

COMHAIRLE NAN EILEAN SIAR

PLANNING SERVICE

**PLANNING ENFORCEMENT CHARTER
A GUIDE TO ENFORCING PLANNING CONTROLS
REVISED APRIL 2010**

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1.0 INTRODUCTION

Planning permission is required for most development that takes place with the exception of some minor works. Sometimes, however, developers or householders undertake work without planning permission or fail to keep to the permission they have been given.

Development is defined in planning legislation as *'the carrying out of building, engineering, mining or other operations in, on, over or under land or the making of any material change in the use of buildings or other land or the operation of a marine fish farm ...'*.

While most development is carried out in compliance with the necessary consents and conditions, there are instances where works are carried out in breach of planning controls. A breach of planning control includes:

- Works carried out without the benefit of planning permission;
- An unauthorised change in use of land or buildings;
- Failure to comply with the conditions attached to a planning consent;
- Departures from details of plans approved by a planning consent.

In such instances planning enforcement action may be necessary in order to remedy the breach.

The Comhairle has statutory powers to enforce planning controls, if the Comhairle consider it is in the public interest to do so. The Comhairle monitors developments to ensure planning controls are being followed, but there is also a role for the public in alerting us to any problems that they become aware of.

This Charter sets out the current powers available to planning authorities.

2.0 PURPOSE OF CHARTER

This Charter explains how the enforcement process works, the role of the Comhairle 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. 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. This Charter explains:

- How the enforcement process works;

- The Comhairle's policy on planning enforcement action;
- How the public are to bring breaches of planning control to the attention of the Comhairle;
- The standard of service you can expect to receive from the Comhairle in planning enforcement matters;
- How you can register any complaint about how the Comhairle takes enforcement action and the Comhairle's procedures for dealing with such a complaint.

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

SERVICE STANDARD

By publishing our standards and targets, we aim to improve our enforcement service and make it responsive to the needs of our customers. We will monitor the contents of this charter to ensure that standards and targets are being met.

SERVICE STANDARD

Further copies of this Charter are available on the Comhairle's website, in local libraries and at: Comhairle nan Eilean Siar, Sandwick Road, Stornoway, Isle of Lewis, HS1 2BW. Tel: 01851 703773. e-mail: planning@cne-siar.gov.uk or at: Development Department, Comhairle nan Eilean Siar, Council Offices, Balivanich, Benbecula HS7 5LA. Tel: 01870 602425 Ext 880. e-mail: planning@cne-siar.gov.uk.

3.0 KEY POINTS ON PLANNING ENFORCEMENT

A breach of planning control is not a criminal offence. The purpose of planning enforcement is to resolve the problem rather than to punish the mistake. In addition, any action taken has to be appropriate to the scale of the breach.

The Comhairle 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. That means that, even where there is a breach of planning control, the Comhairle has to consider if it is in the public interest to take enforcement action. The Comhairle is not required to take any particular action on a specific breach of planning control and, indeed, can decide that no action is necessary.

In some cases, the Comhairle is time-barred from taking action. Generally, work

carried out more than four years ago or a change of use that took place more than ten years ago is considered to be immune from action.

TIME LIMIT

Four year limit - this applies to 'unauthorised operational development' (the carrying out of building, engineering, mining or other operations in, on, over or under land) and change of use to a single dwelling-house. After four years following the breach of planning control, the development becomes lawful, and no enforcement action can be taken.

Ten year limit - this applies to all other development including change of use (other than to a single dwelling-house) and breaches of condition. After ten years, the development becomes lawful if no enforcement action has begun.

Detailed information on the use of enforcement powers can be found in the Scottish Government's Planning Circular 10/2009: Planning Enforcement.

Planning enforcement also covers the physical display of advertisements such as billboards and advertisement hoardings, although slightly different procedures apply. These are set out in a separate section at the end of the document. The actual content of an advertisement is not covered by planning control. Any complaints about the content of an advertisement should be made to the Advertising Standards Authority.

Formal Enforcement action involves the serving of statutory Enforcement Notices. Details of the types of Notice, the purpose they serve, the rights of appeal available and the penalties that can result from failing to act on the terms of each Notice are set out at Sections 6 and 6.1 of this charter.

