

**Argyll and Bute Council**  
Comhairle Earra Ghaidheal agus Bhoid

*Customer Services*  
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10 August 2012

## **SUPPLEMENTARY AGENDA PACK 1**

### **PLANNING, PROTECTIVE SERVICES AND LICENSING COMMITTEE**

**WEDNESDAY 15 AUGUST 2012 AT 10.30 AM IN THE COUNCIL CHAMBER,  
KILMORY, LOCHGILPHEAD**

I enclose herewith item 16 (**DEVELOPMENT MANAGEMENT ENFORCEMENT AND MONITORING CHARTER**) which was marked to follow on the above agenda.

Douglas Hendry  
Executive Director - Customer Services

### **TO FOLLOW ITEM**

**16. DEVELOPMENT MANAGEMENT ENFORCEMENT AND MONITORING CHARTER**

Report by Head of Planning and Regulatory Services (Pages 1 - 20)

### **PLANNING, PROTECTIVE SERVICES AND LICENSING COMMITTEE**

Councillor Gordon Blair	Councillor Rory Colville
Councillor Robin Currie	Councillor Mary-Jean Devon
Councillor George Freeman	Councillor Fred Hall
Councillor David Kinniburgh	Councillor Alistair MacDougall
Councillor Robert Graham MacIntyre	Councillor Donald MacMillan
Councillor Alex McNaughton	Councillor James McQueen
Councillor Sandy Taylor	Councillor Richard Trail

Contact: Fiona McCallum

Tel. No. 01546 604392

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**ARGYLL & BUTE COUNCIL****Planning, Protective Services and Licensing  
Committee****DEVELOPMENT AND  
INFRASTRUCTURE SERVICES****15 August 2012**

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**MONITORING & ENFORCEMENT CUSTOMER CHARTER**

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**1. SUMMARY**

Development Management is about controlling the way the environment around us is changed by people or companies who wish to build on it in some way. There are complex national laws and local guidelines in place to control how the development of our environment takes place.

The new Monitoring & Enforcement charter (attached) gives information on the procedures and the powers available to the Council to ensure the planning laws are upheld and the standards of service our customers can expect from the Development Management service.

Control of unlawful development would be much less effective without pro-active planning enforcement. The public's faith in fair and legal Development Management would be undermined and lack credibility if effective planning enforcement did not happen.

The reputation of Development Management therefore relies on an effective planning enforcement service, to ensure that development is implemented within the terms of any planning consents and that all unauthorised development is investigated.

Unfortunately, works are sometimes carried out without the benefit of planning permission, or conditions attached to planning consents are not adhered to. In such cases, the Council has the responsibility to decide whether it is expedient to take action and powers available to enforce planning controls. The Council actively monitors development but due to the volume of new developments there is also a role for the public in alerting the Council if they become aware of possible breaches. We will investigate all alleged breaches, but have discretion as to whether it is expedient or appropriate to take enforcement action.

The purpose of the charter is to increase the public's awareness of planning enforcement, explain what enforcement means, advise what the Council can do and explain how the Council carries out the enforcement service. Importantly, it also explains how the public have an important role as part of the planning enforcement process and how the Council often relies on the public to draw its attention to breaches of planning control.

## 2. RECOMMENDATIONS

It is recommended that Members

- i) Note the content of the report;
- ii) Endorse the Charter as technical guidance for our Officers to follow;
- iii) Support the content of the Monitoring & Enforcement Charter.

## 3. IMPLICATIONS

3.1	Policy	No Policy issues as this is a technical guidance
3.2	Financial	Monitoring and Enforcement can stimulate the submission of planning applications and also require the Council to commit to direct action (in certain cases). The former may generate income whilst the latter may require funding resource. This Charter is a technical note and principally outlines what customers can expect from our service and what powers are already available to officers so no specific financial implications are noted.
3.3	Personnel	Nil
3.4	Equalities Impact Assessment	Nil
3.5	Legal	Input to the Charter has been provided by Legal Services.

**Author of Report: Ross McLaughlin**

**Date: 9th Aug 2012**

**Reviewing Officer: Richard Kerr**

**Date: 10<sup>th</sup> Aug 2012**

**Angus J Gilmour  
Head of Planning & Regulatory Services**

# Development Management Enforcement & Monitoring Charter

*Cumhnant Sgriobhte Sparradh Dealbhachaidh*

## Argyll & Bute Council

August 2012



**Planning & Regulatory  
Services**

Seirbheisean Planaidh is Riaghlaidh

Development Management • Policy  
Building Standards • Animal Health  
Trading Standards • Environmental Health



This charter outlines the procedures and standards of service that customers can expect when they make enquiries to Argyll and Bute Council about construction development that may not be permitted under the relevant laws.

The aim of this charter is to ensure that Council's procedures are fair and reasonable, that interested parties are told what is required, and that the outcomes of action taken is in proportion with any breaking of planning control laws.

