

Enforcement and Monitoring Charter

Cumhnant Sgriobhte Sparradh Dealbhachaidh

Argyll and Bute Council

Reviewed March 2022



Planning, Housing & Regulatory Services



Planaidh, Taigheadais is Sheirbheisean Riaghlaidh

Animal Health, Building Standards,
Development Management, Development Policy,
Environmental Health, Housing & Trading Standards



CUSTOMER
SERVICE
EXCELLENCE

Enforcement and Monitoring Charter

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

The Charter also identifies the ways we monitor planning permissions and sets out the enforcement powers currently available to the Council. These powers include the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc. (Scotland) Act 2006, and the Planning (Scotland) Act 2019.

Copies of this Charter are available on the Council's website at www.argyll-bute.gov.uk, and at the following Council offices:

- **Kilmory Castle, Lochgilphead, PA31 8RT**
- **1A Manse Brae, Lochgilphead, Argyll PA31 8RD**
- **Municipal Buildings, Albany Street, Oban, PA34 4AW**
- **Milton House, Milton Avenue, Dunoon, PA23 7DU**
- **Helensburgh & Lomond Civic Centre, 38 East Clyde Street, Helensburgh G84 7PG**

Argyll and Bute Council welcomes feedback on this Charter, how it could be improved and how the Council could improve the service it provides.

Any feedback should be sent:

By email to: planning.hq@argyll-bute.gov.uk

Or by post to:

Development Manager
1A Manse Brae
Lochgilphead
Argyll
PA31 8RD

DRAFT

CONTENTS

CHAPTER	PAGE
1. Introduction and context	4
2. Breaches of Planning Control	5
3. Investigating Breaches of Planning Control	6
4. Acting on Breaches of Planning Control	7-8
5. Enforcement Powers	9-12
6. Service Commitments, Outcomes and Monitoring	13
7. Corporate Council Complaints	14
8. Argyll and Bute Council Planning Enforcement Contacts and Other Useful Information	15

DRAFT

CHAPTER 1: INTRODUCTION AND CONTEXT

Planning permission is required for most development that takes place in Scotland, with the exception of some minor works. However, developers or householders sometimes undertake work without planning permission or fail to comply with the terms of planning permissions.

The purpose of planning enforcement is to resolve a problem rather than to punish a mistake. Any action taken has to be appropriate to the scale of the breach.

Councils have discretionary powers to enforce planning controls in such cases, if they consider it is in the public interest and expedient to do so having regard to a deemed assessment against the Local Development Plan and material planning considerations. Councils also monitor certain developments to ensure planning controls are being followed. Additionally, the public often alert the council to problems they become aware of.

This Charter explains how the enforcement process works, the role of the Council and the service standards it sets itself. It also explains what happens at each stage of what can be a lengthy process.

Enforcement is one of the most complex parts of the planning system. Effective and timely enforcement is essential for public confidence, fairness and natural justice. The aim of this Charter is to ensure that adopted procedures are fair and reasonable, and that interested parties are kept informed and are made aware of what is required. Enforcement is an issue that concerns many members of the public.

Following the provisions of [Scottish Government Circular 10/2009 – Planning Enforcement](#) ensures that actions taken are in line with national practices and current Scottish Government guidance. The Council's Enforcement Service contributes to delivery of the Single Outcome Agreement objectives, the Council's Corporate Plan objectives and the Planning Service Plan objectives.

We hope you will find this Charter useful and will let us know if you think we could improve the service further.

[Argyll and Bute Outcome Improvement Plan 2013 – 2023](#)

The Council's Enforcement Service contributes to the making of (and more so the protecting of) our great places and physical environment which is consistent with the SOA Outcome 1, ensuring Argyll and Bute has a diverse and thriving economy. The Council's whole development strategy is only as good as its implementation 'on the ground' and our Officers have a key role in ensuring that the key outcomes of the Development Plan or relevant planning decision are delivered for each site to the benefit of our economy, communities and environment. The reputation of the Council and our economy as a whole must also be upheld by a proportionate enforcement strategy.

Our businesses need a fair, equitable and safe environment to grow based upon effective and proportionate regulation and control. Planning Enforcement and Monitoring is at the heart of this by ensuring developers operate on a level playing field and investments are underpinned by the certainty of a plan led system that is effectively enforced.