In investigating and undertaking enforcement duties, the Comhairle has statutory powers to enter land to:

- establish if there has been a breach of planning control;
- check if there has been compliance with a formal notice;
- check if a breach has been satisfactorily resolved.

This power applies to any land and may involve officials entering land adjacent to the site of the breach.

4.0 OUR POLICY ON TAKING PLANNING ENFORCEMENT ACTION

4.1 General approach to enforcement action

The basic aims of planning enforcement are:

- To remedy the undesirable effects of unauthorised development;
- To bring unauthorised activity under control;
- To ensure that the credibility of the planning system is not undermined.

Enforcement is a discretionary power. That means that it is for the Comhairle to assess whether or not to pursue formal enforcement action having taken into account the nature and scale of the breach, its potential impact on public amenity and public safety, and the extent to which it is considered that the breach can be remedied without recourse to formal planning enforcement procedures.

The Comhairle's approach is firstly to investigate and establish that a breach of planning control has taken place and having done so to seek to remedy that breach through negotiation and agreement with the responsible party. This approach is in line with national guidance in that the purpose of planning enforcement is to resolve the problem rather than to punish the mistake.


It is worth stating that Planning enforcement only applies to matters of '*Development*' that fall within the scope of planning legislation. Where a complaint is received that does not fall within the auspices of planning enforcement but may fall within the wider remit of the Comhairle, the complaint will be referred to the appropriate Department within the Comhairle and the complainant advised of the action that has been taken.

4.2 IDENTIFYING POSSIBLE BREACHES OF PLANNING CONTROL AND THE ROLE OF THE PUBLIC IN NOTIFYING THE COMHAIRLE OF BREACHES OF PLANNING CONTROL

Possible breaches of planning control can include:

- work being carried out without planning permission or consent;
- an unauthorised change of use;
- failure to comply with conditions attached to a permission or consent;
- departures from approved plans or consent.

Monitoring of development is undertaken by the Comhairle's Planning Service to ensure it complies with conditions or limitations. However, there are a large number of permissions granted each year and it is not practical, nor is it expected, that Comhairle can monitor all conditions at all times.



Members of the public will appreciate that the geography and sparse settlement of some parts of the Western Isles means that there may be some months between staff visits to some of the remoter or less populated areas.

The public therefore has a valuable role to play in reporting suspected breaches of planning control and in monitoring the conditions that are placed on certain planning consents. Details of the conditions are included within the decision notice attached to the permission. Public involvement is therefore invaluable in providing information where it is believed that conditions which are attached to a consent are not being complied with or have not been discharged in a satisfactory way.

The following information is essential when reporting a suspected breach:

- the address of the property concerned;
- details of the suspected breach of planning control, with times and dates if relevant;
- your name, telephone number and address;
- an e-mail address if available or if the complaint is submitted electronically;
- information on how the breach affects you;
- whether or not you wish the enquiry to be treated confidentially.

While the Comhairle will do its best to honour requests for confidentiality, it is subject to the requirements of the Freedom of Information (Scotland) Act 2002. Requests for total confidentiality may limit the ability of the authority to take formal action and cannot be guaranteed if the case leads to court proceedings.

Information received by the Comhairle's planning enforcement section is checked to ensure that it involves a possible breach of control and includes all the details required for a possible investigation. After preliminary checking and compliance with the requirements for investigation, the complaint will be registered. Once registered, a written or e-mail acknowledgement will be sent to the person who made the complaint, unless the complaint has been made anonymously.

Any concerns raised by a member of the public will be investigated to establish whether or not a breach of planning control has taken place. You can report a suspected breach by contacting:

Mr Iain Macleod
Planning Enforcement Officer
Development Department
Comhairle nan Eilean Siar
Sandwick Road , Stornoway
Isle of Lewis
HS1 2BW
Tel: 01851 709367 Fax: 01851 709340
e-mail: iainmacleod@cne-siar.gov.uk

SERVICE STANDARD

Complaints are recorded and registered on receipt and a written or e-mail acknowledgement will be sent to the person who made the complaint within 5 working days. The acknowledgement will include a reference number and contact details for the investigating officer. If it is clear to the investigating officer at this stage that the matter does not involve a breach of planning control, the individual will be made aware of this.

