is one which is of significance to the aims of the Park and, if permission were retrospectively sought, CNPA would call the application in, then CNPA will deal with the case. Reference should be made to CNPA's criteria for call in, which is explained in 'Making a Planning Application in Cairngorms National Park, and available for viewing on CNPA's website (*insert weblink*)

Fuller information on the use of enforcement powers can be found in the Scottish Government's Planning Circular 10/2009: Planning Enforcement. (*insert weblink*) These are also summarised in Appendix I of this Charter. However, for a comprehensive interpretation of the powers, it is recommended that independent legal advice is sought.

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. Such complaints will generally be dealt with by the Council planning authorities and not CNPA. The actual content of an advertisement is not covered by planning control. Any complaints about the content of an advertisement should be made to the Advertising Standards Authority at Mid City Place, 71 High Holborn, London WC1V 6QT, tel. 020 7492 2222, e-mail enquiries@asa.org.uk

THE ENFORCEMENT PROCESS



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Flow Chart of Planning Enforcement Process

IDENTIFYING POTENTIAL BREACHES OF PLANNING CONTROL

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;
- departures from approved plans or consent.

Members of the public have a vital role in reporting breaches of control. You can make preliminary enquiries by telephone or in person at the Cairngorms National Park Authority or the relevant local Council but these must be followed up in writing or by e-mail. Contact details for CNPA and the local authorities can be found in Appendix 2 of this Charter. Anonymous complaints will not be considered, unless there is an immediate risk to a protected species/habitat, listed building, or protected tree.

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 and photographs, if possible;
- 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;
- whether or not you wish the enquiry to be treated confidentially.

While we will do our 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.

Members of the public can also play an important role in monitoring the conditions that are placed on certain planning consents. Details of the conditions attached to a grant of planning permission are included within the decision notice attached to the permission. Monitoring of development will be undertaken by the planning authority who granted the planning permission to ensure it complies with conditions or limitations. However, there are a large number of permissions granted each year and it is not practical, nor is it expected, that all conditions are monitored at all times. You should therefore contact the planning authority who granted the planning permission to raise your concerns.

With any complaint made, the information received is checked to ensure that it involves a potential breach of control and includes all the detail required for an 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.

Some complaints, such as neighbour disputes over boundaries, relate to matters over which the planning service has no control and cannot therefore be investigated by planning enforcement officials. Similarly, regardless of a development being granted by a planning authority, if unrelated issues arise, such as anti-social behaviour of workmen or the occupants of a development, it is not the planning authority's remit to deal with non-planning matters. The planning authority can only act using the powers within planning legislation. In such cases you will be advised of this and, where the complaint could be addressed to a different council/authority department (e.g. environmental health), your complaint will be passed on and you will be advised of appropriate contact details. If the matter cannot be dealt with within one of the Councils then you will be advised as such and if possible suggestions will be made as to where to raise your complaint.

INVESTIGATING POTENTIAL BREACHES OF PLANNING CONTROL

The aims of Cairngorms National Park Authority are to:

- To conserve and enhance the natural and cultural heritage of the area;
- To promote sustainable use of natural resources of the area;
- To promote understanding and enjoyment (including enjoyment in the form of recreation) of the special qualities of the area by the public;
- To promote sustainable economic and social development of the area's communities

A priority system is used for investigating complaints in line with the above aims of the Park. This is of importance within the Cairngorms National Park given its unique landscape and natural and cultural heritage. Priority cases, in no particular order, will include:

- development causing significant harm to the natural heritage of the Park;
- development causing significant harm to the cultural heritage of the Park such as irreversible damage to listed buildings;
- unauthorised felling of trees and damage to trees protected by Tree Protection Orders;
- development which does not comply with the terms of a planning permission or breaches of condition for major development;
- development causing significant detrimental impact on amenity

An investigation begins with an officer visiting the site. Following this visit, the complainant will be informed of what course of action, if any, is proposed. In some cases, additional investigation may be needed to establish whether a breach of planning control has occurred, and if so, whether it is causing significant harm.

The length of time required to resolve a case or take action can be affected by a number of factors. Allowance has to be made for the gathering of further evidence, to allow

negotiations to take place or for formal procedures to be concluded. It is essential to spend the necessary time to get evidence since without this negotiation or formal action is unlikely to be successful. Similarly, where the landowner submits a retrospective planning application to regularise the breach of control or an appeal against a decision of the planning authority this may add to the length of time it takes to resolve the case.

