

THE HIGHLAND COUNCIL
PLANNING, DEVELOPMENT AND INFRASTRUCTURE
COMMITTEE

3 JUNE 2015

Agenda Item	12
Report No	PDI 33/15

PLANNING ENFORCEMENT CHARTER

Report by Director of Development and Infrastructure

Summary

Under the terms of Section 27 of the Planning etc. (Scotland) Act 2006, the Council is required to have in place a Planning Enforcement Charter, to advise its customers of the powers available to the Planning Service when dealing with planning enforcement matters, its service standards, contact points, and how to make a complaint. The Charter requires to be regularly reviewed, at least every two years.

The Council first implemented its Charter in August 2010. This was subsequently reviewed in May 2013. Members are asked to approve the latest version of the Enforcement Charter.

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; and
 - the authority's procedure for dealing with such a complaint.
- 1.2 Authorities are required to review, update, and re-publish the Charter regularly; at intervals not exceeding two years.
- 1.3 The Scottish Government has issued guidance on the form and content of the Charter. This guidance, together with the Highland Council's existing adopted Enforcement Charter and the learning outcomes from the enforcement project that was successfully implemented in Q3 2013/14, has been taken into account in preparing this latest version of the revised Charter, which can be found within **Appendix 1**.

2. Revised Charter

- 2.1 The implementation of new processes and procedures around planning enforcement, and the establishment of a dedicated planning enforcement team since its adoption, has been a good test of the May 2013 Charter.
- 2.2 On the whole, that Charter continues to be relevant. It is therefore proposed to largely retain the agreed commitments contained within the May 2013 Charter with changes in the main restricted to refreshing the document to take into account changes to service structure, the Council's complaints process and the language and phraseology now used.
- 2.3 Of all the service standards, the 28 day target in which to provide a complainant with details of any action proposed, has been the most challenging to implement. The essential reason for this is the time taken to investigate and negotiate an appropriate outcome, or determine whether a notice requires to be served.
- 2.4 Experience indicates that it is not always possible to progress an investigation within this period to a point where there would be significant merit in updating the original complainant on an agreed course of action. Nonetheless, it is desirable to make contact within the requisite period stated in the service standard. As a consequence it is proposed to retain the commitment to make contact but temper the requirement to provide the complainant with an agreed course of action.

3. Implications

3.1 Resource

The cost in delivering the enforcement service is met by existing resources.

3.2 Equalities/Carbon Clever/Climate Change/Legal/Gaelic and Rural Risks

The Charter is available in a format for customers with special requirements, and contains advice in other languages on how to obtain information. There are 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.

Recommendation

The Committee is asked to:

- adopt the Charter as set out in **Appendix 1** to the report as the Council's statement of planning enforcement policy and procedure; and
- agree that any minor variations or amendments required are delegated to the Director of Development and Infrastructure in consultation with the Chairman of the Planning, Development and Infrastructure Committee.

Designation: Director of Development & Infrastructure

Date: 24 April 2015

Author: David Mudie, Team Leader – Development Management

Background Papers:

APPENDIX A

The Highland Council

Planning Enforcement Charter (2015)

A guide to the enforcement of planning control

Cairt Cur an Gnìomh Dealbhaidh

Chomhairle na Gàidhealtachd (2015)

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



This page is intentionally blank

Table of Contents

Introduction	4
Key points on planning enforcement	5
Guiding principles of planning enforcement	7
Process flow chart	8
Standards	9
How breaches of planning control are brought to our attention	10
How we investigate	11
What we will not investigate	12
Powers available	13
Complaints about the service	16

Contacts

Sealaidhean

To report a potential breach of planning control please either go to our website and complete our eForm or contact the Service Centre.

Report a Breach of Planning Control

Website: www.highland.gov.uk/planningenforcement

Service Centre: 01439 886608

Introduction

Ro-radh

Building work or the use of buildings or land for an alternative use, in planning legislation, is known as 'development'. Planning permission is required for most forms of development undertaken. Unfortunately, sometimes developers (which can include householders) undertake work without the benefit of planning permission or fail to keep to the terms of the permission they have been given.