Monitoring and Enforcement Performance Indicators

The Council currently record a number of performance indicators stipulated by the Scottish Government including:-

- Number of cases investigated
- Number of Cases Taken up
- Number of Breaches Identified
- Notices Serves
- Number of Prosecutions
- Number of breaches resolved

CHAPTER 2: 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 obligations (S75), listed buildings, tree preservation orders and advertisement regulations. Whilst the legal enforcement procedures may differ, the objectives remain the same; the control and regulation of development and cessation of unauthorised or undesirable development, as well as the remediation and reinstatement of land where necessary. It should also be noted that it is at the Council's discretion whether it is expedient or appropriate to take enforcement action. Most breaches of planning control are not a criminal offence, however, works to protected trees, the display of unauthorised adverts, works to listed buildings or unauthorised works within a Conservation Area are potentially criminal offences and a more formal approach may be required.

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 or within a Conservation Area without the required consents (which are criminal offences)*
- *A failure to comply with any condition, Section 75 obligation 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*
- *Noncompliance with planning conditions*
- *Unauthorised display of advertisements*

Anyone can make a complaint if they are concerned that there has been a breach of planning control. The public play a vital role in reporting these breaches to the Council. Enquiries can be made by telephone to the relevant area office but must be followed up in writing or by e-mail.

DETAILS REQUIRED 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 location of the site (a map showing the site would be useful)*
- *Details of the suspected breach with times, dates, etc.*
- *How long has the alleged breach taken place*
- *Explanation of the harm that the alleged breach is causing and how it affects you*
- *Your contact details, including if available, an e-mail address and phone details*
- *Whether or not you wish the enquiry to be treated as confidential*

Information will be treated as confidential as far as the law allows, in accordance with the Freedom of Information (Scotland) Act 2002 (FOI), the Environmental Information (Scotland) Regulations 2004 (EIR), and the General Data Protection Regulation (GDPR). Information will not be released where it is not in the public interest to do so or as a result of a ruling by the Scottish Information Commissioner or court of law. On occasions elected Members, MP's or MSP's may seek information on enforcement cases from Planning Enforcement Officers. When this happens, basic information will be supplied, such as whether or not a breach of planning control has been identified or whether any notices have been served. Additional information may be subject to release under the FOI or EIR after enforcement cases have been concluded.

Please note the Council will not investigate anonymous complaints unless the alleged breach is considered, by the relevant Area Team Leader, to be so serious to demand an immediate investigation. Complaints that do not fall under the jurisdiction of the Planning Authority such as neighbour disputes or civil matters cannot be investigated through the Council's planning enforcement procedures.

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.

A written complaint will be acknowledged within **3 working days**. The case will then be passed to the relevant Officer who will undertake an investigation. This will normally require a site inspection and a determination as to whether or not there has been a breach of planning control. Where no breach of planning control has been established the complainant will be advised of the outcome and the case will be closed. Please note that the opening of an investigation does not necessarily mean that a breach has occurred or that formal action will be taken.

One of the priority rating timescales, listed below, will be applied to each case. Owing to home/hybrid working arrangements introduced in response to Covid and the geography of Argyll and Bute including many remote settlements and islands, some site inspections may fall out with the priority timescale shown.

Each case is assessed so as they have a level of priority, these are outlined below.

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

- Works being undertaken in contravention of the requirements of a formal notice
- The unauthorised demolition or alterations of a listed building or the demolition of or alterations 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 i.e. road safety, health and safety or bad neighbour development, which has a significant detrimental impact on amenity (in the sole view of the Council)

Level 2 Priority – (site visit within 15 working days of acknowledgement of complaint)

- Unauthorised development, likely to cause harm to the landscape or residential amenity
- Changes of use of land or buildings resulting in a potential adverse impact upon existing levels of amenity
- General breaches of planning conditions
- Unauthorised householder developments with the potential for limited impact, i.e. garden sheds, replacement windows etc. within a Conservation Area

Level 3 Priority – (site visits within 20 working days of acknowledgement of complaint)

- Unauthorised householder developments with the potential for limited impact, i.e. 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

The Council has statutory powers to investigate breaches of planning control and the conditions attached to planning consents, and to take formal action where a satisfactory outcome cannot be achieved by negotiation. However, enforcement is a discretionary power. This means that, even where there is a breach of planning control, the Council has to consider if it is in the public interest to take enforcement action. The Council is not required to take any particular action on a specific breach of planning control and, indeed, can decide that no action is necessary.

