

THE HIGHLAND COUNCIL

PLANNING, ENVIRONMENT AND DEVELOPMENT COMMITTEE

15 May 2013

ENFORCEMENT CHARTER

Report by Director of Planning and Development

Agenda Item	13
Report No	PED 38/13

SUMMARY

This report presents the revised version of the Planning Enforcement Charter, which requires to be published and subsequently reviewed by the Highland Council under the terms of Section 27 of the Planning etc (Scotland) Act 2006. This Charter advises customers of the powers available to the planning service in dealing with planning enforcement matters, its service standards, contact points and how to make a complaint about the service.

Members are asked to approve the contents of the revised Enforcement Charter as the Council's statement of planning enforcement policy and procedure.

1. Background

- 1.1 The Planning etc. (Scotland) Act 2006 introduced a requirement for each planning authority to prepare and publish an Enforcement Charter. The Act requires the Authority's Enforcement Charter to set out:
- A statement of the authority's policies covering enforcement action;
 - An account of how members of the public can bring a possible breach of planning control to the attention of the authority;
 - An account of how any complaint to the authority in respect of the taking of enforcement action is to be made;
 - The authority's procedure for dealing with such a complaint.
- 1.2 Authorities are required to review, update and re-publish the Charter on a regular basis. The Charter must be published on the internet and available through public libraries in the Council's area. It will also be made available via the Highland Council Service Point network.
- 1.3 Circular 10/2009 sets out Scottish Government policy on the use of enforcement powers contained in the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc (Scotland) Act 2006. The 2006 Act introduced new enforcement powers available to planning authorities, which have been incorporated into the Charter. This enforcement regime was reported to PED Committee on March 2010, with the current Charter having been approved as the

Council's statement of planning enforcement policy and procedure at the PED Committee on August 2010.

- 1.4 The Scottish Government has issued guidance on the form and content of the Charter. This guidance, together with the Highland Council's existing adopted planning Enforcement Charter, enforcement policy and complaints procedure, has been taken into account in preparing the revised Charter, which is attached as **Appendix 1**.

2. Delivering a More Effective Enforcement Service

- 2.1 As Members may be aware, a budget pressure bid was successful in providing funding for a further two posts to strengthen the Council's enforcement role. The new posts, which will supplement the role of the existing Enforcement Officer, will allow a more proactive approach to enforcement and allow a centre of expertise to be established.
- 2.2 In addition to the new posts, a project is underway to improve the management and reporting of enforcement complaints. This will also involve utilising the UNIFORM Enforcement IT module to aid reporting to the public and to Committee.

3. IMPLICATIONS

3.1 Resource

The cost in delivering the enforcement service will be met by the planning service using the additional resources provided by the Council, and existing resources.

3.2 Equalities/Climate Change/Legal

The Charter is available in a format for customers with special requirements and will contain advice in other languages on how to obtain information. There will be legal implications in the service of Statutory Notices and referrals to the Procurator Fiscal and the Sheriff. There may be costs for the Council in compensation through unsuccessful enforcement action.

4. RECOMMENDATION

4.1 The Committee is asked to:

- (i) Adopt the Charter as set out in Appendix 1 to the report as the Council's statement of planning enforcement policy and procedure.
- (ii) Note the intention to review the Charter on an annual basis.
- (iii) Agree that any minor variations or amendments required are delegated to the Director of Planning and Development.

Designation: Director of Planning and Development

Date: 1 May 2013

Authors: David Anthoney, Enforcement Officer
Malcolm Macleod, Head of Planning & Building Standards

The Highland Council Planning Enforcement Charter

A guide to enforcing planning controls

Cairt Cur an Gnìomh Dealbhaidh Chomhairle na Gàidhealtachd

Iùl a thaobh a bhith a' cur smachdan dealbhaidh
an gnìomh



The illustration of a particular building or property does not necessarily mean that it has been the subject of enforcement action.

