



Appendix 1 Enforcement Charter Report

Agenda Item: 5

Planning & Access Meeting

28th March 2022

Paper for information

1. Introduction	2
2. What is a Breach of Planning Control?	3
3. Reporting a Possible Breach	3
4. What Happens Next?	4
5. Monitoring of Approved Development	4
6. Priority Categories	6
7. Service Standards	7
8. Resolving Cases	7
9. Formal Action	7
10. Enforcement Register	8
11. Powers of Entry	8
12. Time Limits on Taking Enforcement Action	8
13. Certificates of Lawful Existing or Proposed Use or Development	9

14.	Advertisements	9
15.	Customer Care and Complaints	9
16.	Contacts	9
17.	Other contacts	9
18.	Relevant Information Sources	10

1. Introduction

- 1.1. Planning enforcement assists in the delivery of key planning policy objectives and in maintaining public confidence in the planning system. There is a legal requirement for planning authorities to produce enforcement charters, updated every two years, to inform the public about the role of enforcement in their area.
- 1.2. *This Charter explains how the planning enforcement process works, what role the public can play and the service standards they can expect. It also explains what happens at each stage of what can be a lengthy, complex process, often with long and unpredictable timescales.*
- 1.3. Breaches of planning control are a matter of public interest and we have statutory powers to investigate them and the discretion to take appropriate remedial action where expedient in the public interest. Any enforcement action we take has to have regard to the current Local Development Plan and be fair, reasonable and proportional to the breach and to the extent to which it affects the public interest. **We are not required to take any particular action on a specific breach of planning control and we can decide that no action is necessary.**
- 1.4. People sometimes carry out work without planning permission or they don't keep to the terms of their permission; we usually learn about such things from members of the public and we encourage anyone making such an inquiry or complaint to write in, preferably using our bespoke form. Although we treat all information in confidence we cannot absolutely guarantee this because the courts or Information Commissioner can direct us otherwise, though this would be extremely rare. In the case of potential unauthorised works to a listed building or protected trees we ask people to call us because an urgent response may be needed.
- 1.5. We know breaches of planning control can affect members of the public so we hope you will find this Charter useful and please let us know if you think there are areas where we could improve our service. We investigate all potential breaches and generally seek to resolve matters informally without recourse to formal action which is a last resort except where serious amenity, environmental or safety issues are raised. We aim to provide a service that is fair, proportionate, reasonable and responsive to everyone concerned.

Key Points

- The use of enforcement powers should be commensurate with the breach of planning control, for instance, we are unlikely to take action against a minor breach when there is no adverse impact on the surrounding character or amenity.
- We will normally seek a retrospective planning application in cases where an unauthorised development could be made acceptable by the use of planning conditions (such as landscaping, control of operating hours),
- We will take enforcement action where we judge a breach of planning control to be unacceptable and contrary to development plan policies, national planning policy and guidance.
- Enforcement powers are not intended to be used punitively nor to protect the interests of one person or business over another.

- 1.6. Further information about enforcement can be found in the Scottish Government Circular 10/2009 (www.scotland.gov.uk/Publications/2009/09/16092848/1) and Planning Advice Note 54 - Planning Enforcement (www.scotland.gov.uk/Publications/1999/03/pan54)

2. What is a Breach of Planning Control?

- 2.1. A breach of planning control is where development occurs without the required planning permission. Breaches of planning control include:
- work being carried out without permission or consent
 - an unauthorised material change in the use of land or a building
 - non-compliance with approved plans or condition(s) of a planning permission

3. Reporting a Possible Breach

- 3.1. The public play a vital role in reporting possible breaches of planning control and are encouraged to call in the case of works to a listed building or protected tree but an email or our bespoke form is otherwise more helpful to us, with the following information:
- address of the property or location of land concerned
 - name of the person or company involved
 - details of the suspected breach with times and dates if relevant
 - how the breach affects you or any problems caused by the breach
 - your contact details ⁽¹⁾

All enquiries should be sent to the Planning team – preferably by e-mail to : planning@lochlomond-trossachs.org

There is also an [online form](#) available on our website.

or in writing to :

Loch Lomond & the Trossachs National Park Headquarters
Carrochan
Carrochan Road

⁽¹⁾ We treat all inquiries confidentially but cannot guarantee this absolutely as we may be directed otherwise by the Freedom of Information Commissioner or courts.

4. What Happens Next?

- 4.1. When we receive a report or inquiry we check whether it is a planning matter over which we have control as some enquiries are better dealt with by other authorities like building standards, environmental health; or it may be that the concern is a private civil matter as in a boundary ownership dispute or matters relating to feu superior's consent. We also assess whether the development is '*permitted development*' as set out in the General Permitted Development Order. After a preliminary check we either register a new enforcement case or explain why it's not a 'valid' planning matter.

