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**REPORT TO: PLANNING & REGULATORY SERVICES COMMITTEE ON  
25 FEBRUARY 2020**

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

**BY: DEPUTE CHIEF EXECUTIVE (ECONOMY, ENVIRONMENT AND  
FINANCE)**

**1. REASON FOR REPORT**

- 1.1 The purpose of this report is for Committee to review the Planning Enforcement Charter agreed by this Committee on 27 February 2018 and to provide an update on Planning Enforcement.
- 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 a Planning Authority.

**2. RECOMMENDATION**

**2.1 It is recommended that the Committee:**

- i) note the contents of the report; and**
- ii) agree the updated Enforcement Charter, as set out in Appendix 1.**

**3. BACKGROUND**

- 3.1 The Planning Enforcement Charter was last reviewed by this Committee on 27 February 2018 (para 12 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. Key marker number 5 requires the Enforcement Charter to be reviewed every two years. Moray last received a green rating in its PPF feedback for 2017/18 and to obtain the same rating in 2020/21 there is a requirement to review its content and effectiveness.

#### **4. CURRENT ENFORCEMENT POSITION**

- 4.1 Planning Enforcement during 2019 was undertaken by a full time Planning Enforcement Officer and a full time Condition Compliance Officer. Supervision of Enforcement is undertaken by a Principal Planning Officer who monitors workload and advises on proposed actions along with input from the Development Management and Building Standards Manager as and when required.
- 4.2 Over the last 12 months (1 January 2019 – 31 December 2019), there have been 326 reports of alleged breach of planning control that have required investigation and or research. This is compared to a total of 312 over the same 12 month period (1 January 2018 – 31 December 2018). This is a 4.5% increase in numbers between the two years. However, the 2019 figures are 23% higher than when the Committee was last updated on Enforcement matters in February 2018. The increased monitoring of planning conditions has contributed to this increase in cases.
- 4.3 Out of the 326 enforcement cases opened in 2019, 282 cases have been closed and the average time taken to deal with these cases was 7.27 weeks. Complex cases and those involving appeals take considerably longer to bring to a conclusion. There are currently 4 pre-2019 cases which remain unresolved compared with a much higher backlog in previous years and this demonstrates that the back-log of cases continues to be reduced. Of the outstanding cases 3 relate to non-compliance with planning conditions and the fourth relates to the unauthorised installation of Upvc windows within a listed building.
- 4.4 In 2019, the following Notices were issued:
- 4 Enforcement Notices
  - 1 Planning Contravention Notice
  - 11 Section 272 Notices
- 4.5 There are currently 66 cases which are pending consideration 28 of which are 2020 cases. Of the 282 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
  - iv) an assessment being made that is not expedient to pursue any formal enforcement action.
- 4.6 In 2019, 28 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 to be resolved within a period of 10 weeks up to the point of taking formal

enforcement action or no further action. During 2019 75.2% of all cases have been resolved within the 10 week target. There has been no consideration given to alter this target at the present time due to the increase in number of cases.

- 4.8 Both the Planning Enforcement Officer and the Condition Compliance Officer attended the Scottish Planning Enforcement Forum in December 2019 with items on the Agenda being relevant to the day to day enforcement duties including the changes coming in the Planning (Scotland) Act 2019. 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.

## **5. ENFORCEMENT CHARTER**

- 5.1 The Moray Planning Enforcement Charter (**Appendix 1**) has been reviewed and updated to make minor changes adding in relevant sections where appropriate for ease of understanding. The priorities have been changed to reflect the increased importance of ensuring conditions attached to major planning applications as set out in the Planning (Scotland) Act 2019. A more in depth 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.
- 5.2 Other changes relevant to Enforcement introduced by the new Planning Act in December 2019 are an Increase in fines for persons convicted for non compliance with Planning Contravention Notices, Enforcement Notices, Stop Notices, Temporary Stop Notice and Breach of Condition Notices as set out below:
- The maximum penalty for non compliance with a Planning Contravention Notice has increased from £1,000 to £5,000
  - The maximum penalty for non-compliance with an Enforcement Notice has increased from £20,000 to £50,000
  - The maximum penalty for non-compliance with a Stop Notice has increased from £20,000 to £50,000
  - The maximum penalty for non-compliance with a Temporary Stop Notice has increased from £20,000 to £50,000
  - The maximum penalty for non-compliance with a Breach of Condition Notice has increased from £1,000 to £5,000
- 5.3 In determining the level of fine to be imposed the Court is in particular to have regard to any financial benefit which has accrued or appears likely to accrue to the convicted person in consequence of the activity which constituted the offence.

## **6. SUMMARY OF IMPLICATIONS**

**(a) Corporate Plan and 10 Year Plan (Local Outcomes Improvement Plan (LOIP))**

The Enforcement Charter plays an important role in monitoring and enforcing breaches of planning control and is a key performance indicator in the Planning Performance Framework (PPF).

**(b) Policy and Legal**

No impact.

**(c) Financial implications**

There is no specific budget for enforcement and therefore the only implications are for existing staff costs.

**(d) Risk Implications**

None.

**(e) Staffing Implications**

None at the present time although changes to be introduced by the Planning (Scotland) Act 2019 may result in the consideration of additional resources.

**(f) Property**

No impact.

**(g) Equalities/Socio Economic Impact**

No impact.

**(h) Consultations**

Depute Chief Executive (Economy, Environment and Finance), the Head of Economic Growth & Development, the Legal Services Manager, Neal Macpherson (Principal Planning Officer), the Equal Opportunities Officer, the Strategic Planning and Development Manager and Lissa Rowan (Committee Services Officer) have been consulted and are in agreement with the contents of the report/comments received have been incorporated into the report.

## **7. CONCLUSION**

**7.1 Members are requested to note the annual report on enforcement and to agree the updated Planning Enforcement Charter.**

Author of Report: Stuart Dale, Planning Officer (Enforcement)

Background Papers:

Ref: