



**REPORT TO: PLANNING & REGULATORY SERVICES COMMITTEE ON
27 FEBRUARY 2018**

**SUBJECT: REVIEW OF PLANNING ENFORCEMENT CHARTER & UPDATE
ON ENFORCEMENT**

**BY: CORPORATE DIRECTOR (ECONOMIC DEVELOPMENT,
PLANNING & INFRASTRUCTURE)**

1. REASON FOR REPORT

- 1.1 The purpose of this report is to provide an update on planning enforcement and for Committee to review the Planning Enforcement Charter agreed by this Committee at its meeting on 23 February 2016 (para 6 of Minute refers).
- 1.2 This report is submitted to Committee in terms of Section III (E) (1) of the Council's Scheme of Administration relating to the statutory functions of the Council as Planning Authority.

2. RECOMMENDATION

2.1 The Committee is asked to:

- i) note the contents of the report;**
- ii) agree the updated Enforcement Charter, as set out in Appendix 1; and**
- iii) agree to grant delegated powers to the Appointed Officer to serve Section 33A Notices in cases where material benefits are identified to regularise a breach of planning control.**

3. BACKGROUND

- 3.1 The Planning Enforcement Charter was last reviewed by this Committee on 23 February 2016 (para 11 of the minute refers). The Planning Performance Framework (PPF) has 15 key markers that are reported annually to the Scottish Government and receive a red, amber or green rating (subject of a

separate report to this Committee). Moray received a green rating in its PPF feedback for 2016/17 and key marker 5 that requires the Enforcement Charter to be the subject of review and updated every two years.

4. CURRENT ENFORCEMENT POSITION

4.1 Planning Enforcement during 2017 was undertaken by a full-time Planning Enforcement Officer and one part-time Enforcement Assistant (3 days a week). On the 4 January 2018 a new post created a Condition Compliance Officer to ensure planning conditions imposed on planning decision notices are complied with and enforced. The Planning Enforcement Officer will solely be concentrating on new planning breaches rather than any that are related to an existing consent. Supervision of Planning Enforcement is undertaken by a Principal Planning Officer who monitors workload and advises on proposed actions along with input from the Manager for Development Management when required.

4.2 Over the last 12 months (1 January 2017 – 31 December 2017), there have been 265 reports of alleged breaches of planning control that have required investigation and or research. This is compared to a total of 226 over the previous 12 month period (1 January 2016 – 31 December 2016). This is a 17% increase in numbers of reported breaches and this demonstrates the continuing raised profile of planning enforcement as a result of taking direct action. The increased monitoring of planning conditions has also contributed to an increase in cases investigated.

4.3 Out of the 265 enforcement cases opened in 2017, 219 cases have been closed and the average time taken to deal with these cases was 6.2 weeks. Complex cases and those involving formal notices and appeals can take considerably longer to bring to a conclusion. There are currently 3 pre-2017 cases which remain unresolved compared with a much higher backlog in previous years and this shows that historical cases continue to be reduced.

4.4 In 2017 the following Notices were issued:

- 1 Enforcement Notice
- 1 Listed Building Enforcement Notice
- 1 Section 33A Notice
- 3 Section 272 Notices - to identify land ownership

In addition to the above the Enforcement Section carried out Direct Action on two sites where the owner(s) had failed to comply with Amenity Notices issued in 2016.

4.5 There are currently 46 cases which are pending consideration.

Of the 219 cases that have been resolved it will be for one of the following reasons:

- i) through the submission of a retrospective application;
 - ii) the breach not requiring planning permission i.e. not constituting development;
 - iii) benefitting from being Permitted Development; or
 - iv) an assessment being made that is not expedient to pursue any formal enforcement action.
- 4.6 In 2017 23 retrospective planning applications were submitted and determined as a direct result of enforcement investigations.
- 4.7 The target for resolving cases was set in 2014 at 75% of all enquires within a period of 10 weeks up to the point of taking formal enforcement action or no further action. During 2017 80.40% of all cases have been resolved within the 10 week target. There has been no consideration given to altering this target at the present time.
- 4.8 Both the Planning Enforcement Officer and the former Planning Enforcement Assistant attended the national Enforcement Forum in August 2018 with items on the Agenda being relevant to the day to day enforcement duties. The Chair of the Enforcement Forum has been attending the Heads of Planning Development Management Sub-Committee meetings to assist with sharing good practice and shared ways of working.
- 4.9 Over the next 12 months the Condition Compliance Officer will be working closely with Planning Officers to ensure that condition monitoring work becomes a much higher priority and ensure that developments approved are implemented as consented. Where compliance is not achieved and it is in the public interest to do so enforcement action will be taken.

