



PLANNING AND ACCESS COMMITTEE

MEETING: Monday 29th October 2018

SUBMITTED BY:	Director of Rural Development & Planning
SUBJECT:	Planning Enforcement and Monitoring update 2017/2018

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1 SUMMARY AND REASON FOR PRESENTATION

- 1.1 This paper provides Members with an overview update on planning enforcement and monitoring activities for the last year (focusing on the April 17 – April 18 period to correspond with the information in our Planning Performance Framework (PPF) No 7 which is also reported to this meeting). It also makes the recommendation to agree an updating of the Enforcement Charter.

2 RECOMMENDATION

That Members:

1. **Note** the content of this report for information.
2. **Agree** the updated Enforcement Charter.

3 BACKGROUND

- 3.1 The integrity of the planning system is undermined if breaches of planning control are not enforced and planning conditions not complied with as members of the public feel let down. Planning Authorities have a duty to prepare an enforcement charter and to keep it under review, updated and re-published on a two yearly cycle. Enforcement charters explain the enforcement system to the public and, as the NPA’s charter was last published in November 2016, it now requires to be updated and re-confirmed – the republished charter is attached as **appendix 1** and it is publically available on our website.

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- 3.2 This report covers the period from April 17 - April 18 in order to correspond with reporting on the PPF. The intention is to give a flavour of the broad range of work behind the reported statistics. Over the past two years a number of changes have been implemented as to how we handle enforcement cases in order to improve the capacity and responsiveness of the service. Our work has also involved a refinement to case management to best utilise the long established Uniform and Idox support systems.

4 How our Service Operates

- 4.1 Planning permission is needed for most development and Planning Authorities have powers to enforce these requirements and a duty to investigate alleged breaches of planning control. It is important to understand that enforcement is not a punitive process. The charter emphasises the constructive purpose of enforcement investigations and the importance of assessing each case individually. Where a breach is minor with no demonstrable public harm or where some adjustment or mitigation has been negotiated and carried out, then no further action is needed and the case is closed. The taking of formal action – i.e. service of an enforcement notice - is generally a last resort and only where it is expedient in the public interest, necessary and proportionate to the harm caused by the breach and in line with the development plan and all other material considerations. This is a judgement for the planning authority.
- 4.2 In addition to our planning officers, planning assistants and support staff - our service benefits from having a dedicated monitoring officer who has a unique role in the planning team. It is essentially a support role for all the post-decision aspects of planning control. It involves checking of planning consents that are being implemented and, in particular, checking planning conditions that have been imposed are being complied with. The monitoring officer helps organise this aspect of the work and liaises closely with the planning case officers to make any decisions on agreeing details, adjustments and 'non-material variations' at this stage. It is important to understand that changes and adjustments to development proposals as they move from a planning permission toward implementation on the ground are very common - and the monitoring officer role helps us respond to these changes. Consequently, the monitoring officer role is also invaluable in providing an awareness of any unauthorised development early on – so that any potential harm can be avoided, guidance on due process can be provided and enforcement action avoided. The monitoring officer also provides the administrative support for the setting up of a case file for enforcement enquiries.

5 Summary of Planning Enforcement Activity

- 5.1 The PPF statistics confirm that for the period April 2017 until April 2018 - 41 cases were 'taken up'. 16 breaches were confirmed as 'resolved' and 7 formal notices were served.

Of the notices served, these included an 'Amenity Notice', a 'Temporary Stop Notice' and 'Enforcement Notices' (for advertisements).

- 5.2 An Amenity Notice is used where the condition of land is having an adverse effect

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on the wider public amenity of the area. For the reporting period of the PPF, the case in question related to building materials and equipment that had been stored at the redeveloped former Auction Market at Lyon Road, Killin – and prior to that we have also used this notice to good effect at the former Torpedo site by Arrochar.

- 5.3 A Temporary Stop Notice was utilised in the summer of 2017 to cease the operation of an unauthorised car wash and mobile snack van at a site near Drymen – while our Enforcement Notices have been targeted at unauthorised trailer and banner signage, primarily on the A82.
- 5.4 Other notable cases taken up – but resolved through engagement with the land owners or operators and without resort to serving a notice are :
- The removal of fencing blocking a former railway track and now route of a core path at St Fillans and;
 - The re-profiling of up-filled land on the shore of Loch Lomond, associated with an extension of Loch Lomond Holiday Park at Inveruglas.
- 5.5 No cases were reported to the Procurator Fiscal in 2017 /18 but previously we had cases referred in relation to two instances of unauthorised tree felling within a Tree Preservation Order and Conservation Area at Drymen. Ultimately in both cases the Crown dropped the charges as the National Park was satisfied that the matter had been satisfactorily resolved through voluntary replanting. However, this may not have been achieved without the pressure of the court action.
- 5.6 At the present time the National Park is actively investigating over 40 live enforcement cases. We cannot report the details of these cases as the investigation work may lead to formal enforcement action and potentially legal action – however they cover a range of issues such as: unauthorised building works; unauthorised siting of caravans; alterations to Listed Buildings; unauthorised change of use of buildings; unauthorised display of advertisements and inclusion of open space as domestic garden ground.