The Council must consider each case on its own merits and decide on the best solution. As part of a deemed assessment of enforcement cases, the Council must have regard to the Development Plan and other material planning considerations. In many cases breaches are resolved through negotiation or the submission of a retrospective planning application and no formal action will be taken.

Where a breach of planning control has been established, it is the Council's objective to proceed in the following manner:

1. Negotiation

It is often possible to rectify a breach of planning control through negotiation with the parties involved as formal enforcement action is only taken as a last resort

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 necessary and proportionate to issue an enforcement notice.

A high number of enforcement cases are resolved through negotiation.

2. Retrospective Application

There is opportunity to submit a retrospective application seeking to regularise development which has been either wholly or partially completed, either to address inadvertent breaches of control, or to address development which deviates from previously approved plans. Recourse to retrospective applications should be in exceptional circumstances and is not encouraged routinely, as there are risks associated with the merits of development being considered after it has been executed, and uncertainties associated with views which may be expressed by consultees and the public during the process means that there is no guarantee of a positive outcome. Whilst retrospective applications will be assessed on a "without prejudice basis", their persistent and intentional use on individual projects is undesirable and may lead to further formal enforcement.

3. Formal Action

Where it is determined that formal action must be taken to resolve an enforcement case the Council must determine the most appropriate type of formal action to take (see Chapter 5 for more information). This normally involves the serving of either an enforcement notice, Section 33A notice, or breach of condition notice. These 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. Any notice served on land or buildings will appear against that property on any future property searches, regardless of any change in ownership, until such time as the terms of the notice have been met.

Enforcement Register

Details of enforcement notices, section 33A notices (see Chapter 5), breach of condition notices, advertisement notices and stop notices are entered into the Council's enforcement register which is a public document. The enforcement register for each area office is available for inspection at the relevant address or the complete register is available on the Council's web site at 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

Enforcement action must be taken within strict time limits.

A time limit of four years for enforcement action applies to "unauthorised operational development" (i.e. the carrying out of building, engineering, mining or other operations in, on, over or under land) and change of use to a single dwellinghouse. 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 dwellinghouse) and breaches of condition, after which the development becomes lawful if no enforcement action is commenced and 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.

Council Land

In circumstances where a breach of planning control relates to land within the ownership of the Council it is advised that it would not be appropriate for Planning Services to pursue formal enforcement action against another Council Service on the basis that the Council is unable to take legal action upon itself as the Council is a single legal entity. Council ownership of land does not preclude the undertaking of a planning enforcement investigation however whenever such circumstances arise it is expected that the responsible Service, once informed of the breach of planning control, will take all reasonable steps which are necessary to resolve the matter.

CHAPTER 5: ENFORCEMENT POWERS

Enforcement powers are set out in the Town and Country Planning (Scotland) Act 1997, Listed Building and Conservation Areas (Scotland) Act 1997 and Town & Country Planning (Control of Advertisements) (Scotland) 1984.

Further guidance is set out in:

- Circular 10/2009: Planning Enforcement
- Scottish Government Planning Circular 1/2011: Tree Preservation Orders
- Advertisements (Scottish Office Development Department Circular 10/1984)
- Argyll and Bute Planning Services Advertisement & Signage Policy Technical Working Notes 2017

The circulars can be viewed at

www.scotland.gov.uk/Topics/BuiltEnvironment/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 control or where more urgent action is required the contravener must cease activity with immediate effect.

• **Enforcement Notice** – This notice is used to deal with unauthorised development and breaches of planning conditions. An enforcement notice will specify; the breach, 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 compliance period by the Council. The compliance period must be reasonable and reflect the amount of work that needs to be undertaken. There are limited grounds of appeal to Scottish Ministers against enforcement notices and, if an appeal is made, the notice is suspended until the decision is reached. Full details of the appeal process is attached to the notice. 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 £50,000 in the Sheriff Court or direct action. The notice requires to be served on any person carrying out the unauthorised development and/or any person having control of the land where the development is being carried out.

• **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 and is served on any person carrying out the unauthorised development and/or any person having control of the land where 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 £5,000.

• **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 after it has been served and will outline 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 with its terms is an offence and may lead to a fine of up to £50,000 in the Sherriff Court, though an appeal can be made against the 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 the Council may face claims for compensation.

• **Listed Building Enforcement Notice** – The Council may serve a listed building notice where unauthorised works have been, or are being, undertaken to a listed building. This notice must be served on the current owner, occupier and anyone else with an interest in the property. The notice must specify the steps to be taken to remedy the breach and a compliance period. 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. It is a criminal offence to execute or cause to be undertaken any works to demolish, 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. The legislation also extends to the interiors as well as the exteriors of statutory listed buildings. Unlike a breach of planning control unauthorised works to listed buildings can never become immune from enforcement action.