The charter also identifies the ways we monitor planning consents that have been issued and sets out the enforcement powers currently available to the Council. The Planning etc. (Scotland) Act 2006 has introduced new powers and changed the way the Council can use its existing powers.

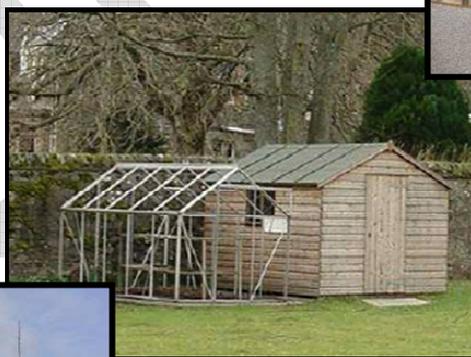
Copies of this charter are available on the Council's website at [www.argyll-bute.gov.uk](http://www.argyll-bute.gov.uk) and at the following Council offices:

67 Chalmers Street, Ardrishaig, PA30 8DX  
Municipal Buildings, Albany Street, Oban, PA34 4AW  
Milton House, Milton Avenue, Dunoon, PA23 7DU  
Blairvadach, Shandon, by Helensburgh, G84 8DX

We welcome feedback on this charter, how it could be improved and how the Council could improve the service it provides.

Any feedback should be sent to:

Development Manager  
Argyll and Bute Council  
Blaivadach House  
Shandon  
Helensburgh  
G84 8ND



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## CHAPTER 1: INTRODUCTION

Development Management is about controlling the way the environment around us is changed by people or companies who wish to build on it in some way. There are complex national laws and local guidelines in place to control how the development of our environment takes place. This charter gives information on the procedures and the powers available to the Council to ensure the planning laws are upheld and the standards of service you can expect from the Development Management service.

Control of unlawful building development would be much less effective without pro-active planning enforcement. The public's faith in fair and legal Development Management would be undermined and lack credibility if effective planning enforcement did not happen.

The reputation of Development Management therefore relies on an effective planning enforcement service, to ensure that development is done within the terms of any planning consents and that all unauthorised development is investigated.

Unfortunately, works are sometimes carried out without the benefit of planning permission, or conditions attached to planning consents are not implemented. In such cases the Council has the power to take action and enforce planning controls. The Council actively monitors development but due to the volume of new developments there is also a role for the public in alerting the Council if they become aware of possible breaches. We will investigate all possible breaches that we are told about, but have discretion as to whether it is practical or appropriate to take enforcement action.

The purpose of this charter is to increase the public's awareness of planning enforcement, explain what enforcement means, advise what the Council can do and explain how the Council carries out the enforcement service. Importantly, it also explains how the public are an important part of the planning enforcement process and how the Council often relies on the public to draw its attention to breaches of planning control.



## CHAPTER 2: WHAT ARE BREACHES OF PLANNING CONTROL?

Although this charter relates to the enforcement of planning legislation, it is important to note that planning enforcement also includes legal agreements (S75), listed buildings, tree preservation orders and advertisement regulations. Whilst the legal enforcement procedures may differ, the objectives remain the same; the protection, regulation and a cessation of any unauthorised development and undesirable damage. It should also be noted that it is at the Council's discretion whether it is expedient or appropriate to take enforcement action.

*For the purposes of this charter, 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 roadside advertising or advertising signs*

The Development Management and enforcement functions operate from four area offices (Oban, Lorn and the Isles; Mid Argyll, Kintyre and the Islands; Bute and Cowal; and Helensburgh and Lomond). Anyone can make a complaint if they are concerned that there has been a breach of planning regulations

The public play a vital role in reporting breaches of planning control. Preliminary enquiries can be made to the Council by telephone to the relevant area office on the number provided in chapter 8 of this charter but these must be followed up in writing or by e-mail and must contain the information detailed in the table below;

### **DETAILS THAT REQUIRE TO BE PROVIDED TO THE COUNCIL TO ENABLE THE COUNCIL TO INVESTIGATE AN ALLEGED BREACH OF PLANNING CONTROL**

- *The name and address of the person who is suspected to have performed the breach of planning control.*
- *The address, or the location of the site, upon which the breach of planning control is suspected to have occurred (a map showing the site would be useful).*
- *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 you.*
- *Your contact details including your name, telephone number, address, and an e-mail address if available, or if the complaint is submitted electronically.*
- *Whether or not you wish the enquiry to be treated confidentially.*

It should be noted that all information received by the Council is subject to the requirements of the Freedom of Information (Scotland) Act 2002. The Council will do its best to honour requests for confidentiality, and information received by the Council will be treated as confidential as far as the provisions of section 34 and 36(2) of the Freedom of Information (Scotland) Act 2002 allow. Requests for total confidentiality may limit the ability of the Council to take formal action and cannot be guaranteed.