It is recognised that delays can be a source of considerable frustration to complainants. 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 case officer for a more regular update.

Once the investigation stage is complete, complainants will receive a formal response within which they will be advised of the proposed action to be taken, if any. They will also be advised if the matter does not involve a breach of planning control and therefore no action can be taken.

ACTING ON BREACHES OF PLANNING CONTROL

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, in terms of harm (if any) caused, and decide on the best solution. Formal action is unlikely to be taken, for example, for developments which, in planning terms, are considered to be acceptable and comply with Local Plan policy. It may be more appropriate, in such cases, to seek the submission of a retrospective planning application to allow all the issues to be considered formally by the planning authority and include public consultation.

Only a relatively small number of cases require formal enforcement action. Formal enforcement action involves the issue of a notice to the landowner or developer. This may be a notice requiring a retrospective planning application to be made, an enforcement notice, or a breach of condition notice.

A notice requiring a retrospective planning permission alerts the landowner or developer to the fact that the development described in the notice does not have the requisite planning permission and requires them to address the situation by submitting a retrospective application. The planning authority will consider this as they would any application made under planning legislation and may grant or refuse permission, depending on the planning merits of the application. Permission may be granted subject to conditions or limitations which the planning authority considers are required to make the development acceptable. In most cases, where there is a current application awaiting determination by the planning authority, it is likely that any action would be suspended in order to avoid prejudicing the decision making process on that application.

Enforcement notices 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;
- in the case of an enforcement notice, any rights of appeal the recipient has and how to lodge an appeal.

The recipient of the notice will also receive a letter to explain what is required, the timescales involved and the options available to resolve the issue.

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 (DPEA). If the Reporter allows the appeal then no further action can be taken by the planning authority. Anyone who has submitted information on a breach of planning control is advised of the appeal and its outcome. Details of which notices have a right of appeal are outlined in Appendix I. For example, there is no right of appeal against a breach of condition notice.

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 any work required by an enforcement notice and charging the person for the costs involved;
- seeking a Court interdict to stop or prevent a breach of planning controls.

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

- in the case of an enforcement notice, direct action by the relevant planning authority
- for either an enforcement notice or a breach of condition notice, the matter being referred to the Procurator Fiscal for possible prosecution or alternatively offering the opportunity to pay a fixed penalty (issue of a fixed penalty notice).

Details of notices requiring retrospective planning permission, enforcement notices, breach of condition notices, temporary stop notices and stop notices are entered into an Enforcement Register. You can inspect the Registers at Cairngorms National Park Authority or relevant Council.

Right of Access

CNPA and the Councils have 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;
- check if a breach has been satisfactorily resolved.

This power applies to any land and may involve officials entering land owned by neighbours adjacent to the site of the breach or alleged breach.

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 to a 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 changes 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.

OUR SERVICE STANDARDS FOR PLANNING ENFORCEMENT

SERVICE STANDARD 1: By publishing our standards and targets, we aim to improve the enforcement service for the Cairngorms National Park and make it responsive to the needs of our customers. The contents of this charter will be monitored to ensure that standards and targets are being met.

SERVICE STANDARD 2: Further copies of this Charter are available on the CNPA and five Council planning authority's websites, in local libraries and all the planning department offices. Details of these are found in Appendix 2 of this Charter.

SERVICE STANDARD 3: 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 complainant. The acknowledgement will include a reference number and contact details for the enforcement officer dealing with the case.

SERVICE STANDARD 4: Priority will be given to breaches of planning control which cause significant harm as outlined in the Charter.

SERVICE STANDARD 5: Members of the public who provide information will receive a formal response within which they will 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.

SERVICE STANDARD 6: It is recognised that delays can be a source of considerable frustration to complainants. 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 case officer for a more regular update.

SERVICE STANDARD 7: Where a planning breach cannot be resolved and action is justified, a formal notice will be served. The recipient of the notice will also receive a letter to explain what is required, the timescales involved and the available options to resolve the issue.

SERVICE STANDARD 8: Where the terms of any formal notice are not complied with, every effort will be made to resolve the case to the satisfaction of the CNPA or the relevant investigating Council within the limitations of the legislation available.

