
RELAXATION OF PLANNING ENFORCEMENT IN RESPONSE TO COVID-19

1.0 EXECUTIVE SUMMARY

1.1 This report seeks approval for an addendum to the Council's Enforcement & Monitoring Charter which would provide clarity to officers, complainants, and land owners of the weighting that Covid-19 and its relevance to the unauthorised development will be afforded in the setting timescales and the processes that will be followed when seeking to resolve a breach of planning control.

1.2 It is recommended that PPSL:

- i) Note the guidance provided by the Scottish Government's Chief Planner on relaxation of planning enforcement in response to Covid-19.
- ii) Note that the Planning Position Statement (Appendix A), setting out previously approved relaxation of planning controls within town centres will now remain in force until 31st March 2021 (following approval by the Council's Leadership Group on 29th October 2020).
- iii) Approve the proposed addendum to the Enforcement & Monitoring Charter (Appendix B) for a temporary period expiring 31st March 2021, subject to periodic review in the event of updated guidance being provided by the Scottish Government.

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2.0 INTRODUCTION

- 2.1 It is recognised that the extraordinary circumstances have given rise to a situation where the individuals and businesses may require to take rapid action in order to respond to restrictions. This can in some cases give rise to unintentional or deliberate breaches of planning control where development requires to be undertaken immediately in response to rapidly changing circumstances.
- 2.2 The Scottish Government has previously provided guidance on relaxation planning enforcement in relation to specific activities that were expected to be undertaken in response to the evolving Covid-19 pandemic and restrictions imposed upon 'normal' business operations.
- 2.3 The Council has also sought to support businesses through this challenging period and recognises that the inherent time periods built into the planning process to facilitate engagement and transparency are not always capable of being aligned with the rapid pace of change seen over recent months.
- 2.4 It is also identified that failure to address breaches of planning control at the current time may give rise to longer-term issue in relation to the management of development, and/or customer satisfaction, particularly where an unauthorised development is subject of a complaint from a neighbour who would ordinarily have had opportunity to comment on the acceptability or otherwise of the unauthorised development if a planning application had been submitted. In order to ensure consistency of approach it is proposed that the Enforcement & Monitoring Charter be amended to include an additional process which seeks to identify if the unauthorised development has been progressed in response to Covid-19 restrictions, and where this is established set out expectations on how such a matter will be resolved.

3.0 RECOMMENDATIONS

- 3.1.1 It is recommended that PPSL:
- i) Note the guidance provided by the Scottish Government's Chief Planner on relaxation of planning enforcement in response to Covid-19.
 - ii) Note that the Planning Position Statement (Appendix A), setting out previously approved relaxation of planning controls within town centres will now remain in force until 31st March 2021 (following approval by the

Council's Leadership Group on 29th October 2020).

- iii) Approve the proposed addendum to the Enforcement & Monitoring Charter (Appendix B) for a temporary period expiring 31st March 2021, subject to periodic review in the event of updated guidance being provided by the Scottish Government.

4.0 DETAIL

- 4.1 The Scottish Government has issued advice that planning authorities should take a “common sense approach to enforcement, with actions proportionate to the severity of suspected breaches of planning control”. The Scottish Government's Chief Planner has issued further instruction setting out guidance for relaxation of planning enforcement on identified activities that may give rise to a breach of planning control as businesses responded initially to ‘lockdown’ restrictions arising from Covid, and then subsequently as they adapted to a new operating environment as restrictions were initially eased.

Summary of Scottish Government Chief Planner's Guidance on Planning Enforcement Relaxations:		
Date Issued	Scope/Activity Covered	Expires:
11 th March 2020 (updated 16 th June 2020)	Relaxation of enforcement of conditions relating to retail distribution	To be reviewed September 2020
18 th March 2020 (updated 16 th June 2020)	Relaxation of enforcement where public houses and restaurants offer a takeaway service during the current outbreak	To be reviewed September 2020
29 th May 2020	Relaxation of enforcement in relation to hours of operation on construction sites; and in relation to changing business practices during physical distancing restrictions	Remove when physical distancing restrictions no longer apply.
2 nd July 2020	Relaxation of enforcement in relation to 28 day rule on temporary uses	To be reviewed September 2020, to be withdrawn when physical distancing is no longer required.