Please note the Council is under no obligation to investigate anonymous complaints and will only do so where the suspected breach complained of is considered, by the relevant Area Team Leader, to be so serious as to require immediate investigation. Complaints that are received by the Council that do not relate to a suspected breach of planning control, such as neighbour or boundary disputes, cannot be investigated by the Council through the Council's planning enforcement procedures .

DRAFT

### CHAPTER 3: INVESTIGATING BREACHES OF PLANNING CONTROL

All enforcement complaints received by the Council will be processed in accordance with the Argyll and Bute Council Customer Service Charter which can be viewed online at [www.argyll-bute.gov.uk/council-and-government/argyll-and-bute-council-customer-service-charter](http://www.argyll-bute.gov.uk/council-and-government/argyll-and-bute-council-customer-service-charter).

A complaint will be registered, acknowledged and a file opened **within five working days** and passed to the relevant Planning Enforcement Officer to undertake an investigation using the priorities set out below. This will normally require a site inspection and a decision as to whether there has been a breach of planning control. Where no breach of planning control has been established, the complainant will be advised of this outcome and the case will be closed. Please note that the opening of a case does not mean that a breach has occurred.

One of the priority rating timescales, listed below, will be applied to each case, however, owing the geography of Argyll and Bute, including many remote settlements and islands, some site inspections may fall out with the priority timescale shown. In such circumstances the complainant will be advised of the delay and revised timetable for investigation.

Each case is assessed and given a priority rating that affects how they are dealt with. The ratings are shown below.

#### Level 1 Priority – (site visit within 5 working days of acknowledgement of complaint)

- Building work that does not meet the requirements of a formal notice.
- The unauthorised demolition or alterations of a listed building.
- The unauthorised demolition of or alteration to a building within a Conservation Area.
- Unauthorised works to trees protected by a Tree Preservation Order or to trees in Conservation Areas.
- Unauthorised development that may lead to substantial and/or permanent damage to sites of international or national importance, for example Sites of Special Scientific Interest, National Scenic Areas or Special Protection Areas etc.
- Unauthorised development or breach of condition that may present an immediate danger to members of the public e.g. road safety, health and safety.
- Bad neighbour development, which has a significant detrimental impact on visual or amenity (in the sole view of the Council).

#### Level 2 Priority – (site visit within 10 working days of acknowledgement of complaint) –

- Unauthorised development, likely to cause harm to the landscape or residential amenity.
- Other changes of use of land or buildings resulting in a potential adverse impact upon existing levels of amenity.
- General breaches of planning conditions

#### Level 3 Priority – (site visits within 15 working days of acknowledgement of complaint) –

- Unauthorised householder developments with the potential for limited impact such as garden sheds, replacement windows etc.
- Unauthorised advertisements (unless they are likely to have an immediate adverse effect on road safety).
- Untidy land.
- All other potential breaches of planning control.

## CHAPTER 4: ACTING ON BREACHES OF PLANNING CONTROL

Even where there has been a breach of planning control it is not always necessary to take enforcement action. The Council must consider each case on its own merits and decide on the best solution. The Council must have regard to the Development Plan and other relevant points and in many cases, through negotiation or submission of a retrospective planning application, no formal action will be required.

Where a breach of planning control has been established, the council will proceed with one or more of the following options:

### Negotiation

It is often possible to remove a breach of planning control through negotiations with the parties involved. This is a favoured course of action as formal enforcement action is only taken as a last resort. In such cases a retrospective planning application will be encouraged, although the outcome of such applications cannot be guaranteed.

In some instances, even though a breach of control has occurred, it may not be appropriate to take further action. This is because the Council has to consider whether, having regard to the circumstances of each case, it is practical and proportionate to issue an enforcement notice.

A high number of enforcement cases are resolved through negotiation.

### Retrospective Application

A retrospective application is processed and determined like any other planning application and representations can be submitted and considered in the determination of the application. Such an application is invited on a "without prejudice basis" as often the planning application process can identify issues that are not immediately apparent. All applications, including retrospective applications, must take due account of all relevant planning considerations including public representation.

### Formal Action

Where formal action must be taken to resolve an enforcement case, the Council must determine the most appropriate type of formal action to take. This normally involves the serving of either an enforcement notice or breach of condition notice. Both 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 these steps to be taken
- The consequences of failure to comply with the notice
- Rights of appeal where appropriate

Only a small number of cases require to be dealt with by formal enforcement action.

### Enforcement Register

Details of enforcement notices, section 33A notices (see Chapter 5 below), breach of condition notices and stop notices are entered into the Council's enforcement register, which is a public document. The enforcement register for the individual areas is available for inspection at the relevant area office, or the complete register is available on the Council's web site at [www.argyll-bute.gov.uk](http://www.argyll-bute.gov.uk).

### Powers of Entry

The Council has powers to enter land to:

- establish if there has been a breach of planning control,
- to check whether there has been compliance with a formal notice,
- to check whether a breach has been satisfactorily resolved.

