

Enforcement and Monitoring Charter

Cumhnant Sgrìobhte Sparradh Dealbhachaidh

Argyll and Bute Council

Reviewed March 2022



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 G847PG**

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

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 a

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:

Negotiation

It is often

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,

CHAPTER 5: ENFORCEMENT POWERS

Enforcement powers are set out in the Town and Country Planning (Scotland) Act 1997, Listed Building

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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



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.

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>

