
CAIRNGORMS NATIONAL PARK AUTHORITY

FOR DISCUSSION

TITLE: PLANNING MONITORING AND ENFORCEMENT
IN THE CAIRNGORMS NATIONAL PARK 2010/11

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Purpose of Report:

To report on the monitoring and enforcement activities since September 2010 and seek any changes to the CNPA Planning Enforcement Charter

Summary

There is a requirement under our Service Standards within the CNPA Enforcement Charter to bring a written report annually to the Planning Committee outlining the nature and extent of enforcement activity and any recommendations to update the Charter.

Since the first report in September 2010, there have been some substantial changes to the size and membership of the Planning Committee and this will be the first opportunity for some of the new members to be updated on this particular part of the CNPA Development Management and discuss aspects of this function.

Monitoring and enforcement can play a key role in taking forward many of the positive aspects of the Local Plan by providing an instrument to back-up the work to further the aims of the Park through good planning decisions and guidance and make them a reality. There is a further opportunity to work closely with applicants and the communities through pre-application discussion and training to negate the need for enforcement in the first place.

This part of development management is very diverse and this paper seeks to inform the Planning Committee of what has transpired over the last 11 months with a table of reported incidents at Appendix I; provide some examples of actual cases and whether the CNPA Planning Enforcement Charter needs any changes in this annual review.

Background

1. The CNPA Planning Monitoring & Enforcement Officer (MEO) post started in February 2009 and one of the first priorities was to produce a CNPA Planning Enforcement Charter as required for all planning authorities by the Planning etc. (Scotland) Act 2006. This Charter was agreed by the Planning Committee on 12th June 2009 and put on the CNPA website and was published in hardback in December 2010. A copy was distributed to all 5 local authorities and libraries within the Park and a copy to each CNPA Board Member. A copy of the Charter is attached at Appendix 2 for information to seek comment from the Committee about any changes that need to be made at this required annual review.
2. The Charter sets out the procedure and actions to be undertaken and provides a summary of the enforcement powers that are available. Throughout the Charter there are a number of Service Standards that are required to be achieved and one of the most important is the requirement to respond to any person who has made a comment or complaint within 5 working days. Members of the public play a vital role in reporting concerns about developer activities and possible breaches of planning control.
3. In the last 11 months, there have been 49 separate incidents or reports that have been investigated and a log with a brief description of each incident can be found at Appendix 1. You will note that there were 29 investigations in the last 11 months which did not relate to a planning application that the CNPA had called in i.e. no application and so a potential unauthorised development.
4. A Planning Contravention Notice (PCN) was issued to the developer of an application in Aviemore in February 2011. This Notice is for the power to require information about the activities on the land from anyone owning or carrying out operations on the land and is often used as the start of the enforcement process.
5. Whilst protocol meetings have been held periodically between the five local authorities that make up the area of the Park, there has not been an in-depth opportunity to pursue the subject of monitoring and enforcement. The relationship between called in applications and those that are not called in, or the clarity of “who does what” where there has been a possible breach of planning control, has not yet been concluded. However, the approach to arranging shared services with the 5 local authorities will be pursued as it is a key action in the 2011/12 Service Improvement Plan.
6. The local authorities of Aberdeenshire, Angus, Moray and Perth & Kinross have dedicated MEOs or planning inspectors. The Highland Council does not have dedicated MEOs as such but the Badenoch & Strathspey area does have a professional support officer at Kingussie who is mostly employed on the validation of planning applications.

7. The CNPA does not have an agreed process of delegation of decision with regard to the issuing of enforcement notices and relies on taking a request to serve an enforcement notice to the next Planning Committee. Following the last informal update report and the Committee's views, there was an understanding of the need for delegation in the case of serving a Temporary Stop Notice where speed of service to stop an activity may be paramount. In this case, it was accepted that the Chairman and Deputy Chairman of the Planning Committee can decide in conjunction with the CNPA Head Planner to authorise the serving of that Notice. This report also seeks to formalise this arrangement.
8. In planning enforcement, a great deal of negotiation, persuasion and interpretation takes place to achieve a positive outcome and, whilst this can be time consuming, invariably it provides a better and more timeous and cost effective outcome than the formal enforcement notice route. However, the threat and need for legal enforcement notices remains a necessary weapon particularly where there have been breaches of planning control such as damage to a Listed Building or by an uncooperative developer.
9. A number of interesting trends can be highlighted from Appendix I. This list only highlights instances in which there may have been a problem. Many routine monitoring visits do not provide an issue that needs looking into and are therefore not noted on this list.
10. Table I shows the number of investigations following MEO monitoring visits, complaints from the public and comments from other parties over the last 2.6 years. The number of complaints from the public has continued to rise and it could be concluded from these figures that members of the public are starting to see the benefit of a dedicated MEO and are more readily responding by notifying the officer of their concerns.

Table I

	2009	2010	2011 (7 months)
Monitoring Visits	28	20	14
Complaints from public	22	34	21
Comments from Planning Offs	3	7	1
LAs , CCs & CNPA members	3	3	2

11. Before the MEO post was created, the enforcement of the conditions agreed by the CNPA Planning Committee at the determination of an application was the responsibility of the Development Management Officer (DMO) who handled the application and consequently insufficient time could be given to monitoring. Using the case DMO for the monitoring and enforcement role is common place in planning authorities without a MEO resource.