**Time Limit Procedures**

Enforcement action must be taken within strict time limits.

A time limit of four years for enforcement action applies to “unauthorised operational development” (E.g. The carrying out of building, engineering, mining or other operations in, on, over or under land) and change of use to a single dwelling house. After four years following the breach of planning control the development becomes lawful and no enforcement action can be taken, although this does not mean that the unauthorised development benefits from planning permission.

A time limit of ten years for enforcement action applies to all other development including change of use (other than to a single dwelling house) and breaches of condition, after which the development becomes lawful if no enforcement action is commenced. As with the time limit for “operational development”, whilst enforcement action cannot be taken, this does not mean that the unauthorised development benefits from planning permission.



## CHAPTER 5: ENFORCEMENT POWERS

Scottish Government Circular 10/2009: Planning Enforcement sets out Scottish Government Policy on the use of the enforcement powers contained in the Planning Acts. The general approach to enforcement of planning controls is equally applicable to other related enforcement.

Enforcement guidance relating to other specific matters can be found in the following:

- Listed Building and Conservation Areas (Scotland) Act 1997. Guidance on issuing Listed Building Enforcement Notices can be found on the Historic Scotland website.
- Scottish Government Planning Circular 1/2011: Tree Preservation Orders
- Advertisements (Scottish Office Development Department Circular 10/1984)

The circulars referred to can be viewed at [www.scotland.gov.uk/Topics/Built-Environment/Planning/Publications/Circulars](http://www.scotland.gov.uk/Topics/Built-Environment/Planning/Publications/Circulars)

### Types of Notices

There are a number of different types of notice that the Council has power to serve under the Planning Acts and related legislation. A notice can require the contravener to remedy the breach of planning and associated controls, or where more urgent action is required, require the contravener to cease the activity which constitutes the breach with immediate effect.

- **Enforcement Notice** – This form of notice is generally used to deal with unauthorised development, but can also apply to a breach of planning conditions. This is served when the Council is satisfied that there has been a breach of planning control and that it is expedient to take action having regard to the development plan and all other material considerations. An enforcement notice will specify; a notification period before it comes into effect (a minimum of 28 days), the steps that must be taken to remedy the breach and a further period (known as the compliance period) which is set by the Council and gives the recipient time to carry out any work required to comply with the notice. There is no minimum or maximum compliance period, so long as the amount of time allowed is reasonable and reflects the amount of work that may need to be undertaken. There are limited rights of appeal to Scottish Ministers against an enforcement notice and, if an appeal is made, the terms of the notice are suspended until a decision is reached. Failure to comply with the terms of an enforcement notice within the time specified is an offence, and may lead to the imposition of a fine of up to £20,000 in the Sheriff Court. Failure to comply may also result in the Council taking direct action to correct the breach (see other powers below).
- **Breach of Condition Notice** – This type of notice is used to enforce the conditions applied to any planning permission. It comes into effect 28 days after being served. It may be used as an alternative to an enforcement notice (see above) and is served on any person carrying out the unauthorised development and/or any person having control of the land upon, over, or under which the development is being carried out. There is no right of appeal against this type of notice. Contravening a breach of condition notice is an offence and may lead to the imposition of a fine of up to £1000.
- **Stop Notice** – This is served in urgent or serious cases where an unauthorised activity must be stopped to safeguard amenity or public safety and/or to prevent serious or irreversible harm to the environment and the surrounding area. When a stop notice is served, the Council must also issue an enforcement notice. The stop notice takes effect between 1-3 days and will state the steps which must be taken to comply with the Notice. There is no right of appeal against a stop notice and failure to comply is an offence. An appeal can be made against an accompanying enforcement notice. If a stop notice is served without due cause or an appeal against the enforcement notice is successful, the stop notice may be quashed and Council may face claims for compensation.
- **Listed Building Notice** – The Council may serve a listed building notice where unauthorised works have been or are being executed to a listed building. This type of notice must be served on the current owner, occupier, and anyone else with an interest in the property. The procedure is similar to that outlined in respect of Breach of Condition and Enforcement Notices. The notice

must specify the steps to be taken to remedy the breach and a final date for compliance. Failure to meet the terms of the notice by the date specified is an offence. There is a right of appeal to Scottish Ministers against the notice. Breaches of listed building control are a serious matter. It is a criminal offence to undertake or cause to be undertaken any works to demolish, significantly alter, or extend a listed building which would affect its character as a building of special architectural or historic interest, unless the works are authorised. In certain circumstances, this can lead either to an unlimited fine. It should be noted that the relevant legislation extends to the interior of statutory listed buildings as well as to the exterior.