4.3 INVESTIGATING POSSIBLE BREACHES OF PLANNING CONTROL

A priority system is used for investigating complaints based on matters such as the effect of the breach and the significance of the site.

SERVICE STANDARD

Priority will be given to significant breaches of planning control including:

- **breaches of condition for large scale development;**
- **irreversible damage to listed buildings;**
- **unauthorised felling of trees and matters affecting trees protected by Tree Protection Orders;**

For suspected cases of unauthorised development or breaches of condition, the following actions will be taken (except in cases where it is deemed necessary in the public interest to take urgent and immediate action).

Enforcement Action – Informal stages

- 1) On receipt of a complaint regarding a suspected breach of planning, (whether in person at one of the Comhairle's offices, by phone, e-mail or letter) the complaint will be recorded on the Comhairle's complaint form and thereafter registered in the Comhairle's planning complaints register. Once registered, the complaint will be assigned to an officer for investigation and a written or e-mail acknowledgement will be sent to the person who made the complaint within 5 working days.
- 2) Within 14 working days of receipt, the case officer will investigate the complaint to establish whether or not there has been a possible breach of planning control. This stage involves checking a) that there is sufficient detail to identify the property; b) that the details of the party suspected of committing the breach are adequate; c) whether or not planning permission would have been necessary; d) if planning permission has been applied for and/or granted and, if granted, are there any relevant conditions attached. Following the submission of a complaint, a site visit will be carried out by the case officer on the first occasion on which they are visiting the area in the course of normal duties.
- 3) On completing the preliminary checking a letter will be sent to the party suspected of committing the breach, advising them of the alleged breach, requesting that they contact the case officer within 14 days to discuss the matter and advising them that if a breach exists that positive steps must be taken to remedy the breach within one month of the date of the letter.
- 4) If the party suspected of committing the breach contacts the Comhairle within 14 days, the case officer will, in the first instance, endeavour to secure an agreement as to actions and a timescale to remedy the breach. Details of any verbal agreement will be confirmed in writing. The site will be inspected on expiry of the agreed period and if progress has been made towards remedying the breach then this will be recorded and any further actions required for compliance and the timescale for implementation agreed and again confirmed in writing. Actions to remedy a breach may include carrying out certain works, removing unauthorised works or in some cases submitting a planning application to regularise the development. If a planning application is received as a result of an enforcement investigation, it will be treated like any other application and further enforcement action will be suspended pending the determination of the planning application.
- 5) If the party suspected of committing the breach does not contact the Comhairle within 14 days or where they fail to act on previously agreed actions and timetables, then in order to ensure that the right person is identified for any subsequent formal action, a Planning Contravention Notice, will be served on any party with an interest in the land,

following agreement with the Head of Service. A Planning Contravention Notice requires the party upon whom it is served to give information so far as he is able about any specified operations, uses or activities being carried out on the land, and any information about their or any other person's interest in the land. A failure to reply to a Planning Contravention Notice within the 21 day period stipulated is an offence.

- 6) If the breach has been brought to the attention of the Comhairle by a member of the public, the case officer will write to you at this stage to advise on the action we have taken with respect to the breach and you will be informed of any reasons for a delay.

In some cases, additional investigation may be necessary, therefore the length of time required to resolve a case or take action can be affected by a number of factors. Allowance has to be made for the gathering of further evidence, to allow negotiations to take place or for procedures to be concluded. Similarly, where the landowner/ developer submits a retrospective planning application to regularise the breach of control or an appeal against a decision of the planning authority, this may add to the length of time it takes to resolve the case.

In some cases action may not be appropriate, even though planning controls have been breached. The Comhairle is unlikely to take formal action, for example, over developments which, in planning terms, are seen as acceptable. It may be more appropriate, in such cases, to seek the submission of a retrospective planning application.