6 Summary of Monitoring Activity

- 6.1 The National Park determines around 300 planning (and other statutory applications) per year – together with a similar number of pre-application enquiries. The planning service also currently has 263 ‘live’ cases recorded in the monitoring module within the Uniform data base system. This covers a wide range of development sites at various stages of implementation. It includes some sites (such as run-of-river hydro power developments) that require long term monitoring for restoration progress many years after initial construction took place on site.
- 6.2 A key trigger for setting up a new monitoring case is the requirement (in Planning statute) for the applicant to provide the Planning Authority with a ‘Notice of Initiation of Development’ (NID). This indicates the intended start of work on site and is often the opening of a dialogue between monitoring officer and developer to ensure that any conditions of the planning permission that require the further approval of details of the development prior to any start on site are addressed. The degree of involvement for the monitoring officer varies significantly across the range of applications – and this prioritised dependant on the case. If a developer is

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fully complying with the terms of the permission, monitoring may only involve brief site checks. However, if a developer has not submitted any or only some of the details to discharge conditions – or carries out a different development on site – then the monitoring officer’s work will involve significant communication, the engagement of other planning officers and specialists and close monitoring with regular site inspections.

6.3 Some of the notable permissions that have been monitored over the reporting period include:

- 1) Social Housing Developments at ;
Succoth – 26 units by Dunbritton H.A
Dumbain Road (Balloch) – 26 units by Cube HA
Pearl Street (Callander) – 4 flats by Stirling Council
The Old Telephone Exchange (Callander) – 23 flats by Rural Stirling HA

- 2) Run-of-River Hydro Developments
Two recent schemes at ;
Falls of Edinample - 2016 permission for a ‘micro hydro’ at South Loch Earn
An T-Sreang (Arrochar) – 2015 permission for 180kw community scheme

Long term restoration monitoring continues to be focused on a range of earlier permissions including the four Glen Falloch schemes to the north end of Loch Lomond (2010 permissions), Donich Water in Argyll (2013), and Burn of Mar by Loch Lomond (2013).

- 3) Cononish Gold Mine – the operation of the trial phase of gold production and the associated waste management arrangements.
- 4) 21 sites for telecom masts consented and implemented under a range of applications across the National Park comprising a Home Office project (in conjunction with EE telecoms) to update communications infrastructure across the UK (which in turn provides connectivity to the emergency services).
- 5) The installation of a wood fired combined heat and power plant at Acharn Forest Killin (up to 5MW output)
- 6) Alteration and extension to the Leisure centre conference facilities and accommodation at Drimsynie Estate (Argyll Holidays) Lochgoilhead

7 The Enforcement Charter

7.1 As introduced in Para 3.1 above, the charter explains to the public how the enforcement process works, what unauthorised development is and how someone with a concern can report it. It sets out the prioritisation that the National Park will give to planning breaches and the timescales that can be expected for acknowledgement of any concern that is reported to us. The charter also explains what happens at each stage of what can be a complex, lengthy process with unpredictable timescales. Since 2016 there have been no changes made to the statutory planning enforcement framework or to the government’s policy and

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guidance on the subject. As a result no changes are proposed to be made to the content of the charter at this time. Nevertheless Members should be aware that the ongoing Planning Review - and the progression of the Planning (Scotland) Bill through parliament - does propose some strengthening of enforcement powers which include : an increase in fines and the introduction of 'charging orders' which would enable authorities to recoup costs in the event of taking 'direct action' to remedy planning breaches.

- 7.2 The purpose of this report to Committee is to re-affirm for Members the content and purpose of our enforcement charter and to confirm the statutory re-publication date. Subject to this confirmation a copy will be issued to Scottish Ministers and the updated version will be published on our website.

8 CONCLUSION

- 8.1 Carrying out development without planning consent – or breaching a condition of a planning consent - is generally not a criminal offence. Enforcement action is carried out at the discretion of the planning authority and informal resolution of breaches is encouraged where appropriate. Nevertheless, the perception as to how planning enforcement is applied is very important to confidence in the planning system. Planning monitoring is an area that is often given lower priority by Planning Authorities due to the focus on measuring performance in the determination of planning applications and the pressured resourcing of planning teams. The National Park is committed to improving our service in both areas and the recently implemented changes to our ways of working, as described in this report, should continue to deliver best results on the ground as we continue to refine the processes.

List of Appendices: **Appendix 1 Planning Enforcement Charter**