



EIR Ref:2021/007

19th May 2021

REQUEST UNDER ENVIRONMENTAL INFORMATION (SCOTLAND) REGULATIONS 2004

We refer to your request for information, received by email on 20th April 2021. The information you have requested is environmental information, as defined in Regulation 2 of the Environmental Information (Scotland) Regulations 2004 (EIRs). We have therefore applied the exemption in section 39(2) of FOISA and dealt with your request under the EIRs alone.

Your specific requests and the response from the National Park Authority are provided below.

“what measures are in place after 9 months to prevent ongoing planning breaches?”

This request relates to work at Crienich Stables, Croftamie, which is currently the subject of a live planning enforcement case.

Planning enforcement cases are categorised as A – High Priority, B – Medium Priority or C – Low Priority. A relatively small number of cases result in the taking of enforcement action involving service of a formal notice on the landowner or developer. Only when a notice is served would the case reference be disclosed online through the public portal.

This case has been categorised as C – Low Priority and there has been no formal notice served in this case. The initial complaint showed the dumping of material constituting engineering works which was assessed as a category C enforcement matter. The priority level relates to the timescales for visiting the site. In this case the planning monitoring officer visited the site within 9 working days of the complaint the, target is 15 days for category ‘C’ cases.

Enforcement powers are not intended to be used punitively nor to protect the interests of one person or business over another.

We will normally seek a retrospective planning application in cases where an unauthorised

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National Park Headquarters, Carrochan, Carrochan Road, Balloch, G83 8EG Long: 4°34'24"W Lat: 56°00'12"N

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development could be made acceptable by the use of planning conditions (such as landscaping, control of operating hours). In this case it has been assessed that there is a requirement for a planning application and the Park Authority has been engaged in ongoing communication with the landowner's agent to achieve this.

“To assist in this clarification, I additionally hereby make a formal request for you to provide me with all correspondence to date in relation to this issue held by the planning department”

This planning enforcement case was opened on 11th August 2020. Assessment of the file shows that there has been ongoing correspondence between the Planning Authority and the Landowner's agent since this date. This correspondence has been withheld from release under R10(5)(b) of the EIR's as the information relates to a live enforcement case and the release of this information may adversely affect the ongoing work of the Park Authority to resolve this enforcement matter.

While the intention is to resolve this case without recourse to more formal action, such action remains an option, including the use of a formal enforcement notice.

Application of public interest test

In respect of the withheld information under Regulation 10(5)(b) we have considered the public interest test, i.e. the public interest in favour of disclosure balanced against the public interest in maintaining the exemption. In considering the public interest, we have given careful consideration to the content of the information, the current context and the effect of disclosure on the National Park Authority's ability to perform its functions effectively.

The Environmental Regulations do not define “public interest”, but it has been described as “something which is of serious concern and benefit to the public.” The public interest does not mean what is of interest **to** the public, but what is in the interest **of** the public.

Public interest in disclosure

There is a public interest in individuals being able to exercise their rights under the Regulations in order to enhance their understanding of the work of a public authority.

The National Park Authority recognises that it is in the public interest to have openness and transparency in the work of a public authority and to demonstrate its accountability to the public in relation to how public money is spent.

Public interest against disclosure of withheld information

The requested information relates to a live planning enforcement matter. While no enforcement notice has been served, the use of such a notice remains an option for the Park Authority if considered necessary and in the public interest.

Failure to comply with an enforcement notice is an offence and we have the following additional powers which complement the serving of notices:

- referral to the Procurator Fiscal for possible prosecution
- issue of a fixed penalty notice
- direct action by us to carry out the notice requirements and recover our costs
- a court interdict to stop or prevent a breach of planning control.

We decide on a case by case basis what further action to take. There is a maximum fine of £20,000 where prosecution is successful and, if non-compliance persists, a second prosecution may be sought with a recommendation that the courts impose a 'continuance fine', which would

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apply each day the notice is not complied with.

It has been concluded that there is a greater public interest in withholding the correspondence between the Park Authority and the landowner and agent in this case to enable the Park Authority to pursue its current approach with the landowner and their agent. Release of the requested correspondence into the public domain may adversely impact both the outcome of these live negotiations and also negatively impact any prosecution should more formal action become necessary.

While we have concluded that it is not in the public interest to release the requested information, we would reiterate that the Park Authority is actively working on this case, and discussions with the agent are progressing towards the intended submission of a planning application. The planning monitoring officer will keep you informed and you will have the opportunity to submit comments if a planning application is made, which will be made available on our planning portal.

Yours sincerely

**Governance and Legal Team
Loch Lomond and the Trossachs National Park Authority**

Review Procedure

If you are dissatisfied with this decision, or the way in which the Authority has dealt with your request, you are entitled to require the Authority to review its decision. Please note that in order for a review to take place you are required to:

- Send your request for review in writing, setting out in full the reasons why you are requesting a review.
- Submit your review request within 40 working days of either the date on which you received a response from the Authority or the date by which you should have received a response under the terms of the Freedom of Information (Scotland) Act 2002, whichever is the later.
- address your review request to:

Governance & Legal Team
Loch Lomond & The Trossachs National Park Authority
National Park Headquarters
Carrochan
Carrochan Road
Balloch
G83 8EG
E-mail: info@lochlomond-trossachs.org

The review will be handled by staff who were not involved in the original decision. You will receive notice of the result of your review within 20 working days.

If you are not satisfied with the response to your request for review, you can contact the Scottish Information Commissioner, the independent body which oversees the Freedom of Information (Scotland) Act 2002, at:

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Scottish Information Commissioner

Kinburn Castle

Doubledykes Road

St Andrews

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KY16 9DS

Tel: 01334 464610

Website: www.itspublicknowledge.info

E-mail: enquiries@itspublicknowledge.info

Online appeal portal: www.itspublicknowledge.info/Appeal

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