May 2013

Contents

Clàr-innse

SECTION 1	Introduction	4
SECTION 2	Key points on enforcement.....	5
SECTION 3	Guiding principles.....	6
SECTION 4	How breaches are brought to our attention	6
	• Own monitoring	
	• Complaints/reports from third parties	
SECTION 5	How we investigate including process map.....	7
SECTION 6	What we can't investigate	7
SECTION 7	Powers available	8
SECTION 8	Standards	9
SECTION 9	Complaints about the service.....	10
SECTION 10	Contact details	11

Contacts

Seòlaidhean

To request this information in an alternative format, e.g. large print, Braille, computer disc, audio tape, or suitable language, please contact the Planning & Development Service:

Planning & Development Service

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Telephone: 01463 702250

Fax: 01463 702298

Email: planning@highland.gov.uk

1 Introduction Ro-ràdh

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

Where this is the case, the Council has powers to take enforcement action, if it considers it is in the public interest to do so. We will monitor development to ensure planning controls are being followed but there is also a role for the public in alerting the Council to any problems you become aware of. This is of significant assistance when considering the expansive area we cover within the Highlands.

This charter explains how the enforcement process works, our role and the service standard we set ourselves. It also explains what happens at each stage of what can be a lengthy process and the role that you can play in assisting us to deter breaches of planning control and reporting unauthorised development.

Enforcement is one of the most complex parts of the planning system and can affect many members of the community. The aim of this charter is to ensure that our adopted procedures are fair, reasonable, and consistent, and that interested parties are fully aware of the procedures involved in the process, the powers available to us, and the limits of those powers.

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



Photo: The Highland Council

2 Key points on enforcement

Prìomh phuingeann cur an gnìomh

A breach of planning control is defined as:

- Development being carried out without the benefit of planning permission
- The carrying out of development or alterations to a Listed Building without the required consent
- A failure to comply with any condition, agreement or limitation attached to any planning permission or related consent
- Unauthorised works to protected trees
- An unauthorised change of use
- Departure from approved plans or consent
- Unauthorised display of advertisements, such as advertising signs or roadside advertising
- A site or building which is in such a poor state that it affects amenity

Breaches of planning control do not in most cases constitute a criminal offence; however, unauthorised works to a listed building, or to a tree protected by a Tree Preservation Order, both of which are investigated by the enforcement team, do. The primary purpose of planning enforcement is to resolve the problem rather than to punish the mistake. Any action taken has to be appropriate to the scale of the breach and to the effect that the breach has on the local or broader amenity.

We have statutory powers to investigate development carried out without planning permission, breaches of the conditions attached to planning consents and other environmental matters which give rise to concern over amenity, such as land which has been allowed to deteriorate to such an extent that it affects the appearance of a wider area. We can take formal action where a satisfactory outcome cannot be achieved by negotiation, although enforcement is a discretionary power. This means that, even where there is a breach of planning control, we need to consider whether it is in the public interest to take enforcement action. It is worth noting that we are not required to take any particular action on a specific breach of planning control, and indeed can decide that no action is necessary.

Another important duty of the enforcement service relates to the monitoring of approved developments, particularly housing developments. Planning permission is normally granted subject to a number of conditions, some of which control the development and some of which relate to matters such as landscaping and finishing materials. It is the role of the planning case officer to check that any ►

conditions which have to be approved before building begins have been approved, and that the development is in accordance with the approved plans. We do this by establishing contact with the developer at an early stage and by visiting the site to monitor the development. We are obliged however to prioritise our attention to the more sensitive sites.

The Council's authority to take enforcement action comes from government legislation. Fuller information on the use of enforcement powers can be found in the Scottish Government publication Planning Circular 10/2009: Planning Enforcement, which can be viewed online at the link below¹.

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. The wording and images on an advertisement are not covered by planning control. Any complaints about the content of an advertisement should be made to the:

Advertising Standards Authority,

Mid City Place,
71 High Holborn,
London WC1V 6QT
Tel: 020 7492 2222

Email: enquiries@asa.org



¹ Planning Circular 10/2009: Planning Enforcement: www.scotland.gov.uk/Publications/2009/09/16092848/0

3 Guiding principles Prionnsapalan stiùiridh

It is clearly undesirable that anyone should carry out development without the necessary permissions being in place. However, the main objective of the planning enforcement service is to remedy the undesirable effects of unauthorised development and to bring unauthorised activities under control, ensuring that the credibility of the planning system is not undermined, and that the amenity of neighbours is not adversely affected.