SERVICE STANDARD

Having taken a suspected breach of planning complaint through Stages 1-7 above, the Comhairle will in most cases have clarified the extent and nature of the breach of planning control, the parties responsible for the breach, and the likelihood of resolving the breach without recourse to formal enforcement

The Comhairle recognises that delays can be a source of considerable frustration to those submitting information, particularly if they consider their amenity is affected. Consequently, we will try to keep interested parties informed at significant stages in the progress of a case but they may wish to contact the case officer for a more regular update. If there has been no progress for a period of 8 weeks from receipt of the complaint, the Comhairle will write to a complainant to explain the delay.

Enforcement action – Formal stages

The length of time taken to resolve an enforcement case can be unpredictable and progress can be affected by a number of factors which includes timescales and appeal entitlements set out in statutory notices. It should be noted that an Enforcement Notice can be the subject of an appeal to the Scottish Ministers (within specified

timescales) and the timetable and outcome of the appeal falls within the remit of the Scottish Government Directorate for Planning and Environmental Appeals (DPEA) and is therefore out with the control of the Comhairle.

In line with a statutory requirement, the Comhairle maintains an Enforcement Register and copies of notices served can be inspected at: Council Offices, Planning Service, Development Department, Comhairle nan Eilean Siar, Sandwick Road, Stornoway, Isle of Lewis.

The formal enforcement process comprises a number of stages set out below. At each stage there is still an opportunity for the breach to be resolved by negotiation and agreement. The affected party can submit an appeal in relation to certain types of notice.

- 1) Within 7 days of the Head of Service authorising the instigation of formal enforcement action, a Planning Contravention Notice or a Section 272 Notice (requiring further information and the nature of their interest in the land) will be served on the party committing the breach (if not already done). At this point we will write to the complainant advising that formal enforcement action has commenced.

The service of the Planning Contravention Notice or Section 272 Notice indicates the Comhairle's serious intent and offers another opportunity to resolve the problems without recourse to the service of an Enforcement Notice or Breach of Condition Notice.

- 2) If no progress is made in negotiating a solution at this stage, the Comhairle will prepare and serve either an Enforcement Notice a Breach of Condition Notice or a notice requiring a retrospective planning application to be made, depending on which is most appropriate to the breach.

SERVICE STANDARD

Where a breach of planning cannot be resolved and action is justified, a formal notice will be served. This will be either, a notice requiring a retrospective planning application, an enforcement notice, or a breach of condition notice. The Comhairle will write to the recipient of the notice to explain what is required, the timescales involved and the available options to resolve the issue.

Only a relatively small number of cases require formal enforcement action. Formal enforcement action involves the issue of a notice to the landowner or developer. This may be a notice requiring a retrospective planning application to be made, an enforcement notice, or a breach of condition notice.

A notice requiring a retrospective planning permission alerts the landowner or developer to the fact that the development described in the notice does not have the

requisite planning permission and requires them to address the situation by submitting a retrospective application. The planning authority will consider this as they would any application made under planning legislation and may grant or refuse permission, depending on the planning merits of the application. Permission may be granted subject to conditions which the planning authority considers are required to make the development acceptable.

Enforcement notices and breach of condition notices include the following information:

- a description of the breach of control that has taken place;
- the steps that should be taken to remedy the breach;
- the timescale for taking these steps;
- the consequences of failure to comply with the notice;
- in the case of an enforcement notice, any rights of appeal the recipient has and how to lodge an appeal.

Appeals against enforcement notices are considered by Scottish Ministers and dealt with, in most cases, by Reporters from the Scottish Government's Directorate for Planning and Environmental Appeals (DPEA). Anyone who has submitted information on a breach of planning control is advised of the appeal.

There is no right of appeal against a breach of condition notice.

Failure to comply with a notice may result in the planning authority taking further action. This can include a range of possible options including:

- referring the case to the Procurator Fiscal for possible prosecution;
- carrying out any work required by an enforcement notice and charging the person for the costs involved;
- seeking a Court interdict to stop or prevent a breach of planning controls;
- Issue of a fixed penalty notice.