- **Advertisement Enforcement Notice** – An enforcement notice may be served by the Council where it appears to them that any advertisement has been displayed without the necessary consent, or without compliance with a condition or limitation attached to a consent, . The notice is served upon the owner, lessee and occupier of the land and on any other person known to the Council to be displaying the advertisement. The notice will require specific steps to be taken, within a specified period, to restore the land to the condition it was in before the display began or to secure compliance with the condition or limitation. In addition the notice may specify, as an alternative, steps to be taken to bring the display up to an acceptable condition. Where any of the steps required by the notice have not been taken within the specified period the Council may enter the land and take those steps and recover its expenses from the owner or lessee of the land. Any person upon whom a notice of this type is served may appeal in writing to the Scottish Ministers. The notice will have no effect until the appeal is withdrawn or determined. The siting or erection of an unauthorised advertisement is an offence, with a current maximum fine of £1000. In cases where an advertisement has been placed on Council owned land or property without consent the advertisement may be removed and destroyed. Unlike a breach of planning control a breach of advertisement control can never become immune from enforcement action.
- **Advertisement Discontinuance Notice** – Some advertisements may be displayed without the requirement for advertisement consent and are therefore lawful. However, where the Council consider that such an advertisement harms the amenity of the local area or causes a danger to members of the public, the Council may serve a notice requiring the discontinuance of the display of that advertisement where it is considered expedient to do so.
- **Notice Requiring Application for Planning Permission for Development Already Carried out (Section 33A Notice)** – Where the Council considers that a development which does not have planning permission may be acceptable (i.e. they consider that it might be granted planning permission) they may issue a notice requiring the landowner or developer to submit a retrospective planning application. This application will be considered on its planning merits and handled in the same way as any other planning application. Issuing such a notice does not guarantee that permission will be granted; the Council may, on consideration of the application, decide instead to refuse permission, or to grant permission subject to conditions or alterations to make the development acceptable. Failure to comply with the terms of a Section 33A notice may result in further enforcement action.

(ii) **OTHER POWERS/NOTICES OPEN TO USE BY ARGYLL AND BUTE COUNCIL**

- **Planning Contravention Notice** – the Council may issue a planning contravention notice on the owner or occupier of any land, on any other person with an interest in such land, or on a person who is using or carrying out operations on the land in order to obtain information about activities on land where a breach of planning control is suspected. Those who receive a planning contravention notice are required to provide specified information about operations being carried out on the land, and any conditions or limitations which apply to any planning permission granted in respect of the land. Failure to comply with the notice within 21 days of it being served is an offence and can lead to a fine in the Courts.
- **Fixed Penalty Notices** – this provides the Council with an alternative process, in addition to the option to seek prosecution, to address situations where a person has failed to comply with the requirements of an enforcement notice or a breach of condition notice. By paying the penalty imposed by the fixed penalty notice, the person will discharge any liability for prosecution for the offence. They will not, however, discharge the obligation to comply with the terms of the enforcement or breach of condition notice and the Council will retain the power to take direct

action to remedy the breach and recover the costs of such work from that person. The Council are not required to offer the option of paying a fixed penalty.

- **Temporary Stop Notices** – this is used to require the *immediate* halt of an activity which breaches planning control and which, in the Council's view, would cause damage to the environment and/or local amenity. A temporary stop notice should only be used where the Council consider that there is a clear and immediate need for such action. Temporary stop notices differ from stop notices in that they can be served with immediate effect and do not require to be served in conjunction with an enforcement notice. There are also reduced compensation liabilities. A temporary stop notice cannot prohibit the use of a building or a caravan as a dwellinghouse. A temporary stop notice ceases to have effect 28 days after it is first displayed, unless a shorter period is specified in the notice, or the notice is withdrawn by the Council before it ceases to have effect. A second or subsequent temporary stop notice cannot be issued in respect of the same activity. A temporary stop notice may however be followed by further enforcement action such as an enforcement notice and stop notice. There is no statutory right of appeal against a temporary stop notice. It is an offence to contravene a temporary stop notice.
- **Listed Building Repairs Notice** – can be served by the Council on the owner of a listed building at any time if the owner of a listed building fails to keep a listed building in a reasonable state of repair. If the owner of the property fails to comply with this notice the planning authority, with the consent of the Scottish Ministers, may be entitled to acquire the building through compulsory purchase. The notice must specify the works considered reasonably necessary for the proper preservation of the listed building and explain the effect of the compulsory purchase provisions. Compulsory purchase proceedings can be initiated two months after service of a repairs notice. Any person with an interest in the building has 28 days after service of a compulsory purchase order to apply to the sheriff for an order prohibiting further proceedings upon it.
- **Listed Building Urgent Works Notice** - where it appears to the Council that any works are urgently necessary for the preservation of a listed building, they may execute the works that are required to any unoccupied part of the listed building after giving not less than seven days' written notice to the owner. The Council may give notice to the owner of the building requiring them to pay the expenses of the works. The owner has 28 days from receipt of the notice to make representations to the Scottish Ministers. The costs of the works may be recovered from successive owners of the building in certain circumstances where a notice of liability for expenses has been registered in relation to the building