5. Monitoring of Approved Development

- 5.1. Planning approvals are monitored for compliance with the approved plans and any conditions applied. **It is primarily the responsibility of the applicant/developer to ensure they are in compliance with the terms of a permission. Information relating to the compliance with conditions is recorded in the application file. However given the large number of permissions granted each year it is not always possible, or practical, to monitor every case.** Applicants should read their planning permission decision notices carefully as there may be '*pre-start*' conditions to address before starting work on site as failure to discharge these conditions may invalidate the permission. **Applicants are required to submit a 'Notice of Initiation of Development' to us before starting work. This is an important trigger to confirm that any 'pre-start' conditions that require the submission - and agreement - of further information prior to work starting on site have been complied with.**

Monitoring major developments

- 5.2. **The Planning (Scotland) Act 2019 introduces provision for Planning Authorities to include a statement within their planning enforcement charter setting out how they monitor and record compliance with planning permission for major developments. The National Park on average determines of the order of up to three major applications each year. The process for monitoring and recording compliance is the same as described for our other more significant 'local' applications. However, using the example of the ongoing development of the gold and silver mine at Cononish by Tyndrum (major application ref: 2017/0254/MIN; granted permission October 2018), a Section 75 legal agreement attached to the permission provided that the developer covers the ongoing cost of specialist independent advice toward the monitoring of technical matters related to the implementation of the permission, discharge of planning conditions and restoration at the site. This approach will be considered on a case by case basis for similar significant applications with specialist monitoring requirements. Our monitoring work covers a**

wide range of development sites at various stages of implementation. It includes some sites – such as the goldmine - that require long term monitoring for restoration many years after initial construction took place on site.

Recording and viewing monitoring documentation

- 5.3. All submissions and correspondence associated with ongoing monitoring and the discharge of conditions is recorded on the planning casework file for the relevant planning application. While this is not openly available on the public access website, all documentation is retained in accordance with the National Park's agreed retention schedule. Documentation from the file can be made available on a case by case basis in accordance with our approved procedures.

6. Priority Categories

- 6.1. Each investigation is prioritised depending on the significance of the breach to ensure an effective service because we receive a large number of enquiries. The priority category depends on the nature of the breach, the significance of its effects and the relative sensitivity of the site. (Priorities are not influenced by the complainant, the subject of the complaint or the number of complaints received.)

Category A – High Priority

- Works that contravene an Enforcement Notice or otherwise counter any enforcement action already taken.
- Unauthorised works, including demolition, affecting a Listed Building or a building in a Conservation Area.
- Unauthorised works that harm, or potentially harm, sites of international or national importance, such as Sites of Special Scientific Interest or Scheduled Ancient Monuments.
- Unauthorised works that harm or remove trees protected by a Tree Preservation Order or within a Conservation Area.
- Unauthorised development that endangers members of the public.
- Any other breach of planning control, including breaches of conditions, causing, or likely to cause, significant harm to the natural or cultural heritage of the National Park or to residential amenity.

Category B – Medium Priority

- Lesser breaches of Listed Building or Conservation Area control.
- Breaches, including breaches of conditions, having or causing moderate levels of visual impact or disturbance.
- Unauthorised advertisements causing significant visual harm or compromising highway safety.
- Unauthorised siting and occupation of residential or holiday caravans.
- Breaches of residential or holiday occupancy restrictions.

Category C – Low Priority

- Minor or technical breaches with little or no impact on public amenity
- Lesser breaches of advertisement control
- Untidy land not affecting public amenity.
- Any other alleged breach of planning control not falling into Category A or Category B.

7. Service Standards

- 7.1. **Acknowledgement:** We will acknowledge receipt of all written inquiries (e-mail or letter) or complaints within 5 working days. Telephone inquiries are acknowledged at the time.
- 7.2. **Site visit:** We will make a site visit within the following time periods for each priority category:
- **High Priority** 5 working days
 - **Medium Priority** 10 working days
 - **Low Priority** 15 working days
- 7.3. **Follow up response:** Within a further 20 working days after we acknowledge receipt we will provide a brief update on findings to date. We understand someone may simply want to alert us and leave it at that and other times someone who may be affected may want more contact but it is usually difficult to predict how long it will take to resolve a case and how this might happen. Each one is different. There is scope for third parties, for example, neighbours to comment if a retrospective planning application is made but there is no such provision where a notice served is appealed to the Scottish Ministers.

8. Resolving Cases

- 8.1. Enforcement action isn't appropriate for all breaches of control, 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 material considerations. We consider each case on its merits and may require a retrospective application to allow for neighbour notification and a full assessment including consultation where relevant and any appropriate mitigation or long term restrictions. In some instances we may decide that no action is an appropriate and proportionate response. We generally try to resolve breaches of planning control through negotiation as the process is not intended to be punitive. A relatively small number of cases result in the taking of enforcement action involving service of a formal notice on the landowner or developer.