When this happens the Council has powers to take enforcement action against the unauthorised development, if it considers it is in the public interest to do so.

The Council routinely monitors development to ensure planning controls are being followed. However, there is a role for the public in alerting the Council to any problems that they become aware of. This is of significant assistance to us when considering the size of the Council area.

This charter explains how the enforcement process works, our roles and responsibilities and the service standard that we have set ourselves.

It aims to set out what happens at each stage of what can be a lengthy process and the role that the public play in reporting unauthorised development and assisting us to deter further breaches of planning control.

Planning enforcement is one of the most complex parts of the planning system. The aim of this charter is to ensure that our adopted procedures are fair, reasonable, consistent and importantly transparent so that interested parties are fully aware of the procedures involved in the process, the powers available to the Council, and importantly the limits of those powers.

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

Key points on planning enforcement

Príomh phuingean cur an gníomh

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

The Council has statutory powers to investigate a breach of planning control. Any action taken has to be appropriate to the scale of the breach and to the effect that the breach has on the environment or residential amenity.

Breaches of planning control do not in most cases constitute a criminal offence. The exception to this includes: unauthorised works to a listed building; to a tree protected by a Tree Preservation Order; or, the erection of an advertisement without consent. Formal action is likely to be an immediate response in such cases.

In the majority of cases however, it is the Council's policy to resolve the problem rather than to punish the mistake.

We may decide to take formal action where a satisfactory outcome cannot be achieved by negotiation. However, any **action is discretionary**. 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.

An important aspect of enforcement is monitoring of development. Planning permission is normally granted subject to a number of conditions, some of which manage the development and some of which relate to details of finishing materials and landscaping. It is the responsibility of the planning case officer to check that any conditions which have to be approved before work begins have been, and that the development proceeds 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. However given the large number of planning permissions granted, it is not always possible to monitor every case. As such priority will be given to the more sensitive sites.

The Council's authority to take enforcement action comes from national legislation. Further information on the use of enforcement powers can be found in the Scottish Government publication *Planning Circular 10/2009: Planning Enforcement*¹.

Planning enforcement also covers the physical display of advertisements, such as billboards and advertisement hoardings. It is important to note that the wording and images on an advertisement are not covered by planning control and the council has no power to act on these matters.

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
Telephone: 020 7492 2222

Guiding principles of planning enforcement

Prionnsapalan stiuiridh

It is clearly undesirable that anyone should carry out development without the necessary permissions being in place. The main objective of planning enforcement is to remedy the undesirable effects of unauthorised development on the environment and the amenity of our communities. Bringing unauthorised activity under control ensures that the credibility of the planning system is not undermined.

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

Consistency:

The enforcement process shall be followed in the same manner for each similar case;

Fairness:

Outcomes shall be equitable and fair;

Proportionality:

Enforcement action shall relate directly to the scale, type and nature of breach of planning control;

Clarity:

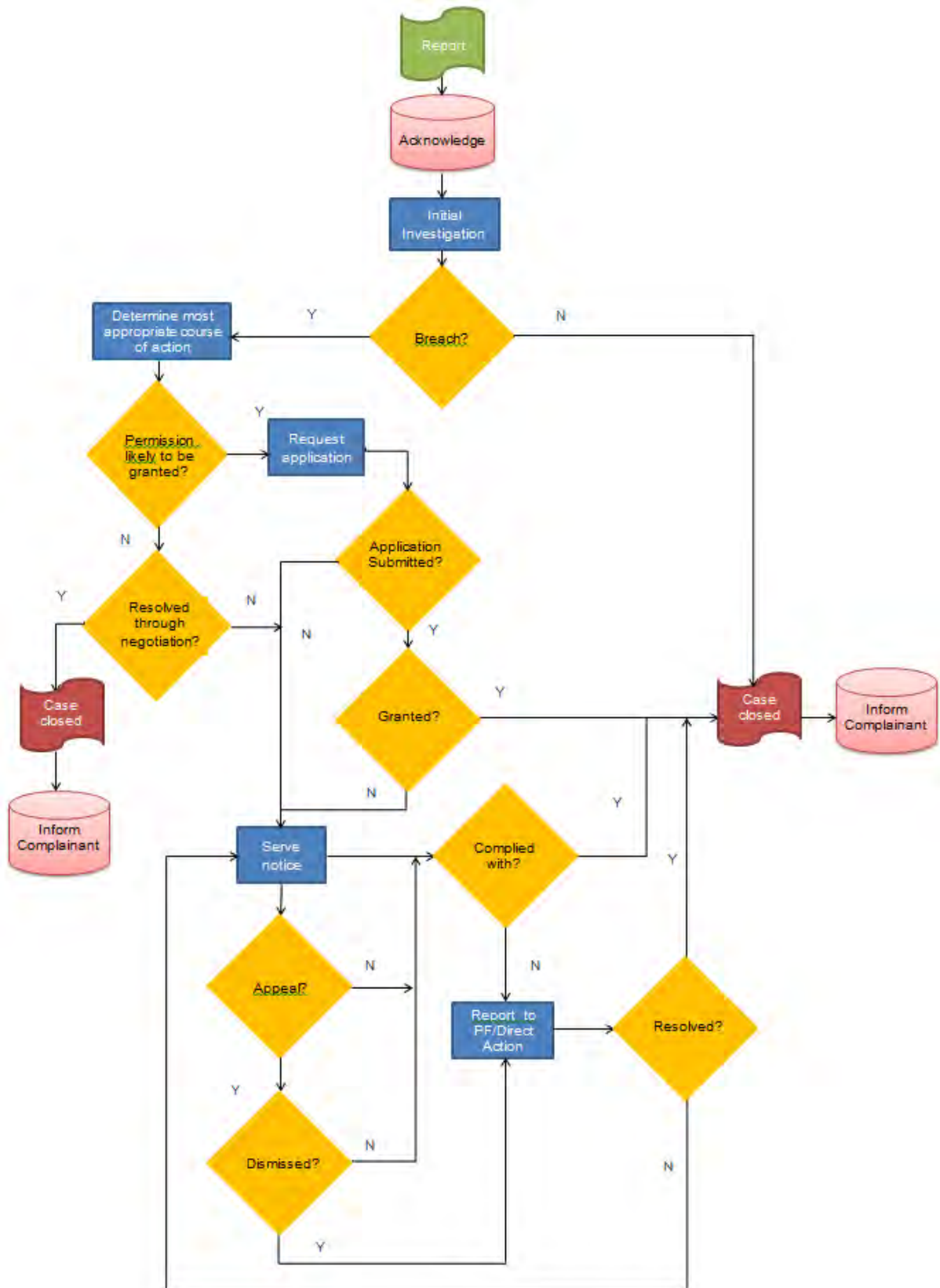
Any enforcement action taken by the Council shall be easily understood by members of the public, organisations and businesses;

Equality:

Every individual or group shall be treated with respect and in accordance with their individual rights, beliefs or circumstances. No decision will be influenced by those.

In considering any enforcement action, the deciding issue for us will be whether the breach of planning control or the condition of a site would unacceptably affect amenity, the environment 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 or may cause demonstrable harm.

Process flow chart
Sruth-chlár pròiseas



Standards

Inbhean

Standard: We will acknowledge a Report within 5 working days of receipt providing you contact details of the officer handling the case.

An investigation often begins with a member of staff visiting the site to gather information before a decision is made on how to proceed.

Standard: We will visit sites subject of a Report within 10 working days, except where long distances are involved or during periods of inclement weather.

The length of time required to investigate, take action and resolve a case 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. 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.

Where our investigation indicates that there has been no breach of planning control or that we intend not to pursue matters in the public interest, complainants shall be informed of this in reasonable time.

Standard: Where there has been no breach of planning control or that we intend not to pursue matters in the public interest we will inform you of our position within 28 days of the Report.

Standard: Where further investigation is required you will be contacted within 28 days of the Report and provided with an estimated timescale for completion of the investigation and potential remedy if known.

