
CAIRNGORMS NATIONAL PARK AUTHORITY

FOR DECISION

Title: ENFORCEMENT CHARTER REVIEW

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Purpose of Report

This paper provides an overview of the monitoring and enforcement activities for the last year up to the end of 2015 and the year ahead. It also includes a draft Enforcement Charter for the Cairngorms National Park and asks the Committee to endorse this prior to publication.

Recommendation

That the Committee:

- i. note the report for information; and**
- ii. agree the proposed draft Enforcement Charter for the National Park**

Background

1. This report covers the 12 month period up to the end of 2015 as part of a cycle of reporting that was started in 2009. The figures for the Scottish Government statistics on enforcement are collected by financial year (e.g. from April 2014 to March 2015) and are reported separately through Planning Performance Framework report.

Review of last 12 Months

2. Over the past 12 months a variety of enforcement cases have been brought to our attention by various interested parties, including; stakeholders (such as SNH), interest groups (such as Badenoch and Strathspey Conservation Group and the Mountaineering Council of Scotland) members of public and staff/board members. Grouping the stakeholders and members of staff together, the split is roughly 50/50 in terms of who brings cases to our attention.
3. Generally, one new case per week (52 during 2015) is brought to our attention; some can be dealt with relatively quickly by passing on to the local authority and others require us to work with the complainant to resolve the issues. These cases have included:
 - a) Pitmain Estate, Kingussie – Following the approval of applications on the estate there were some issues with suspensive conditions not being met as well as delays in commencing works which impacted on the core paths on the estate;

- b) Co-op, Newtonmore – the issue of fans being located adjacent to residential properties and requiring to be moved. This was the subject of a retrospective application;
 - c) Boat of Garten Waste Water Treatment Works – complaints from local residents and the community council regarding noise, odour and compliance with approved plans;
 - d) Inchbroke Farm, Grantown – Land raising by the farmer on both sides of the road; and
 - e) work at Badaguish where a protracted period of negotiation, as well as enforcement action, prompted the planning applications that were approved at the November Planning Committee.
4. However, much of the work involves regular monitoring of permissions being implemented. This is essential in ensuring that any potential to carry out unauthorised development is caught early on avoiding the need to consider enforcement action.
5. This success is a result of effective communication between developers and officers to ensure developments are carried out in accordance with approved plans and documentation as well conditions being discharged in a timely manner. Over the last 12 months the development management team have been working hard to make sure conditions meet the requirements of the Circular 4/1998. The Circular sets out the six tests for planning conditions of: need; relevance to planning; relevant to the development being permitted; ability to enforce; precision; and reasonableness. This has given officers more certainty of position when raising potential concerns with developers and responding to complaints.
6. The biggest issue of the past year has been the increasing numbers of hill tracks within the National Park which has also taken a significant amount of officer time. Unfortunately, the CNPA continues to identify or be told of unauthorised tracks that have not been through the prior notification/approval process for agricultural or forestry private roads or ways, or have been created without planning permission.

Looking to the future

7. Section 158A of the Planning etc. (Scotland) Act 2006 requires planning authorities to prepare an enforcement charter. Detailed requirements are also included within Planning Circular 10/2009: Planning Enforcement and guidance has been issued through the publication of a model charter as an example of the sort of information the Charter should contain. Planning Authorities are free to adapt the format and the content to suit their own requirements, providing that their Charter contains the required information to meet the criteria set out as being a publicly available document setting out:
- a) how the enforcement system works, in particular the role of the planning authority and the service standards it sets itself;
 - b) the policies for taking enforcement action;
 - c) how members of the public can report breaches to the planning authority;
 - d) how the public can complain to the authority as regards how they take enforcement action; and
 - e) the complaints procedure.

8. A planning authority must keep their Charter under review and they must be upgraded and re-published at least every two years. More frequent reviews may be required if there are changes to the enforcement system or legislation. Ministers may also require it to be reviewed if, for example, they are not satisfied that sufficient regard has been paid to the guidance (as stated above) on content.
9. The CNPA Charter was originally approved by the Planning Committee in June 2009 and a review was last undertaken in September 2014. Whilst there have been no changes in the enforcement legislation, a review and update are now required.
10. CNPA currently works in partnership with the five local planning authorities in the Park and each has its own Enforcement Charter covering their respective geographic areas and activities. All the Charters have used the model template set out in the Scottish Government guidance. However, delivery of enforcement within the Park was considered at the annual Cairngorm Planning Protocol Meeting on 29 October 2015. It was discussed that CNPA would lead on the preparation of one Enforcement Charter for the National Park, summarising the role of all six organisations and providing appropriate contact points.
11. The CNPA monitors conditions discharge and adherence on applications it has called in and approved. Each local planning authority monitors conditions on applications it approves. Furthermore, enforcement cases can be brought to the attention of either CNPA or the relevant local planning authority. However, cases would be passed on, on the basis that CNPA will lead on cases relating to applications that, had they been made, would have been 'called in'. The local planning authorities will deal with all remaining cases.
12. A draft Charter has now been prepared taking the legislative requirements and guidance on board and also the position discussed between the CNPA and the five local planning authorities. The draft Charter is attached as Appendix I of this report. The Scottish Government's model template has been adapted to comply with these requirements.
13. The key changes to the Charter are:
 - a) consolidating and explaining the roles of the CNPA and the five Councils;
 - b) including a flow chart of the planning enforcement process;
 - c) amending the priorities to make reference to the aims of CNPA;
 - d) standardising the service standards; and
 - e) including contact details for the five Councils.
14. The draft Charter has been circulated to the five local planning authorities for their agreement. Subject to this agreement and that of the Committee, the Charter will be published. CNPA is then required to send copies to the Scottish Ministers, place a copy within each public library in its area, and publish it electronically.
15. In the year ahead, as well as publishing and implementing the new Enforcement Charter, the intention is to implement new procedures for monitoring and enforcement which include the use of a specific computer programme to ensure a

more complete recording of monitoring and enforcement cases. The procedures will be based on the work already carried out by The Highland Council's enforcement team as well as the National Association of Planning Enforcement (NAPE) to include all matters relating to enforcement and monitoring.

16. With the publication of the new Charter it is also intended to adopt closer working relationships with all the five local planning authorities, including undertaking joint visits where appropriate.

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