

**EXTENSION OF RELAXATION OF PLANNING ENFORCEMENT IN RESPONSE TO
COVID-19 – Updated Sept. 2021**

1.0 EXECUTIVE SUMMARY

1.1 This report seeks approval to further extend existing planning relaxations relating to recovery of town centre business activity, and approval for the continued application of an addendum to the Council's Enforcement & Monitoring Charter that provides 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) Approve that the Planning Position Statement (Appendix A), (setting out the relaxation of planning controls within designated town centres as previously approved by the Council Leadership Group in July 2020, and subsequently extended on 29th October 2020 and by PPSL 17th March 2021) be further extended until 31st March 2022.
- ii) Approve the addendum to the Enforcement & Monitoring Charter (Appendix B) for a further temporary period expiring 31st March 2022, 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 arising from Covid-19 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 of 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 recognised that the inherent time periods built into the planning process to facilitate engagement and transparency were not always capable of being aligned with the rapid pace of change seen over recent months. In order to address this shortcoming, the Council Leadership Group previously adopted a Planning Position statement in July 2020 setting out a formal relaxation to planning enforcement and the requirement to apply for planning permission in relation to temporary changes of use and structures within town centres where these were required to facilitate resumption of business activity following 'lockdown'. The Planning Position statement expired on 30th September 2020 but was subsequently extended by the Leadership Group (at their meeting on 29th October 2020) and thereafter by PPSL (at meeting of 17th March 2021) for a further period expiring 30th September 2021.
- 2.4 PPSL has also previously recognised 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 the Enforcement & Monitoring Charter was amended by PPSL at their meeting on 18th November 2020 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, to set out expectations on how such a matter will be resolved, these temporary provisions are currently scheduled to expire on 30th September 2021.

2.5 It is however recognised that the extraordinary circumstances meriting temporary relaxations of planning enforcement remain in place; this is highlighted by the Scottish Government’s recent decision to seek to extend the ‘emergency period’ defined by the Coronavirus (Scotland) Act for a further period of 6 months (expiring 30th March 2022) through the Coronavirus (Extension and Expiry) (Scotland) Act 2021 and associated Regulations.

3.0 RECOMMENDATIONS

3.1.1 It is recommended that PPSL:

- i) Approve that the Planning Position Statement (Appendix A), (setting out the relaxation of planning controls within designated town centres as previously approved by the Council Leadership Group in July 2020, and subsequently extended on 29th October 2020 and by PPSL 17th March 2021) be further extended until 31st March 2022.
- ii) Approve the addendum to the Enforcement & Monitoring Charter (Appendix B) for a further temporary period expiring 31st March 2022, 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)	<u>Relaxation of enforcement of conditions relating to retail distribution</u>	Remains relevant until further notice.
18 th March 2020 (updated 16 th June 2020)	<u>Relaxation of enforcement where public houses and restaurants offer a takeaway service during the current outbreak</u>	Remains relevant until further notice.
29 th May 2020	<u>Relaxation of enforcement in relation to hours of operation on construction sites; and in relation to changing business practices during physical</u>	To be reviewed when physical distancing is no longer required.

	distancing restrictions	
2 nd July 2020	Relaxation of enforcement in relation to 28 day rule on temporary uses	To be reviewed when physical distancing is no longer required.
18 th December 2020	Maintaining a Functioning Planning System and Supporting Recovery - Relaxing Planning Control	To be reviewed when physical distancing is no longer required.
22 nd March 2021	Chief Planner letter: stakeholder update - March 2021 - gov.scot (www.gov.scot)	To be reviewed when physical distancing is no longer required.

Supporting Town Centre Economic Recovery in Argyll and Bute

- 4.2 Throughout 2020 and 2021 to date, 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 Leadership 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. The Scottish Government have subsequently confirmed that this advice will remain in place until such time as requirements for physical distancing have been removed. Given the continuing requirement for engagement with licencing activity as businesses react to the current fluid situation approval is now sought from PPSL (as opposed to the Leadership Group following advice provided by the Head of Legal & Regulatory Support) to extend the period covered by the Planning Position statement up until 30th September 2021. This extended period is in alignment with the most recent intent to extend the ‘emergency period’ defined by the Scottish Government in unrelated provisions of the Coronavirus (Extension and Expiry) (Scotland) Act 2021, although this could be reviewed earlier in the event that the Chief Planner were to issue revised guidance indicating that planning enforcement relaxations were no longer necessary.
- 4.4 Whilst the expiry of the Planning Position statement would not prevent the Council as planning authority from continuing to deliver planning enforcement in a pragmatic and proportionate manner which gives due consideration to the requirement of businesses to react to Covid-19 restrictions, the absence of a formally agreed exemption (as noted in the Planning Position statement) would prevent/impede positive engagement with other regulatory processes, Licencing in particular, where any breach of planning control, or requirement for permission would require to be flagged up. Whilst the Planning Position statement remains in force such matters can be identified but accompanied by commentary advising that new uses/erection of temporary structures could proceed temporarily without the benefit of express planning permission. Whilst lockdown restrictions have now been removed the recent increases in infection rates confirm that this remains an incredibly fluid situation and it is anticipated that there may still be continuing requirement for temporary uses/structures relating to town centre activities which will again create a tension between the requirement for planning permission and support for businesses reacting to a fast changing situation impacting upon their ability to operate with restrictions on opening hours/use of indoor facilities/social distancing etc. It is therefore considered that it would be prudent to make appropriate provision to extend the Planning Position statement for the duration of the ‘emergency period’ until 31st March 2022 (as it is defined by the Coronavirus (Expiry and Extension) (Scotland) Act 2021) to reduce regulatory requirements for temporary changes to operating arrangements by town centre businesses during this challenging period.
- 4.5 During previous discussions on the relaxation of planning enforcement some reservations were expressed given the potential longer term planning

enforcement implications where licensed premises seek permanent changes to their licence relying on the Planning Position Statement for planning compliance in the short term but do not subsequently seek the requisite planning permissions prior to relaxations expiring. This risk has been recognised and commitment has been provided that the Development Management Service will work with Licencing Standards Officers to identify cases where permanent revision to licences dependent on the relaxation are granted and monitor these/invite planning applications at such time as relaxations are withdrawn.

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- 4.6 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.
- 4.7 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 PPSL previously approved the addendum to the Planning Enforcement Charter set out in Appendix B at their meeting on 17th March 2021 for a temporary period expiring 30th September 2021. 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.
- 4.8 The circumstances which initially gave rise to the introduction of the addendum to the Enforcement Charter remain and it is accordingly recommended that PPSL extend the application of the addendum for a further 6 month period, expiring 31st March 2022, again this period aligning within the defined extended 'emergency period'.

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 continues to apply the 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 – Longer term planning enforcement liabilities arising where licences are permanently amended but are dependent upon the Position Statement for the initial period of operation.
- 6.7 Customer Service – Positive impact through management of customer expectations.

Executive Director of Development & Economic Growth - Kirsty Flanagan
Policy Lead David Kinniburgh

6th September 2021

For further information contact: Peter Bain – 01546 604204

APPENDICES

Appendix A – Previous report to Strategic Leadership Group July 2020

Appendix B – Proposed Addendum to Planning Enforcement Charter