9. Formal Action

- 9.1. In a small number of cases formal enforcement action is necessary; this usually comprises the service of a notice that has been authorised by the Planning and Access Committee except in emergencies or where the Planning Manager has delegated authority to proceed with such action. Formal notices include the following information:
- a description of the breach that has taken place
 - the steps that should be taken to remedy the breach
 - the timescale for taking these steps

- the consequences of non-compliance with the notice
 - the rights of appeal of the recipient where relevant
- 9.2. If an appeal against the notice is lodged with the Scottish Ministers, it is usually dealt with by a Reporter from the Scottish Government’s Directorate for Planning and Environmental Appeals (DPEA).
- 9.3. 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.
- 9.4. 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 apply each day the notice is not complied with.

10. Enforcement Register

- 10.1. A register of details of enforcement notices, breach of condition notices and stop notices served is available at our HQ, Carrochan Road, Balloch, G83 8EG and on our [website](#).

11. Powers of Entry

- 11.1. We have powers to enter land to investigate a possible breach of planning control and to check whether a notice has been complied with. It is an offence to wilfully obstruct an authorised person acting in the exercise of a right of entry. We may also go onto adjacent land if this would help us to determine whether there’s been a breach of planning control.

12. Time Limits on Taking Enforcement Action

- 12.1. The statutory time limits on the taking of enforcement action are:
- **Four-year time limit:** No enforcement action may be taken against operational development 4 years from the date on which the operation was substantially completed. Operational development means the carrying out of building, engineering, mining or other operations in, on, or over land; this could include replacement windows, building extensions or building retaining walls. The same time limit also applies in the case where a building, previously in use for a different purpose, is used as a dwellinghouse. In these cases, after 4 years, the development effectively becomes lawful and no enforcement action can thus be taken.
 - **Ten-year time limit:** No enforcement action may be taken against all other

development after 10 years from the start of the breach; this applies mainly to material changes in the use of land or a building and breaches of condition.

12.2. These time limits apply only to the initial enforcement action.

13. Certificates of Lawful Existing or Proposed Use or Development

13.1. This is an application process available to anyone wanting to establish whether an existing or proposed use or development is 'lawful' in a planning sense. It can be used to seek formal confirmation that a proposal would be 'permitted development' or that unauthorised, but enforcement time-barred, development is lawful.

14. Advertisements

14.1. Planning enforcement powers cover unauthorised display of outside advertisements but any objection to the content of a sign should be raised with the Advertising Standards Authority.

15. Customer Care and Complaints

15.1. Enforcement inquiries are not formal complaints and are worked on as a case by case basis as explained above. The planning service is committed to providing a high quality service but if you have a concern about the way your enforcement inquiry was dealt with, please write to the **Planning Manager** (email planning@lochlomond-trossachs.org). If you are still dissatisfied you can follow the National Parks complaints procedure set out on our website here: <http://www.lochlomond-trossachs.org/park-authority/how-to-make-a-complaint/> or phone to request a paper copy.

16. Contacts

16.1 Enforcement inquiries except in urgent cases for instance works to a listed building or to protected trees should be made in writing. The quickest and easiest way is to use our online form on our website at: <http://www.lochlomond-trossachs.org/planning/planning-applications/make-an-application/helpful-resources/planning-enforcement-monitoring/>

Contact us by telephone for urgent concerns: 01389 722024

17. Other contacts

17.1. Scottish Government, Planning and Environmental Appeals Division
www.dpea.scotland.gov.uk
Telephone: 0300 244 6668
Email: DPEA@gov.scot

Scottish Public Services
Ombudsman

www.spsp.org.uk

Scottish Public Services Ombudsman
Bridgeside House
99 McDonald Road
Edinburgh
EH7 4NS Telephone: 0800 377 7330
Email: Ask@spsso.gov.scot

18. Relevant Information Sources

1. The Planning etc. (Scotland) Act 2006 –
<https://www.legislation.gov.uk/asp/2006/17/contents>
2. The National Parks (Scotland) Act 2000 –
<https://www.legislation.gov.uk/asp/2000/10/contents>
3. The Town and Country Planning (Scotland) Act 1997 –
<https://www.legislation.gov.uk/ukpga/1997/8/contents>
4. 'Development' is defined in Section 26 of the Town and Country Planning (Scotland) Act 1997 as being the undertaking of building, engineering, mining or other operations in, on, over or under land, or the making of any material change of use of buildings or land.
5. Town and Country Planning (General Permitted Development) (Scotland) Order 1992
<https://www.legislation.gov.uk/uksi/1992/223/contents/made>
6. Town and Country Planning (Use Classes) (Scotland) Order 1997
<https://www.legislation.gov.uk/uksi/1997/3061/contents/made>
7. Circular 10/2009 - Planning Enforcement
[www.scotland.gov.uk/Publications/2009/09/16092848/
0](http://www.scotland.gov.uk/Publications/2009/09/16092848/0)
8. Planning (Scotland) Act 2019 (section 44)
<https://www.legislation.gov.uk/asp/2019/13/contents/enacted>