The Council follows these guiding principles in relation to planning enforcement:

Consistency:

To ensure that similar enforcement activities are dealt with in the same manner;

Fairness:

To ensure equitable and fair enforcement;

Proportionality:

To ensure that enforcement action relates directly to the degree of breach of planning control; ►

Clarity:

To ensure that any enforcement action taken by the Council is easily understood by members of the public, organisations and businesses;

Equality:

To ensure that any decision is not influenced by the ethnic origin, gender, religious or political beliefs or sexual orientation of the offender or interested parties.

In considering any enforcement action, the decisive issue for us will be whether the breach of planning control or the condition of a site would unacceptably affect amenity or the existing use of the land or buildings meriting protection in the public interest. In other words, the Council will need to be satisfied that the breach of planning control is causing harm. We will not take enforcement action solely to regularise an otherwise acceptable development which is causing no demonstrable harm. ■

4 How breaches are brought to our attention Mar a tha brisidhean air an toirt gur n-aire

Own Monitoring

Details of the conditions imposed on planning consents are included within the decision notice relating to the development which can be inspected on our website. Monitoring is undertaken by our development management team.

Complaints/reports from third parties

Members of the public and Community Councils have a vital role in reporting breaches of planning control and are a valued asset in supporting us when reporting enforcement matters considering the vast geographical area we cover. Any concerns should be raised with us at the earliest opportunity. Preliminary enquiries can be made by telephone(HQ) or by email: planning.enforcement@highland.gov.uk

We need the following information when a suspected breach is reported:

- the address, or the location of the site, upon which the breach of planning control is suspected to have occurred; ►

- the name and address of the owner of the property or site involved, or of the person who is suspected to have performed the breach of planning control;
- details of the suspected breach of planning control, with times and dates if relevant;
- how long has the alleged breach taken place;
- a description of the harm that the suspected breach is causing and how it affects the complainant;
- contact details of the complainant, including, name, telephone number, address and email address if available;

It should be noted that all information received by us is subject to the requirements of the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004. The Council will protect the personal information of complainants (as required by the Data Protection Act 1998) but may be required to disclose information relating to the substance of complaints. Requests for total confidentiality may limit our ability to take formal action and cannot be guaranteed if the case leads to court proceedings. ■

5 How we investigate including process map

Mar a bhios sinn a' sgrùdadh, a' gabhail a-steach mapa pròiseis

A priority system is used for investigating complaints based on matters such as the effect of the breach, and its significance on neighbours. Priority will be given to significant breaches of planning control including:

- unauthorised development causing immediate harm;
- unauthorised works to listed buildings;
- unauthorised felling of protected trees;
- breaches of planning conditions adversely affecting amenity and/or resulting in continuing harm.

When we receive a complaint, we will check that it constitutes a breach of planning control and that the legislation ► allows us to take action. If it does, the complaint will be registered, given a case reference number and allocated to a member of staff. If full contact details are provided by the complainant, an acknowledgement letter or email will be sent confirming the case reference number and the case officer dealing with the matter, in line with our published standards (see Section 8). We encourage people who contact us to give full contact details. We will protect the personal information of complainants (see previous Section 4). Again it should be emphasised that confidentiality cannot be guaranteed as ultimately the complainant may be required to give evidence in a court of law. ■



6 What we can't investigate

Na rudan nach urrainn dhuinn a sgrùdadh

We do not normally investigate anonymous complaints. An exception would be where public safety is considered to be at risk.

Sometimes we receive complaints involving neighbour disputes over boundaries and land ownership. These are not matters falling under planning control and cannot be investigated by the enforcement service, but should be referred to a solicitor, or, if the property is owned by the Council, the Council's Housing and Property Service.