SERVICE STANDARD

Where the terms of any formal notice are not complied with, every effort will be made to resolve the case to the satisfaction of the Comhairle. Options include:

- **in the case of an enforcement notice, direct action by the Comhairle;**
- **for either an enforcement notice or a breach of condition notice, the matter being referred to the Procurator Fiscal for possible prosecution or alternatively offering the opportunity to pay a fixed penalty (issue of a fixed penalty notice);**

4.4 Enforcement Action – Urgent cases

In certain cases it may be deemed necessary by the Head of Service that it is in the public interest to take urgent and immediate formal enforcement action. These are likely to be cases where it appears that there may be:

- significant detrimental impact on public amenity or public safety;
- where the breach would result in significant environmental damage;
- where works would result in irreversible damage to listed buildings.

In these cases it is in the public interest that early action is taken and therefore the preliminary stages detailed above are set aside, and an intensive investigation to establish key facts is carried out as quickly as possible and the authority of the Head of Development Service is sought in respect of taking urgent enforcement action.

Options for action in urgent circumstances include:

- (1) Serving a Temporary Stop Notice or Stop Notice (accompanying an Enforcement Notice) e.g. where there is an immediate threat to the health and safety of the general public and you require the works resulting in the breach to cease immediately;
- (2) subject to legal advice, and on the authority of the Head of Service, an Interim Interdict or Interdict may be raised through the Courts. Interdicts also have the effect of stopping or preventing a breach of planning control.

Details of notices requiring retrospective planning permission, enforcement notices, breach of condition notices, temporary stop notices and stop notices are entered into the Enforcement Register. You can inspect these documents at all reasonable hours at:

| | | |
|-------------------|----|---------------------------|
| Council Offices | or | Council Offices |
| Sandwick Road | | Balivanich |
| Stornoway | | Isle of Benbecula |
| Isle of Lewis | | HS7 5LA |
| HS1 2BW | | |
| Tel: 01851 703773 | | Tel: 01870 602425 Ext 880 |
| Fax: 01851 709340 | | Fax: 01870 602332 |

4.5 ENFORCEMENT POWERS

The planning enforcement powers available to your local planning authority are set out in the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc. (Scotland) Act 2006. Listed building enforcement notices are covered by the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. The Planning Acts are available from HMSO, 71 Lothian Road, Edinburgh and can be viewed online at the Office of Public Sector Information (OPSI) website; <http://www.opsi.gov.uk/>

Government policy on planning enforcement is set out in Planning Circular 10/2009: Planning Enforcement. The circular is published on the Scottish Government website and can be viewed at:

www.scotland.gov.uk/Topics/Built-Environment/planning/publications/circular.

5.0 ENFORCEMENT AND ADVERTISING

The display of advertisements is covered by the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984. Many advertisements are displayed with what is called 'deemed consent' which means they do not require planning permission if they meet the criteria and conditions set out in the regulations. One of these conditions is that the landowner has given permission for the advertisement to be displayed on their land.

Displaying an advertisement in contravention of the regulations is an offence and, if convicted in court, an offender can be fined. The court can impose further fines for each day the breach of the regulations continues.

The Comhairle has the power to serve an enforcement notice. This specifies a time period (normally 28 days) for compliance with the notice. However, this period can be reduced to seven days if the Comhairle believes there is an urgent need for the advertisement to be removed or altered in the interests of public safety, or if the advertisement can be removed without any other work being required.

An enforcement notice can also require that a particular piece of land should not be used to display advertisements. This remains in force even if the original advertisement is removed. Any subsequent advertising on this site would amount to a breach of the notice.

The Comhairle also has powers to remove or destroy placards and posters that do not have planning permission or deemed consent. If the person who put up the poster can be identified, they have to be given at least two days' notice that the Comhairle intends to take the poster down. If they cannot be readily identified, then the advert can be

removed immediately.

Comhairle officials can enter unoccupied land, if necessary, to remove an advertisement. However they have no powers to remove advertisements displayed within a building to which there is no public access.

6.0 TYPES OF ENFORCEMENT NOTICE

Breach of Condition Notice - this 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 (see below) and is served on any person carrying out the development and/or any person having control of the land. There is no right of appeal. Contravening a breach of condition notice can result in the Comhairle deciding to prosecute, with a fine of up to £1,000.