- **Advertisement Enforcement Notice** – This notice may be served by the Council where it appears to them that an advertisement has been displayed without the necessary consent, or without compliance with a condition or limitation attached to 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 remove the advertisement, 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 siting or erection of an unauthorised advertisement is an offence, with a current maximum fine of £5,000. In cases where an advertisement has been placed on Council owned land or property without consent the advert 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. Previously consented advertisements can remain on display beyond the 5 year consent period. However, the Council may serve a notice requiring the discontinuance of the display of that advertisement.

- **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 own 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 to refuse the application, or to grant permission subject to conditions 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 carrying out operations on the land in order to obtain information about activities 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. Failure to comply with the notice within 21 days of it being served is an offence with a current maximum fine of £5,000.

- **Fixed Penalty Notices** – These provide 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 a 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. This notice may be increasingly used as an intermediary option prior to taking direct action or in situations where a prosecution is unlikely to be taken up by the Procurator Fiscal.

- **Temporary Stop Notices** – This is used to require the immediate halt of an activity which, in the Councils view, would cause significant damage to the environment and/or local amenity. A temporary stop notices 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. The notices ceases to have effect after 28 days after it has been 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 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 again a temporary stop notice. It is an offence to contravene a temporary stop notice which may lead to a fine of up to £50,000 in the Sherriff Court. .

- **Listed Building Repairs Notice** – This can be served by the Council on the owner of a listed building at any time if the owner fails to keep a listed building in a reasonable state of repair. Compulsory purchase can be initiated two months after service of a repairs notice.
- **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 no less than 7 days written notice to the owner. The Council may give notice to the owner of the building requiring them to pay the cost of the works.
- **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 the land if it appears that the amenity of the area is adversely affected by the condition of the land or buildings. The notice sets out the steps to be taken to address the adverse effect of the condition of the land or buildings within a specified period.

(iii) FURTHER CONTROLS

- **Tree Preservation Order and Trees in Conservation Areas** – Trees within a Conservation Area or subject to a Tree Preservation Order are protected in law and it is an offence to cut down, uproot, willfully destroy a tree or willfully damage, top or lop a tree in such manner as to be likely to destroy it without the consent of the Planning Authority. You can check if a tree is within a Conservation Area or protected by a TPO online at <https://www.argyll-bute.gov.uk/planning-and-environment/tree-preservation-orders>
- **Interdict and Interim Interdicts** – An Interdict is imposed by the Courts and is used to stop or prevent a breach of planning control. Court proceedings can prove costly and Interdicts are normally only sought in serious cases or where Enforcement Notices have been ignored in the past. However, the Council can seek an Interdict in relation to any breach without having to use other powers first. Breaching an Interdict is treated as a contempt of court and carries heavy penalties.
- **Direct Action** – Failure to comply with the terms of an Enforcement Notice within the time specified can result in the Council carrying out the specified work. The Council can seek to recover any costs it incurs from the land owner.
- **Power to Require Information as to Interest in Land (Section 272 Notice)** – This provides limited powers to obtain information on interests on land and the use of land. Failure to provide the information required is an offence.

Further enforcement powers may be made available to the Council due to changes in legislation (such as the Historic Environment Act and following implementation of the Planning (Scotland) Act 2019) and these will also be considered for use depending on the circumstances and merits of each individual case.

OTHER POWERS

- **High Hedges:** The High Hedges Act makes a range of provisions relative to high hedges in Scotland, that oblige the Council to act as arbiter where all other avenues to resolve a high hedge dispute have been exhausted. More detail for how the Act is administered within Argyll and Bute can be found at <http://www.argyll-bute.gov.uk/high-hedges-scotland-act>

OTHER COUNCIL DEPARTMENTS AND AGENCIES 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 complainants 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 licenses or certificates 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 Authority/ Trunk Roads Authority:** Where it becomes apparent that an enforcement case is not a planning issue but a Roads or Trunk Roads 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 Authority use a series of relevant legislation including the Roads (Scotland) Act 1984 which includes power to remove unauthorised advertisements 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 both 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.
- **Scottish Environmental Protection Agency (SEPA):** SEPA deal with issues relating to Waste Management Regulation and Japanese Knotweed and more information can be found at <http://www.sepa.org.uk/>
- **Police Scotland:** The Police Scotland have the power to prosecute all criminal offences in relation to planning control and that in some high priority cases the council has the discretion to refer the matter to them to initiate criminal proceedings.