Supporting Town Centre Economic Recovery in Argyll and Bute

- 4.2 During Summer 2020. Development Management have participated in the Council's Easing of Lockdown working group which has had a focus on providing support to the recovery of town centre business activity as the initial ‘lockdown’ measures were eased, and includes a variety of internal and external stakeholders. It was identified at an early stage that proposals to utilise town centre spaces to provide outdoor eating/drinking facilities would give rise to breaches of planning control in many cases, and as such had potential to be

problematic to licencing activity necessary to regulate this function. In response to this concern officers prepared an update for the Council's Strategic Group (paper attached as Appendix A) setting out a formal relaxation of planning enforcement activity which was approved in 29th July 2020. The position statement (set out below for reference) has provided certainty that has allowed temporary outdoor eating/drinking areas to be created without the requirement for planning permission and has facilitated related licencing activity.

*“For a temporary period up until **30th September 2020** Argyll and Bute Council as planning authority will not invite applications for planning permission or pursue planning enforcement action for development providing for the temporary change of use of outdoor areas and/or erection of temporary structures within the designated Town Centre areas of the Main Towns and Key Settlements (as defined in the adopted LDP) which are intended to provide on-street seating for existing cafes, bars, beer gardens and similar to accommodate physical distancing in relation to the resumption of operations in town centre businesses subject to the appropriate authorisations being obtained from Environmental Health, Licensing and Roads Authorities.*

Following the expiry of the defined temporary period, or any subsequently prescribed extension of this period, all temporary uses shall require to be discontinued, temporary structures removed, and the land restored to its former condition unless express planning permission has been sought and obtained in the intervening period.

The installation of any permanent or semi-permanent structures or alterations to the public realm are not supported by these temporary measures and shall require the benefit of express planning permission in advance of works commencing.”

- 4.3 The Planning Position statement was initially aligned to the time period provided in the Scottish Government Chief Planner's letter of 2nd July 2020 which indicated that a review of the requirement for this planning enforcement relaxation would be undertaken in September 2020. No formal update has yet been provided on this matter by the Scottish Government although, when enquiries were made, it has been indicated that the advice remains in force. Given the ongoing requirement for engagement with licencing activity as businesses react to the current fluid situation approval was sought and secured from the Council's Leadership Group on 29th October 2020 to extend the period covered by the Planning Position statement up until 31st March 2021. This extended period is in alignment with the 'emergency period' current defined by the Scottish Government in unrelated provisions of the Coronavirus (Scotland) Act 2020, although this could be reviewed earlier in the event that the requirement for physical distancing is no longer required.

- 4.4 Whilst the Planning Position statement has provided greater certainty to support specific town centre activities it is noted this does not address planning enforcement issues within the wider Council area where there is a customer expectation set out in the Charter that complaints will be investigated and progressed in a timely manner. In some instances, these complaints will also relate to development outwith designated town centres that has required to have been undertaken in direct response to the extraordinary circumstances arising from Covid-19 restrictions and are necessary to facilitate business continuity/survival in these challenging times.
- 4.5 Given the potential conflict between the expectation that the Council will act to resolve breaches of planning control and the challenges created by current circumstances it is recommended that the PPSL approve the addendum to the Planning Enforcement Charter set out in Appendix B. The objective of the addendum is to provide clarity for all parties that the Council will continue to investigate, record and potentially take action where necessary in respect of unauthorised development even where this relates to development arising in response to Covid. It will however also be made clear that where there is a genuine requirement for the development in response to the circumstances arising from Covid-19 that the Council will have due regard to this in deciding the most appropriate means to address the breach of control in both the short, and longer term. Where unauthorised development gives rise to serious short-term adverse effects upon public health and/or safety, significant irreversible environmental harm then it would remain appropriate to seek swift resolution. Where no such harm arises, it may still be appropriate to proceed with formal action, however the addendum clarifies that time periods for compliance should be aligned to the circumstances of the development to support individuals and businesses as they respond to Covid-19.

5.0 CONCLUSION

- 5.1 The recommendations set out proposals that will provide sufficient certainty to ensure that the Development Management Service can remain fully engaged in support for other regulatory activity of the Council which supports town centre recovery, and sets out an addendum to existing protocol for the resolution of planning enforcement matters that will assist in consistency of application and management of expectations for both complainants, and land owners that the Council will take a common sense approach to enforcement where the requirement for the development has arisen as a result of a response to Covid-19.

6.0 IMPLICATIONS

- 6.1 Policy - None
- 6.2 Financial - None
- 6.3 Legal - None
- 6.4 HR - None
- 6.5 Fairer Scotland Duty: - None
- 6.5.1 Equalities - protected characteristics - None
- 6.5.2 Socio-economic Duty – Positive impact through support for business activity

as it responds to Covid-19

6.5.3 Islands - None

6.6. Risk - None

6.7 Customer Service – Positive impact through management of customer expectations.

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5th November 2020

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APPENDICES

Appendix A – Previous report to Strategic Group July 2020

Appendix B – Proposed Addendum to Planning Enforcement Charter