Enforcement Notice - this is generally used to deal with unauthorised development, but can also apply to a breach of planning conditions. There are similar notices and powers to deal with listed buildings (see below) and advertisements. An enforcement notice will specify;

- a notification period before it comes into effect (a minimum of 28 days - but see the section below on advertisements);
- the steps that must be taken to remedy the breach; and,
- a further period (known as the compliance period) which is set by the planning authority and gives the recipient time to carry out any work required to comply with the notice. There is no minimum or maximum period, so long as the amount of time allowed is reasonable and reflects the amount of work that may need to be undertaken.

There are limited rights of appeal against an enforcement notice and, if an appeal is made, the terms of the notice are suspended until a decision is reached.

Failure to comply with an enforcement notice within the time specified is an offence and may lead to a fine of up to £20,000 in the Sheriff Court. Failure to comply may also result in the Comhairle taking Direct Action to correct the breach (see other powers below).

Listed Building Enforcement Notice - this must be served on the current owner, occupier and anyone else with an interest in the property. The procedures are similar to those outlined above. The notice must specify the steps to be taken to remedy the breach and a final date for compliance. 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. Breaches of listed building control are a serious matter. It is a criminal offence to undertake unauthorised works to demolish, significantly alter, or extend a listed building. In certain circumstances, this can lead either to an unlimited fine or imprisonment.

Stop Notice - this is used in urgent or serious cases where an unauthorised activity must be stopped, usually on grounds of public safety. When a stop notice is served, the planning authority must also issue an enforcement notice. There is no right of appeal against a stop notice and failure to comply is an offence. 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 Comhairle may face claims for compensation. The use of stop notices therefore needs to be carefully assessed by the Comhairle.

Temporary Stop Notice (TSN) - this is used to require the immediate halt of an activity which breaches planning control. The provisions make an exception in that a TSN cannot prohibit the use of a building or a caravan as a dwelling house. TSNs are enforceable for 28 days, after which they time they expire. They may, however, be followed by further enforcement action such as an Enforcement Notice and Stop Notice. There is no provision to appeal against a TSN.

Fixed Penalty Notice (FPN) – this provides planning authorities 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 (EN) or a breach of condition notice (BCN). By paying the penalty imposed by the FPN, 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 EN or BCN and the planning authority will retain the power to take direct action to remedy the breach and recover the costs of such work from that person. The planning authority is not required to offer the option of paying a fixed penalty. Any decision to do so would be dependant on considerations such as the scale of the breach and its impact on local amenity.

Notice Requiring Application for Planning Permission for Development Already Carried out – Where the planning authority 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 planning 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 planning authority may, on consideration of the application, decide instead to refuse permission, or to grant permission subject to conditions or alterations to make the development acceptable.

6.1 Other Powers

Planning Contravention Notice - this is used to obtain information about activities on land where a breach of planning control is suspected. It is served on the owner or occupier, on a person with any other interest in the land or who is carrying out

operations on the land. They are required to provide information about operations being carried out on the land and any conditions or limitations applying to any planning permission already granted. Failure to comply with the notice within 21 days of it being served is an offence and can lead to a fine in the Courts.

Notice under Section 272 (of the Town and Country Planning (Scotland) Act 1997) - this provides limited powers to obtain information on interests in land and the use of land. Failure to provide the information required is an offence.

Notice under Section 179 (of the Town and Country Planning (Scotland) Act 1997) - this allows planning authorities to serve a notice on the owner, lessee or occupier of land which is adversely affecting the amenity of the area. This is also known as an **'Amenity Notice'** and sets out the action that needs to be taken to resolve the problem within a specified period.

Interdict and Interim Interdict - 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 Local Authorities normally only seek interdicts in serious cases or where enforcement notices have been ignored in the past. However, a Local Authority 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 Comhairle carrying out the specified work. The Comhairle may recover any costs it incurs from the landowner.

Notification of Initiation and Completion of Development (NID/NCD) and Display of Notices While Development is Carried Out – While not in themselves planning enforcement powers, these notices are intended to improve delivery of planning enforcement by requiring positive confirmation that development has commenced and been completed, and, in the case of on-site notices, to raise community awareness of developments in the local area. Planning authorities will be made aware of active development in their areas, enabling them to prioritise resources with a view to monitoring development.