12. Whilst the public and planning committees place high importance on enforcement, it is frequently perceived within some planning authorities as the ‘cinderella’ of the 3 legs of development control – Development Management, Building Standards and Enforcement. In practice, monitoring and enforcement of the conditions of a determined application and the reporting of unauthorised works tends to be less thorough in some authorities because of prioritisation of available resources but the CNPA made it a priority by employing a MEO and adopting the Charter. The CNPA Planning Committee can be assured that sufficient resource is currently provided in the Park but the notion of taking on further work from the local authorities will require further resources.
13. Appendix I offers many examples which highlight the diverse type of incidents that are dealt with under monitoring and enforcement. They range from old cases which have not been resolved for a long period of time; minor and more serious breaches of conditions; unauthorised development and responding to public concerns.
14. Non compliance with the conditions of a Decision Notice has been common throughout Scotland and particularly with suspensive conditions where there is a requirement to do something “prior to the commencement of development”. There is a worrying tradition that developers appear to demonstrate less regard to suspensive conditions when there is a move towards a greater use of suspensive conditions in the notion that it speeds up the planning process. In reality, this is frequently counterproductive and requires a higher intensity of monitoring and a slowing down of the denouement of the development.

Summary of Case Studies in the Presentation

15. This summary offers a flavour of examples of possible enforcement activity in more detail. The examples chosen represent a cross section of the type of investigations which were prompted by monitoring visits, complaints from residents and comments from the public.
16. **Case I** is two-fold and came about because of concern by neighbours about the positioning of marker posts on land that was being surveyed at the time of the snow and by noise and vibration emanating from machinery on site. The site is a large development of mixed housing with some affordable element in Aviemore and was an application that was lodged in 2005.
17. On inspecting the site and comparing the approved site drawings, there was a difference between the position of the marker posts and the plans. The marker posts were too close to the burn and the neighbour’s houses and after a second survey, the position of the marker posts was moved away from the houses by about 6 metres. The architects apologised for the mistake and blamed the fact on measuring from the fluctuating bank of the burn in the snow rather than a fixed point of an existing building as the original survey.

18. The second aspect of this site was that a number of neighbours including a member of the Community Council had concerns about noise from the site and excessive vibration through their properties. The latter was caused by a vibrating roller preparing the base for the new houses and after visiting the site, the MEO was able to persuade the contractors to bring forward this work so that it could be completed earlier than intended.

The noise element of the complaints came from a crusher and grader which was recycling a 7500 tonne heap of concrete, stone and soil that had been dumped on the site by previous owners. The developers wished to use the material rather than cause huge extra transport movements through Aviemore and the MEO was able to persuade the complainants that this was a better option and the contractors again agreed to speed up the process.

19. **Case 2** is another case where members of the public reported an incident whilst out walking their dog. This concerns the evidence of asbestos around a site near Ballater where previous buildings have been demolished and not sufficient care has been taken to clear and properly dispose of the asbestos element of the down-takings. The MEO wrote to the agent and asked for an explanation and what remedial action would be taken as the fragments were adjacent to a public footpath. An environmental report was submitted to the CNPA with a comprehensive method statement of the action to dispose of the asbestos. The contractors were made aware of their obligations and the material was removed to an appropriate disposal unit.
20. **Case 3** is an application concerning unauthorised use for storage of building materials, quarrying of materials for construction off the farm and imported stone and sand on a farm near Aviemore. The extent of the unauthorised use was discovered on a routine visit to take photographs for a call-in for a retrospective application for part of the site.
21. A retrospective application was withdrawn just before the determination meeting but the Committee resolved to agree enforcement action, if necessary, to rectify the unauthorised works. The enforcement action will be in the form of an Enforcement Notice which is currently in draft form with the CNPA legal advisers. In this case and with the cooperation of the developer and his landscape architect, the Enforcement Notice was agreed as the best way forward so that the CNPA can have confidence that compliance will be achieved as opposed to the use of a legal agreement.
22. **Case 4** is an application which highlights cooperation between the CNPA and one of the local authorities making up the Park. The CNPA had received many complaints from the public and CNPA staff about the huge amount of unauthorised advertising signage on the sides of the road at the Spittal of Glenshee. The MEO contacted his opposite number in Perth & Kinross Council and included photographs of the

signage. The MEO at P&K Council contacted the hotel at the Spittal and asked them to remove them.

23. After 28 days, the CNPA contacted P&K Council and informed them that nothing had happened. The P&K Council MEO went to the site and removed some of the moveable signage to his office and the hotel then removed most of the remaining signage. Enforcement officers are permitted to take direct action and remove unauthorised advertising signage from both public and private land.
24. These 4 cases demonstrate a small sample of the different types of complaints and comments and the resulting action by the CNPA MEO and show that with the help of the public and others, persuasion and negotiation can often get the desired result but the use of formal enforcement action has to be considered on a case by case basis.
25. All cases outlined in Appendix 1 and including these 4 cases were responded to in terms of contacting the complainant within the 5 day period outlined in our Service Standards in the Charter and most were also initially investigated within that timeframe.

The CNPA Planning Enforcement Charter

26. Although the Charter was agreed by the Committee in 2009 and has been available on the CNPA website since that time, it was decided not to publish the Charter in hard copy until December 2010. This was decided by the need to wait until after October 2010 when the Park boundary changed to incorporate part of Perth and Kinross Council area and the changes in the size and make-up of the Committee.
27. The Charter is required to be reviewed annually and therefore it has been included at Appendix 2 so that comments can be sought from the Committee on any changes that need to be incorporated.
28. There have been no changes in the enforcement legislation although outcomes from any changes in the Permitted Development Rights Order that will be decided in the aftermath of the consultations will have some bearing on aspects of enforcement. It is recommended that no changes are made to the Charter until the next annual review.

Recommendation

- a) That Members accept this report for information.
- b) That Members agree for the delegation of authority for service of a Temporary Stop Notice to the Head Planner in conjunction with the Convenor and Vice Convenor of the CNPA Planning Committee.