Complaints can sometimes involve matters that are more appropriately dealt with by other Council Services such as Environmental Health, or external agencies such as the Scottish Environment Protection Agency. If we receive a complaint which involves another Council service we will pass it to the relevant service and we will inform you who we have contacted on the matter. If it involves an external agency – an organization outwith the Council – we will advise you who should be contacted. ■



7 Powers available

Cumhachdan rim faotainn

Enforcement notice

If development is carried out without planning permission, or a condition or limitation subject to which planning permission has been granted is not complied with, an enforcement notice can be served on all parties with an interest in the land requiring remedial works to be carried out to deal with any harm caused by the breach. There is a right of appeal against an enforcement notice to the Directorate for Planning and Environmental Appeals (DPEA) and the notice has no effect until the appeal is determined and the notice upheld. It is an offence not to comply with the terms of an enforcement notice.

Stop notice

Where a breach of planning control consists of an activity considered to be causing serious harm, a stop notice, in conjunction with an enforcement notice, can be served. The notice usually takes effect within three days of service and it is an offence to fail to comply with its requirements. There is no right of appeal against a stop notice.

Temporary stop notice

This can be issued where a breach of planning control comprises an activity and when we consider that it is important that the activity should cease immediately. It must be displayed on the land to which it relates and ceases to have effect after 28 days. It is an offence to fail to comply with its requirements.

Breach of condition notice

If planning permission has been granted subject to conditions and these have not been complied with, a breach of condition notice can be served on the person(s) responsible for carrying out the development to which it relates, or on the owner of the land requiring compliance with the condition. There is no right of appeal against a breach of condition notice and it is an offence to fail to comply with its requirements.

Fixed penalty notice

Where an enforcement or breach of condition notice has not been complied with, we can issue a fixed penalty notice as an alternative to prosecution. The fixed penalty amounts to £2,000 for each step not complied with in an enforcement notice and £300 for each step not complied with in a breach of condition notice.

Notice requiring application for planning permission

This can be issued on an owner of land requiring submission of a planning application where development has been carried out without planning permission. Whilst there are no penalty provisions for failing to comply with this notice it constitutes enforcement action under the relevant legislation and leaves it open to us to pursue further action in terms of an enforcement notice.

Notice requiring information as to interests in land

This can be issued on any occupier of land requiring them to confirm in writing their interest in the land along with details of any other party with an interest in the land. In addition it can require information on what the land is being used for, when that use began and the time when any activities being carried out began. It is often used to gather information prior to pursuing enforcement action. It is an offence to fail to comply with its requirements.

Planning contravention notice

This can be served on an owner of land or any person carrying out operations on land or who is using the land for any purpose. The notice requires recipients to confirm whether the use or activities alleged in the notice are being carried out, when they began, details of those engaged in the use/activities including their own and to provide any information as to any planning permission that may exist for the use/activities or any reason why permission is not required. It is an offence to fail to comply with its requirements.

Amenity notice

This can be served on anyone with an interest in land where the condition of any land is considered to adversely impact on the amenity of an area. There is a right of appeal to the DPEA.

Listed building enforcement notice

This is similar to a standard enforcement notice but relates to unauthorised works affecting the character of a listed building. Any recipient of such a notice can appeal to the DPEA. It is an offence to fail to comply with the requirements of a listed building enforcement notice.

Advert enforcement notice

This is similar to an enforcement notice but relates to unauthorised advertisements. Such notices can be appealed to the DPEA.

Advert discontinuance notice

Where an advertisement enjoys deemed consent under the relevant advertisement regulations but we require its removal, a discontinuance notice may be served. This can be appealed to the DPEA.

Replacement tree notice

Where a tree protected by a tree preservation order is removed, uprooted or destroyed in contravention of the order or any conditions of a consent given under a tree preservation order requiring the replacement of trees is not complied with, the Council can issue a replacement tree notice requiring the owner of the land to plant a tree or trees. Any notice served can be appealed to the DPEA.

Prosecution

Non compliance with certain notices as indicated above, as well as unauthorised works to listed buildings, the display of an advertisement in contravention of legislation or contravention of a tree preservation order can constitute

a criminal offence under the relevant legislation and can result in the offence being reported to the Procurator Fiscal with a view to criminal proceedings being initiated against the individuals concerned. The decision whether or not to prosecute rests entirely with the Procurator Fiscal and will be based on the evidence submitted and whether or not it is in the public interest to prosecute.