For any development for which permission has been granted, a NID has to be submitted to inform the planning authority of the date on which development will commence. It is to be submitted after planning permission has been granted and before development has commenced. Initiating development without submitting a NID is a breach of planning control and the planning authority may consider enforcement action.

The NCD requires a developer to submit a further notice as soon as practicable after development has been completed.

Depending on the nature or scale of a development, the developer may also be required to display on-site notices while development is taking place. These notices

contain basic information about the site and the development. They also provide contact details where members of the public may find out more information or report alleged breaches of planning control. It is a breach of planning control to fail to display such a notice when required to do so.

7.0 HOW TO MAKE A SUGGESTION OR COMPLAINT ABOUT THE ENFORCEMENT SERVICE - THE COMHAIRLE'S COMPLAINTS PROCEDURE

The Comhairle is committed to delivering high quality best value services for the people of the Western Isles; however, even in the best-run organisations things sometimes go wrong. The Comhairle's Complaints Procedure provides a framework through which your grievances or criticisms can be resolved and your views on our services can be taken into account.

There are two types of complaint:

- An informal or minor issue where you request an improvement in the way a service is delivered and the Comhairle responds to address your request;
- A formal complaint where you have either asked for an improvement and are not satisfied with the Comhairle's response or wish to register a serious complaint.

You can make a formal complaint at any time.

Please let us know if:

- you think that we have done something wrong;
- you think that we have not done something we should have done;
- you think that you have been treated unfairly.

We would like to know, because:

- if we have been at fault, we would like to put things right and make sure it doesn't happen again;
- if we have not been at fault, we will make sure you get a full explanation.

To make a formal complaint, you can do so in person at any of our local offices, by phoning us, by sending us an e-mail or by completing the form on our web site. We will acknowledge your complaint within 3 working days.

The Comhairle hopes the public will be satisfied with the planning enforcement service. However, if you have any suggestions, concerns or difficulties, we want to hear from you. We are committed to improving our service and dealing promptly with any failures.

The Comhairle's adopted procedure will be followed in a case where a member of the public wishes to submit a formal complaint about the enforcement service. This complaints procedure can be found at:

<http://www.cne-siar.gov.uk/policy/complaint.htm> and the sections relevant to the enforcement service we provide are detailed below.

7.1 THE TYPE OF COMPLAINT COVERED BY THIS PROCEDURE

This procedure covers formal complaints within the following definition:

"an expression of dissatisfaction, about the Standard of Service received, actions or lack of action by the Comhairle, affecting an individual customer or group of customers following a request for improvement."

7.2 WHAT TO DO IF YOU ARE DISSATISFIED WITH THE ENFORCEMENT SERVICE PROVIDED BY THE COMHAIRLE.

In the first instance you should see if your complaint can be resolved informally to your satisfaction.

If you are still dissatisfied with the service you have received from the Comhairle you can make a formal complaint under the Comhairle's Complaints Procedure. The Chief Executive will be pleased to offer advice to help you pursue your complaint.

7.3 WHAT HAPPENS WHEN YOU MAKE A FORMAL COMPLAINT

Complaints are usually better resolved if they can be dealt with at the time of the incident and by staff providing the service. The process will be as follows:

You can contact the manager of the enforcement service about your complaint or complete the complaints form and return it to the Department providing the service. Alternatively you can write a letter of complaint (or an e-mail) giving us all the details. If you want to complain about the Enforcement service you can address your complaint to the Head of Development Services, Development Department, Comhairle nan Eilean Siar, Comhairle Offices, Sandwick Road, Stornoway, HS1 2BW, e-mail: kbray@cne-siar.gov.u . The officer will listen and will take a note of any information that you give. You can submit your complaint in writing and this can be written by you, a friend or relative or another person on your behalf. Your complaint will be recorded and you will be asked to confirm that this record correctly reflects your complaint.

7.4 HOW WE WILL DEAL WITH YOUR COMPLAINT

- The Officer dealing with your complaint will acknowledge your complaint within three working days of receipt.
- A Senior Manager in the Department will fully investigate your complaint in confidence.
- During the investigation, further information may be sought from you about the complaint. If this is a face to face meeting you can take along a person of your choice if you want to have someone with you.
- We will let you know the outcome of your complaint within 21 calendar days starting from the date your complaint is received. You will be invited to discuss the outcome if you so wish. If a decision cannot be given within 21 days you will be informed of the reasons for any delay.
- We will notify you of the outcome of your complaint through the post by recorded delivery unless you have requested correspondence by e-mail. Details of the appeal process will be included.