### (iii) SPECIAL/OTHER CONTROLS

- **Tree Preservation Order Notice** – It is an offence, subject to certain provisions contained within the Planning Acts, to cut down, lop or wilfully damage or destroy a protected tree without permission. If it appears to the Council that such an offence has been committed or that any conditions of a consent given under a tree preservation order which require the replacement of trees are not complied with, the Council may serve on the owner of the land a notice requiring the planting of a tree or trees of such size and species within such period as may be specified in the notice. There is a right of appeal to the Scottish Ministers against such a notice on the grounds specified in the Planning Acts. Should a notice not be complied within the time period for compliance the Council may enter the land and plant the tree or trees and may recover from the owner or lessee of the land their expenses in doing so.
- **Trees in Conservation Areas** –It is also an offence, subject to certain provisions contained within the Planning Acts, to cut down, lop, uproot or wilfully damage or destroy any tree in a Conservation Area without permission, in respect of which no tree preservation order (TPO) is for the time being in force.
- **Interdict and Interim Interdicts** – Interdicts and Interim Interdicts are imposed following an application made by the Council to the Sheriff Court in order to stop or prevent a breach of planning control. An interdict can be sought whether or not other enforcement action has been taken by the Council in respect of the breach. The Council will normally only seek an interdict in serious cases or where enforcement notices have been ignored in the past.

## Enforcement & Monitoring Charter

- **Direct Action** – Where an enforcement notice is not complied with within the specified period the Council may, at their discretion, enter the affected land and carry out the work specified in the notice to ensure compliance with the notice. Any expense incurred by the Council can and will be recovered from the landowner or lessee, through legal and court procedures where necessary.
- **Land adversely affecting the Amenity of a Neighbourhood Notice (Section 179 Notice)** – The Council may serve a notice on the owner, lessee or occupier of land if it appears to them that the amenity of the area is adversely affected by the condition of the land. Such a notice may deal with buildings as well as land. The notice sets out the steps to be taken to decrease the adverse effect of the condition of the land within a specified period.
- **Power to Require Information as to Interests in Land (Section 272 Notice)** – this provides the Council with limited powers to obtain information on interests in land and the use of land. Failure to provide the information required is an offence.

### OTHER COUNCIL DEPARTMENTS AND OFFICIAL BODIES WHICH MAY BECOME INVOLVED

- **Building standards:** For example where a dangerous or structurally damaged building is involved or where unauthorised works are being carried out to or in a building the relevant complaints may be directed to Building Standards who may take action under The Building (Scotland) Act 2003.
- **Regulatory Services:** Failure to comply with conditions relating to private water supplies, public safety, health issues, obtaining appropriate licences or certifications may require investigation from colleagues within Regulatory Services.
- **Streetscene:** Where a reported breach involves Council land or property Council Officers from Streetscene department may remove unauthorised development / advertisements acting as landowner.
- **Roads Department / Trunk Road Authority:** At times it becomes apparent that an enforcement case is not a planning issue but a Roads Department or Trunk Road issue. In cases like these the enforcement case is closed and the relevant complainant informed, the information is then passed to a Roads Technician to progress. The Roads Department use a series of relevant legislation including the Roads (Scotland) Act 1984 which includes power to remove unauthorised advertisement located within the roads corridor, falling under the control of the Roads Authority.
- **Procurator Fiscal:** If it transpires that the Council considers an offence has taken place it is solely a matter for the Procurator Fiscal to decide on whether sufficient evidence has been provided, and whether a prosecution would be in the public interest. Such matters are not within the control of the Council.

### ENFORCEMENT NOTICE APPEALS

There is no right of appeal against some specific enforcement notices such as a Planning Contravention Notice, Breach of Condition Notice, Section 272 Notice and Section 33A Notice.

Where appeals are allowed, it is submitted to and considered by Scottish Ministers. In almost all cases appeals are dealt with by Reporters from the Scottish Government Directorate for Planning and Environmental Appeals.

Such appeals are usually determined through the submission of written statements from both parties and a site inspection, although some cases are determined through a hearing or public local inquiry. Appeals must be made before the notice has taken effect which is detailed on individual notices, and is normally within 28 days of serving the notice.

Should the appeal to Scottish Ministers be dismissed, the Reporter will require the appellant to seek compliance with the notice, although the terms of the notice may alter.

Appeals are made to:

Planning & Environmental Appeals, 4 The Courtyard, Callendar Business Park, Falkirk, FK1 1XR

## CHAPTER 6: SERVICE COMMITMENTS & MONITORING

All enforcement complaints received will be dealt with in the same manner regardless of their source. It is the Council's aim to treat all enforcement cases in an even handed and fair way for all parties involved. Whilst it is important to quickly resolve a breach of planning control, it is also important to understand that a balance can often be found to help achieve a satisfactory outcome. In doing so the Council will balance the opportunities for negotiation and delay against the seriousness of the breach and the damage caused to health, safety and amenity.