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 endeavor to keep interested parties informed where there is some significant progress made on the case. You may wish to contact the case officer directly for a more regular update.

Standard: We will notify you of the outcome of a case within 10 working days of the case being closed, with an explanation of the outcome provided.

How breaches of planning control are brought to our attention

Mar a tha brisidhean air an toirt gur n-aire

Monitoring

Details of the conditions and obligations imposed on planning permissions are included within the decision notice relating to the development. Monitoring is undertaken routinely by our development management teams.

Decision notices can be inspected on our website (<http://wam.highland.gov.uk/wam/>).

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.

Potential breaches can be reported at www.highland.gov.uk/planningenforcement by using our 'Report a Breach of Planning Control' eForm or by telephone on 01349 886608.

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

- Contact details of the complainant, including name, telephone number, address and email address if available;
- Details of the type and nature of the potential breach of planning control, including when you became aware of it;
- Name and address of the person(s)/organisations responsible
- for the alleged breach, include contact details where known;
- The address or location of the site where the potential breach of planning control has occurred;
- Any other relevant information e.g. any documents or photographs.

It should be noted that all information received by us is subject to the requirements of the Data Protection Act 1998. This means that the Council has a duty to protect the personal information of complainants. We will not disclose personal details.

Under the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004, we may need to disclose information relating to the substance of complaints.

Notwithstanding the above, requests for total confidentiality may limit our ability to take formal action and cannot be guaranteed if the case leads to court proceedings.

How we investigate

Mar a bhios sinn a' sgrudadh

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 or potentially serious 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 report of a potential breach it will be registered on our system and given a reference number. It will then be allocated to the relevant area office for checking, acknowledging and investigation. Reports of some significant breaches may be passed directly to our Enforcement Team.

Initial investigations can include a property history search, inspecting a planning decision or approved plans, and will usually involve a site visit.

The first things that we need to establish are whether the potential breach reported relates to planning matters (see Section X) and that a breach of planning control has indeed occurred. If the case is not founded, it will be closed and a letter sent explaining why.

Where a breach of planning control has been identified, we will establish an appropriate course of action. We attempt to resolve breaches through negotiation. In cases where a breach is serious or must be brought under control and cannot be resolved informally, we will take formal action.

For minor breaches, or those not causing significant harm, this will usually involve the submission of a retrospective planning application for the development already carried out. For more complicated breaches, or those that may have a detrimental impact on the environment or community this may involve the serving of a formal notice to rectify the breach.

What we will not investigate

Na rudan air nach dèan sinn sgrùdadh

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

As a Planning Authority, we do not have power to deal with every issue often perceived as a planning matter. The following are examples of matters that we are unable to address:

- A boundary dispute or dispute over the ownership or control of land
- A technical building issue relating to the building standards
- A matter relating to the management of a building site or behaviour of builders or contractors
- A parking dispute regarding contractor vehicles

These are issues are civil matters and should be referred to a solicitor, or, if the property is owned by the Council, the Council's Community Services.

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 organisation outwith the Council - we will advise you who should be contacted.

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 and 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 at any time we choose.

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. 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 at any time we choose.

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 constitutes 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 those involved. 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.

Complaints about the service

Gearanan mun t-seirbheis

We are committed to improving our performance, dealing promptly with any enquiries and hope that the public will be satisfied with the planning enforcement service provided. We welcome any suggestions, concerns or difficulties about the service being communicated to us..

The Council will investigate any complaints made about the way an enforcement enquiry was dealt with through our corporate complaints procedure. We aim to resolve complaints quickly and at the point of contact and we will give you our decision at Stage 1 in five working days or less, unless there are exceptional circumstances. For more complex complaints or for those which are not resolved at Stage 2 we will provide a full response to your complaint within 20 working days.

Complaints can be reported to –

Website:

http://www.highland.gov.uk/info/670/consultations_complaints_and_compliments/368/make_a_complaint

Telephone: 01349 886606

In Writing: Complaints, The Highland Council, PO Box 5773, Inverness, IV1 9EJ