ENFORCEMENT NOTICE APPEALS

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

Where appeal rights exist, appeals are 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. (DPEA)

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 date the notice takes effect which is detailed on individual notices, and is normally 28 days after the notice is served.

Appeals are made to:

Directorate for Planning and Environmental Appeals
4 The Courtyard
Callendar Business Park
Callendar Road
Falkirk
FK1 1XR

www.dpea.scotland.gov.uk

CHAPTER 6: SERVICE COMMITMENTS, OUTCOMES AND MONITORING

All enforcement complaints received will be dealt with in the same manner regardless of their source (excluding anonymous complaints). 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 resolve a breach of planning control, satisfactory outcomes can be found through negotiation in many cases and on occasions can be time consuming. The Council will balance the opportunities for negotiation and delay against the seriousness of the breach and the damage caused to health, safety, the environment or amenity.

When a planning enforcement complaint is received, a level of priority will be given in accordance with this Charter, ensuring that all complaints are investigated within an appropriate timescale proportionate to the breach of planning control that may or not have been committed. On occasions it should be noted that the investigations may exceed these timescales.

Complaints will be acknowledged within **three working days** of receipt by letter or e-mail. This period of time allows the Council to register the complaint and pass the case to the relevant Officer.

Following registration and acknowledgement of a possible breach of planning control, a Planning/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 be informed of the results of the initial investigation within **25 working days** of the receipt of the complaint. The complainant will be advised whether 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 wherever possible.

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 the breach of planning control, or appeals to Scottish Ministers against a decision of the Council, will also affect the timescale for resolution of the case.

The Officer dealing with the case will update the complainant when a decision is made or when a case is resolved.

Outcomes

Our aim in undertaking enforcement activity is to protect or enhance the natural environment, protect or enhance the historic environment, support a fair economy, and positively resolve the problems that arise from breaches of planning control.

The Scottish Government publishes performance statistics on planning and enforcement, which can be viewed at: <http://www.scotland.gov.uk/Topics/Statistics/Browse/Planning/Publications>

Strategic Monitoring

We do not always rely on members of the public to make an enforcement complaint or bring to our attention 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 all consents. We give priority to major applications, controversial developments or those in sensitive locations.

CHAPTER 7: CORPORATE COUNCIL COMPLAINTS

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 enforcement 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 is 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 is dealt with and how any investigation is carried out in terms of the service commitments. In the first instance you should discuss the matter with the Officer involved. If you are still dissatisfied then you should contact the appropriate Area Team Leader who will 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 remain dissatisfied with the way the Area Team Leader investigated your complaint, you can make your formal complaint via the Council's website <http://www.argyll-bute.gov.uk/council-and-government/complaints>

DRAFT

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. Enforcement enquiries should be submitted to the relevant Area Office in the first instance.

Contact Details for Reporting Suspected Breaches of Planning Control:

Customer Contact Centre: 01546 605518

- Planning Enforcement Officer
Mid Argyll, Kintyre & Islands
1A Manse Brae
Lochgilphead
PA31 8RD
Tel no. 01546 605518
planning.maki@argyll-bute.gov.uk
- Planning Enforcement Officer
Oban, Lorn & The Isles
Municipal Buildings
Oban
PA34 4AW
Tel no. 01546 605518
planning.olandi@argyll-bute.gov.uk
- Area Team Leader
Helensburgh & Lomond Civic Centre
38 East Clyde Street
Helensburgh
G84 7PG
Tel no. 01546 605518
planning.handl@argyll-bute.gov.uk
- Area Team Leader
Bute & Cowal
Milton House
Milton Avenue
Dunoon
PA23 7DU
Tel no. 01546 605518
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.

The High Hedges (Scotland) Bill was passed on 28th March 2013. Below is a link to the Council online 'Question & Answers': <http://www.argyll-bute.gov.uk/high-hedges-scotland-act>

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. Other Council departments with enforcement or regulatory powers which may overlap or compliment planning enforcement powers include:

Area Environmental Health Manager Planning,
Housing 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 Manager Planning, Housing and
Regulatory Services, The Helensburgh and Lomond
Civic Centre, 38 East Clyde Street, Helensburgh G84
7PG
Tel: 01546 605522