When a planning enforcement complaint is received, a level of priority will be given ensuring that all complaints are investigated within an appropriate timescale; proportionate to the breach of planning control that may have been committed.

Complaints will be acknowledged within **five working days** of receipt by letter or e-mail. This period of time allows the Council to register the complaint and assess if the Council holds any relevant background information.

Following registration and acknowledgement of a possible breach of planning control, an enforcement officer or planning technician will visit the site. Priority for both site visits and dealing with the complaint will be established by consideration of the effect of the breach, the significance of the site and the alleged breach of planning control, taking into account the timescales laid out in Chapter 3.

Complainants will then be informed of any findings or results of the initial investigation within **20 working days** of the acknowledgement of the complaint. The complainant will be advised if in fact there is a breach of planning control, the level of priority attached to the case, the findings of the initial site inspection and how the Council propose to proceed with the case.

It is not always possible to anticipate the length of time required for resolution by negotiation or on a decision on whether to take action or not. Progress can be delayed for a number of reasons, for example, where evidence must be collected and verified from a number of sources over a period of time, where negotiations take place, or where formal procedures have to be used. Applications to regularise a breach of planning control, or appeals to Scottish Ministers against a decision of the Council, will also affect timescales for resolution of a case.

The enforcement officer dealing with the case will endeavour to keep the complainant up to date with any progress with the investigation and welcomes phone calls for updates on the investigation.

### Monitoring

We do not always rely on members of the public to make an enforcement complaint or alerting our attention to an alleged breach of planning control. We also undertake strategic monitoring of consents and these may trigger an enforcement file to be opened and investigated. Given the number of planning consents and geographic size of Argyll and Bute we cannot strategically monitor or review every consent, but we do give priority to conditions of major applications and applications in sensitive or controversial locations.



## CHAPTER 7: CORPORATE COUNCIL COMPLAINTS

Whilst it is emphasised that an enforcement complaint is not a complaint against the Council, Argyll and Bute Council hopes that the public will be satisfied with the planning enforcement service that is provided. In providing this service it is the Council's sole aim to fully investigate complaints made to them with a view to resolving them in a consistent and even-handed manner.

The Council is committed to improving the planning enforcement service and dealing promptly with any failures. At any point in this service should any dissatisfaction be felt about the way in which an enforcement enquiry was dealt with then it is open to any person to make a formal complaint.

The Council will consider complaints made about the way in which an enforcement enquiry was dealt with and how any investigation was carried out in terms of the service commitments. In the first instance you should discuss the matter with the Enforcement Officer involved. If you are still dissatisfied then you should ask to meet with the appropriate Area Team Leader who will then investigate the matter.

*It should be noted that the actual outcome of an enforcement investigation cannot be the subject of a complaint, but only the way that the decision was arrived at.*

If you are unsatisfied by the way your informal complaint has been dealt with by the Area Team Leader, or if you feel that the importance of your complaint merits proceeding immediately to a formal complaint, the following procedure should be followed, regardless of who you have initially discussed the matter with.

You can make your formal complaint via the Council's website <http://www.argyll-bute.gov.uk/council-and-government/complaints>



## CHAPTER 8: ARGYLL AND BUTE COUNCIL PLANNING ENFORCEMENT CONTACTS AND OTHER USEFUL INFORMATION

### Enforcement Contacts

The planning enforcement function of the Council is a decentralised service based in the main Development and Infrastructure Services Area Offices. As such enforcement enquiries should be lodged with the Area Office.

#### Contact Details for Reporting Suspected Breaches of Planning Control

- Planning Enforcement Officer  
Mid Argyll, Kintyre & Islands  
67/69 Chalmers Street  
Ardrishaig  
PA30 8DX  
Tel no. 01546 604085  
[planning.maki@argyll-bute.gov.uk](mailto:planning.maki@argyll-bute.gov.uk)
- Planning Enforcement Officer  
Oban, Lorn & The Isles  
Municipal Buildings  
Oban  
PA34 4AW  
Tel no. 01631 567950  
[planning.olandi@argyll-bute.gov.uk](mailto:planning.olandi@argyll-bute.gov.uk)
- Planning Enforcement Officer  
Helensburgh & Lomond  
Blairvadach House  
Shandon  
Helensburgh  
G84 8ND  
Tel no. 01436 658887  
[planning.handl@argyll-bute.gov.uk](mailto:planning.handl@argyll-bute.gov.uk)
- Planning Enforcement Officer  
Bute & Cowal  
Milton House  
Milton Avenue  
Dunoon  
PA23 7DU  
Tel no. 01369 708621  
[planning.bandc@argyll-bute.gov.uk](mailto:planning.bandc@argyll-bute.gov.uk)

#### Planning and Related Enforcement Legislation and Advice

Planning Enforcement powers are set out in Part IV of the Town and Country Planning (Scotland) Act 1997 (as amended) and in Chapter IV of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. The Planning Acts are available from HMSO, 71 Lothian Road and at [www.scotland-legislation.hmso.gov.uk](http://www.scotland-legislation.hmso.gov.uk).