Interdict

We can apply to the courts to restrain a breach of planning control and the court may grant an interdict if it is considered appropriate to restrain or prevent the breach.

Direct action

Non-compliance with certain notices (enforcement, amenity, advert and replacement trees) can result in the Council entering the land and carrying out the steps required to secure compliance with the notice. The costs involved in such actions are recoverable from the owner of the land concerned. ■

8 Standards Inbhean

SERVICE STANDARD

- We will acknowledge an initial or email complaint within 5 working days of receipt. An initial phone contact which requests a response will be acknowledged within 5 working days.

An investigation begins with a member of staff visiting the site to gather information before a decision is made on how to proceed. Following this visit, the individual who has made the complaint will be informed of what action, if any, is proposed. In some cases, additional investigations may be required and if that is the case, we will contact the complainant and advise them of the likely timescale involved.

SERVICE STANDARD

- We will visit sites which are the subject of complaints within 10 working days except where long distances are involved.

The length of time required to resolve a case or take action can be affected by a number of factors. Progress can be delayed because of the need to gather further evidence to allow negotiations to take place or for formal procedures to be concluded. This will take longer in the remoter parts of our area. An application to regularise a breach of control or an appeal against a decision of the planning authority can also delay resolution of the case.

SERVICE STANDARD

- The finding of the initial visit and any action that is proposed or has been taken will be sent to the complainant within 28 days. If the alleged breach is not to be the subject of any further action, the response will give reasons for that decision. If we cannot meet this timescale, the complainant will be contacted within 28 days giving information on the reason(s) for it taking longer than this indicating the likely timescale for responding.

We recognise that delays can be a source of considerable frustration to those submitting information, particularly if they consider their amenity is affected. Consequently, we will do our best to keep interested parties informed of significant stages in the progress of the case and we will give you contact details of the officer handling the case. You may wish to contact the case officer directly for a more regular update.

SERVICE STANDARD

- Complainants will be notified of the outcome of a case within 10 working days of the case being closed, with an account of the outcome provided. ■

9 Complaints about the service Gearanan mun t-seirbheis

We are committed to improving its service and dealing promptly with any failures and hopes the public will be satisfied with the planning enforcement service provided. Any suggestions, concerns, or difficulties should be communicated to us.

The Council will consider seriously any complaints made about the way an enforcement enquiry was dealt with. In the first instance, complaints should be discussed with the member of staff involved. If complainants are still dissatisfied they can further discuss the matter with the:

Head of Planning and Building Standards,

Planning & Development Service,
The Highland Council HQ,
Glenurquhart Road,
Inverness IV3 5NX

Telephone: 01463 702254

or Email: planning@highland.gov.uk

If a complainant is still dissatisfied, the complaint can be taken further by completing a complaints form which is available on the Council's website:
www.highland.gov.uk/comments

or in writing to:

The Chief Executive,

The Highland Council HQ,
Glenurquhart Road,
Inverness, IV3 5NX

Lastly, if the complainant remains unsatisfied with the Council's complaints process, they have the right to take their complaint to the Scottish Public Service Ombudsman (SPSO).

In Person: SPSO, 4 Melville Street, Edinburgh EH3 7NS

By Post: SPSO, FREEPOST EH64I, Edinburgh EH3 OBR

Freephone: 0800 377 7330

Online Contact: www.spsso.org.uk/contact-us

Website: www.spsso.org.uk

Mobile site: <http://m.spsso.org.uk>

Generally, the Ombudsman must be contacted within 12 months of the initial complaint being raised. ■



Photo: Donald Fisher

10 Contact details Seòlaidhean

Breaches of planning control should be reported to our Electronic Planning Centre:

In Writing:

Planning Centre,

The Highland Council HQ,
Glenurquhart Road,
Inverness IV3 5NX

Telephone: 01349 886608

Email: planning.enforcement@highland.gov.uk

There is an extensive Highland Council Service Point network available covering the wide range of the Council area where breaches of planning control can also be reported.

Full contact details of these are available in the telephone directory or on the Highland Council's website at:

www.highland.gov.uk/servicepoints



Photo: Donald Fisher