5. ENFORCEMENT CHARTER

- 5.1 The Moray Planning Enforcement Charter (**Appendix 1**) has been reviewed and updated to make minor changes within the appendix adding in relevant sections where appropriate for ease of understanding. Essentially the content of the charter, service standards and targets remain fit for purpose and remain unchanged. A reference has been added in to refer to High Hedges as ultimately the serving of such a notice is no different to any of the other planning enforcement powers available to the Council. The reference to a Condition Compliance Officer has also been included.

6. SECTION 33A NOTICES

- 6.1 Section 33A of the 1997 Act (introduced by section 9 of the 2006 Act) gives planning authorities the power to issue a notice requiring a retrospective planning application to be submitted. A number of these notices have been served since the power was introduced in 2009 but general practice is to invite owners to make retrospective applications in the first instance rather than through a formal notice. Where such notices have been served this has

followed on from reporting the issue to this Committee which can lead to a delay in pursuing action.

- a) The main purpose of serving this type of notice is to encourage the submission of a retrospective planning application, which then allows the planning authority to consider the grant of planning permission subject to any conditions or limitations that would make the development acceptable in planning terms. It should be noted that the retrospective planning application would be determined in the same manner as a planning application submitted by the developer in the normal manner and would require to be accompanied by the relevant fee. There is no right of appeal to this notice.
- b) The advice in planning circular 10/2009 states that before issuing a notice under section 33A the planning authority should, as with any enforcement action consider whether the action is commensurate to the breach. There would be no purpose in issuing such a notice where the planning authority were of the view that permission would clearly not be granted.
- c) If a planning application is not submitted to the planning authority by the date, the planning authority should consider further enforcement action. Such further action should be considered particularly if the planning authority were of the view that a retrospective application would have been granted only if it were subject to conditions or limitations. In such cases it may be appropriate to issue an enforcement notice imposing restrictions on the use of the land or on activities carried out on the land. Whether or not further action is taken, and regardless of the specific action (if any) taken, the issue of the notice requiring the retrospective planning application constitutes taking enforcement action. This is of particular relevance should a person subsequently seek a certificate of lawful use or development in respect of the development, or where a Planning Authority considers further action necessary outwith the normal time restrictions on enforcement.
- d) Having delegated authority to serve S.33A Notices would enable officers to serve Notices in a more efficient manner which could lead to an increase in the number of retrospective planning applications that are submitted along with the associated planning fee. This change to current working practices will hopefully demonstrate to members of the public the importance that this planning authority places on dealing with unauthorised breaches of planning control and ensuring that development is regulated appropriately. This practice can be the subject of review after 12 months.

7. SUMMARY OF IMPLICATIONS

- (a) **Moray 2026: A Plan for the Future and Moray Corporate Plan 2015-2017**
None.

- (b) Policy and Legal**
No impact.
- (c) Financial implications**
There is no specific budget for enforcement.
- (d) Risk Implications**
None.
- (e) Staffing Implications**
None as existing resources will be utilised.
- (f) Property**
No impact.
- (g) Equalities**
No impact.
- (h) Consultations**
The Corporate Director (Economic Development Planning & Infrastructure), the Head of Development Services, Neal MacPherson (Principal Planning Officer), Legal Services Manager (Property & Contracts), the Planning Enforcement Officer, the Condition Compliance Officer, the Senior Engineer Transport, Lissa Rowan, (Committee Services Officer), Don Toonen (Equal Opportunities Officer) have been consulted and comments received have been incorporated into the report.

8. CONCLUSION

- 8.1 Committee are requested to note the annual report on enforcement, agree the updated Planning Enforcement Charter and authorise the Appointed Officer to have delegated powers to serve S.33A Notices.**

Author of Report: Beverly Smith Manager (Development Management)