7.5 WHAT TO DO IF YOU ARE STILL NOT HAPPY

- If you are not satisfied with the decision you can appeal in writing to the Chief Executive within 28 days of the receipt of the decision on your complaint.
- The Chief Executive will send you an acknowledgement of your appeal within three working days of receipt.
- The Chief Executive will examine all the previous papers held by the Department on your case and will then investigate your complaint.
- You will also be given the opportunity to attend a meeting with the Chief Executive (or other Senior Officer within the Chief Executive's Office) to discuss your complaint, with 14 days of receiving the complaint, or as soon as practicable.
- The Chief Executive will make his decision in writing to you as soon as it is reasonably practicable, after the meeting.
- If "reasonably practicable" exceeds 21 days from the date of receiving your complaint, the Chief Executive will write to you explaining the reasons for the delay and indicate when the response is likely to be issued.
- If you are not satisfied with, the Chief Executive's decision, you may have a right of appeal to a Review Committee composed of Councillors. The Chief Executive will give you information on any such appeal.

- If you are still not satisfied with the Comhairle's decision you can refer your complaint to the Scottish Public Services Ombudsman. A copy of the Ombudsman's Complaint Form is available from the Comhairle Offices at Sandwick Road, Stornoway, Tarbert, Balivanich and Castlebay.

Note: All complaints will be investigated and dealt with in strict confidence. However; to enable the Comhairle's procedure to be adequately monitored and revised, if necessary, some statistical information about complaints received by the Comhairle may be published on an annual basis. No details of individual complaints will be revealed as part of this monitoring process.

7.6 WHEN SHOULD YOU REFER YOUR COMPLAINT TO THE OMBUDSMAN.

If you are not happy with the outcome of the appeal then you can refer your complaint to the Scottish Public Services Ombudsman. The Scottish Public Services Ombudsman Act 2002 confers the right to make a complaint to the Ombudsman. You may wish to contact the Ombudsman at:

4 Melville Street

Edinburgh

EH3 7NS

Telephone: 0800 377 7330, or e-mail: ask@spsso.org.uk

Generally, you must contact the Ombudsman within 12 months.

The Ombudsman can consider complaints about poor service; failure to provide a service; administrative failure but will expect you to have taken up your complaint with the Comhairle first before they will look at your complaint. Generally, you have to send your complaint to the Ombudsman within a year of the event that related to your complaint or from when you found out about the matter. They can sometimes extend the time limit, but only if there are special reasons.

8.0 HOW TO CONTACT US:

Enforcement for Outer Hebrides

Mr Iain Macleod

Planning Enforcement Officer

Development Department

Comhairle nan Eilean Siar,

Sandwick Road , Stornoway,

Isle of Lewis, HS1 2BW

Tel: 01851 709367. Fax: 01851 709340

e-mail: iainmacleod@cne-siar.gov.uk

Head of Development Services

Mr Keith Bray

Head of Development Services

Development Department

Comhairle nan Eilean Siar,

Sandwick Road , Stornoway,

Isle of Lewis,

HS1 2BW

Tel: 01851 709544. Fax: 01851 709340

e-mail: kbray@cne-siar.gov.uk

Complaints

Chief Executive's Office

Comhairle nan Eilean Siar,

Sandwick Road , Stornoway,

Isle of Lewis,

HS1 2BW

Tel: 01851 703773.

Fax: 01851 705349

Scottish Government Planning Division

Area 2H,

Victoria Quay,

Edinburgh,

EH6 6QQ

Tel: 08457 741741 (Planning Helpline)

Advertising Standards Authority

Advertising Standards Authority

Mid City Place,

71 High Holborn,

London,

WC1V 6QT

Telephone 020 7492 2222

Text phone 020 7242 8159

Fax 020 7242 3696

e-mail: enquiries@asa.org.uk