Scottish Government policy on planning enforcement is set out in Planning Circular 10/2009: Planning Enforcement available in electronic format on the Government website at [www.scotland.gov.uk/planning](http://www.scotland.gov.uk/planning).

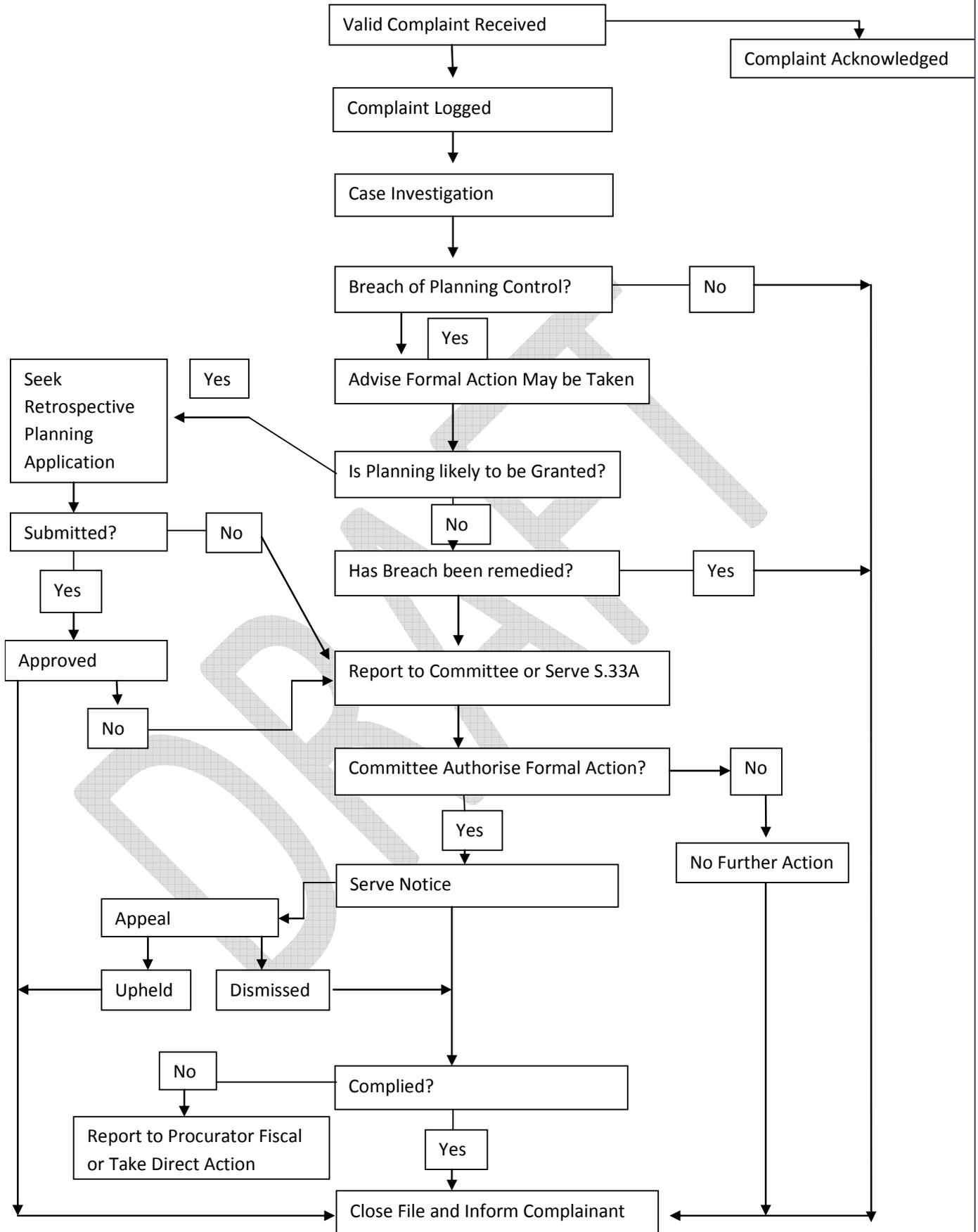
Other Council departments with other enforcement or regulatory powers which may overlap or compliment planning enforcement powers include;

Area Environmental Health Manager  
Planning and Regulatory Services  
Municipal Buildings  
Albany Street  
Oban  
PA34 4AW  
Tel no. 01546 605519

Network and Roads Maintenance Manager  
Manse Brae  
Lochgilphead  
PA31 8RD  
Tel no. 01546 605514

Building Standards Manger  
Planning and Regulatory Services  
Blairvadach  
Shandon  
Helensburgh  
G84 8ND  
Tel: 01436 658872

Appendix A – The Process for Dealing with an Enforcement Complaint



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