MAKING A SUGGESTION OR COMPLAINT ABOUT THE PLANNING ENFORCEMENT SERVICE

We hope that you will be satisfied with the planning enforcement service in Cairngorms National Park. 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.

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.

In the first instance, complaints should be discussed with the member of staff involved at the planning authority who has dealt with your enforcement case.

Details of service standards relating to complaints about service vary between CNPA and the Councils. Reference should therefore be made to the complaints procedures on the relevant Authority's website for details of the standards and procedures and who to escalate your complaint to. In all cases, 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. Responses will be provided to you within the timescales set out in the complaints procedures of CNPA or the relevant Council 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.

If you are unsatisfied with the complaints process at CNPA or the relevant Council, you have the right to take your complaint to the Scottish Public Services Ombudsman, at:

*SPSO FREEPOST EH641
EDINBURGH EH3 0BR*

Telephone: 0800 377 7330, or e-mail: ask@spsso.org.uk

Generally, you must contact the Ombudsman within 12 months.

APPENDIX I: ENFORCEMENT POWERS

The planning enforcement powers available to CNPA and the five Councils are set out in the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc. (Scotland) Act 2006. Listed building enforcement notices are covered by the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. The Planning Acts are available from HMSO, 71 Lothian Road, Edinburgh and can be viewed online at the Office of Public Sector Information (OPSI) website; <http://www.opsi.gov.uk/>

Government policy on planning enforcement is set out in Planning Circular 10/2009: *Planning Enforcement*. The circular is published on the Scottish Government website and can be viewed at www.scotland.gov.uk/Topics/Built-Environment/planning/publications/circulars .

TYPES OF NOTICE

Breach of Condition Notice - this is used to enforce the conditions applied to any planning permission. It comes into effect 28 days after being 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.

Enforcement Notice - this is generally used to deal with unauthorised development, but can also apply to a 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 notification period before it comes into effect (a minimum of 28 days - but see the section below on advertisements);
- the steps that must be taken to remedy the breach; and,
- a further period (known as the compliance period) which is set by the planning authority and gives the recipient time to carry out any work required to comply with the notice. There is no minimum or maximum period, so long as the amount of time allowed is reasonable and reflects the amount of work that may need to be undertaken.

There are limited rights of appeal against an enforcement notice and, if an appeal is made, 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).

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.. 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 an 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 stop notice may be quashed and the Council may face claims for compensation. The use of stop notices therefore needs to be carefully assessed by the Council.

Temporary Stop Notice (TSN) - this is used to require 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 a 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 planning authorities with an alternative process, in addition to the option to seek prosecution, to address situations where a person has failed to comply with the requirements of 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 work from that person. The planning authority is not required to offer the option of paying 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 - Where the planning authority considers that a development which does not have planning permission may be acceptable (i.e. they consider that it might be granted planning permission) they may issue a notice 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 such a notice does **not** guarantee that permission will be granted; the planning authority may, on consideration of the application, decide instead to refuse permission, or to grant permission subject to conditions or alterations to make the development acceptable. The Circular advises this power should generally only be used where it is considered that the development would be acceptable or acceptable subject to control by conditions.

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 or 'Amenity Notice' (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 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 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.

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.

Notification of Initiation and Completion of Development (NID/NCD) and Display of Notices While Development is Carried Out - while not in themselves planning enforcement powers, these notices are intended to improve delivery of planning enforcement by requiring positive confirmation that development has commenced and been completed, and, in the case of on-site notices, to raise community awareness of developments in the local area. Planning authorities will be made aware of active development in their areas, enabling them to prioritise resources with a view to monitoring development. For any development for which permission has been granted, a NID has to be submitted to inform the planning authority of the date on which development will commence. It is to be submitted after planning permission has been granted and before development has commenced. Initiating development without submitting a 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 has been completed. If the development is a Major development as defined by the Planning Act,

the developer will 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 required to do so

APPENDIX 2: CNPA & COUNCIL CONTACTS

CNPA

Planning Enforcement Officer, CNPA, 14 The Square, Grantown on Spey PH26 3HG

Telephone: 01479 870 xxxx or 01479 870 517 or 01479 870 xxxx

Email: planning@cairngorms.co.uk

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

Highland Council, Glenurquhart Road, Inverness, IV3 5NX

Telephone: 01349 886608

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, PHI 5GD

Telephone: 01738 475300

Email: DevelopmentManagement@pkc.gov.uk