

Aberdeenshire Council


Planning & Environmental Services

Planning Enforcement Charter





Planning Enforcement Charter



Aberdeenshire
COUNCIL

Planning and Environmental Services -

“Supporting Aberdeenshire Council’s vision to be the best area and the best council by providing high quality local services to residents, communities, businesses and visitors”

We will work to enhance quality of life by:

- protecting the health, welfare and safety of people and the environment
- managing Aberdeenshire’s unique environment in the interests of current and future generations
- enhancing the economic welfare of the area by supporting fair and legal trading
- encouraging healthy lifestyle options
- managing construction and the use of land
- providing advice, information and support in all areas of work

serving Aberdeenshire from mountain to sea -
the very best of Scotland.

In contributing to the vision of Planning & Environmental Services, Planning Enforcement will work to enhance quality of life by:

- managing construction and the use of land; and
- providing advice, information and support in all areas of work.



Planning Enforcement Charter

Introduction

Planning permission is required for most development that takes place in Scotland, 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.

Councils have powers to enforce planning controls in such cases, if they consider it is in the public interest to do so. Councils monitor developments to ensure planning controls are being followed but there is also a role for the public in alerting the council to any problems they become aware of.

This Charter explains how the enforcement process works, the role of the Council 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 is an issue that concerns many members of the public. We hope you will find this Charter useful and will let us know if you think we could improve the service further.

This Charter sets out the current powers available to planning authorities. The Planning Etc (Scotland) Act 2006 introduces a number of changes. The guidance contained in this Charter will be revised as necessary as these changes are introduced to keep it up to date.

The range of work covered by the Planning Enforcement process includes:

- **Enforcement Notices**
- **Investigation of breaches of Planning conditions**
- **Stop Notices**
- **Investigation of complaints**

Purpose of the Planning Enforcement Charter

The main purpose of this Charter aims to explain:

- 1 How the service is organised.**
- 2 Service standards.**
- 3 Complaints procedure.**

1 HOW THE SERVICE IS ORGANISED

The organisation of the Planning Enforcement Service within Aberdeenshire closely follows the structure of the Council itself. Across Aberdeenshire there are six Area Development Management Teams, each serving one of the six administrative areas of the Council. The service centres for these Areas Teams are based at the following locations.

Service Centres

Banff and Buchan

Town House, Low Street, Banff
Tel: 01261 813200 Fax: 01261 818228
e-mail: bb.planapps@aberdeenshire.gov.uk

Formartine

45 Bridge Street, Ellon
Tel: 01358 726429 Fax: 01358 726450
e-mail: fo.planapps@aberdeenshire.gov.uk

Kincardine & Mearns

Viewmount, Arduthie Road, Stonehaven
Tel: 01569 768300 Fax: 01569 766549
e-mail: km.planapps@aberdeenshire.gov.uk

Buchan

Arbuthnot House, Broad Street, Peterhead
Tel: 01779 483724 Fax: 01779 483727
e-mail: bu.planapps@aberdeenshire.gov.uk

Garioch

Gordon House, Blackhall Road, Inverurie
Tel: 01467 620981 Fax: 01467 628469
e-mail: ga.planapps@aberdeenshire.gov.uk

Marr

Viewmount, Arduthie Road, Stonehaven
Tel: 01569 768300 Fax: 01569 766549
e-mail: ma.planapps@aberdeenshire.gov.uk

Each Area Development Management Team reports planning applications to an Area Committee which meets on a three week cycle and is comprised of Elected Members of the Council.

In addition to the Service Centres, local Development Management Surgeries, staffed by planning officers are held at:

- Banff and Buchan** > *Fraserburgh Area Office, 51 Mid Street, Fraserburgh*
Wednesday 10.00 am – 3.30 pm
- Formartine** > *Education Office, Towie House, Turriff*
Wednesday 1.45 pm – 4.15 pm
- Kincardine and Mearns** > *Laurencekirk Office, Johnston Street, Laurencekirk*
Wednesday 2.30 pm – 4.30 pm – Fortnightly

Marr

- > *Banchory Office, The Square, Banchory*
Wednesday 9.30 am – 12 noon
- > *Aboyne Office, Bellwood Road, Aboyne*
Wednesday 1.30 pm – 4.00 pm
- > *Huntly Office, 25 Gordon Street, Huntly*
Wednesday 1.30 pm – 4.00 pm
- > *Alford Office, School Road, Alford*
Wednesday 9.30 am – 12 noon

During these times planning officers are available for advice and consultation on all aspects of planning including enforcement.

A Guide to 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.

Aberdeenshire Council has statutory powers to investigate breaches of planning control and the conditions attached to planning permissions, 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 Council has to consider if it is in the public interest to take enforcement action. Aberdeenshire 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.

Fuller information on the use of enforcement powers can be found in the Scottish Government publication Planning Advice Note 54 (PAN54): Planning Enforcement which can be viewed online at www.scotland.gov.uk/Publications/1999/03/pan54.

Planning permission is required for most development that takes place in Scotland. Sometimes, however, developers or householders undertake work without planning permission or fail to keep to the permission they have been given. Aberdeenshire Council has powers to act in such cases.

The Council will investigate breaches of planning control. These can include:

- work being carried out without planning permission
- an unauthorised change of use
- not following conditions imposed by a planning permission
- not following plans approved by a planning permission



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The public can play a vital role in reporting such incidents to the Council. This will need to include:

- the address of the property concerned;
- details of the suspected breach of planning control, (with times and dates if relevant);
- contact details for the person providing the information;
- whether that person wishes the matter to be treated confidentially. Aberdeenshire Council will do its best to honour such requests but anonymity cannot be guaranteed where statutory enforcement action is undertaken.

The purpose of planning enforcement is to resolve the problem rather than to punish the mistake. Action can involve negotiating a solution, asking for a retrospective planning application to be made, or more formal action such as the issue of an enforcement notice or a breach of condition notice.

In Aberdeenshire, formal action does not require the agreement of the Area Committees. Formal action can include serving an enforcement notice on the relevant people, spelling out the action they are required to take. They can challenge this notice, through an appeal to Scottish Ministers. If so, enforcement action is suspended until a decision is issued. Failure to comply with an enforcement notice can result in prosecution.

In some cases, the Council 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 10 years ago is considered lawful and immune from action.

It is not always possible to anticipate how a particular case will develop, nor how long it will take. Aberdeenshire Council will try to keep people informed of progress. The Council has set down the procedures, its service standards, and contact details in this Charter for Planning Enforcement. This is available on the Council's website www.aberdeenshire.gov.uk and in local development management offices.

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 this should be made to the Advertising Standards Authority.

Information on Aberdeenshire Council's Development Management Service can also be found on the Internet by visiting the Council's web site at www.aberdeenshire.gov.uk

2 SERVICE STANDARDS

Identifying Possible Breaches of Planning Control

When notified of a possible breach of Planning Control we will:

- Check, verify and register the complaint. Once registered, a written or e-mail acknowledgement will be sent to the person who made the complaint within five working days. The acknowledgement will include a reference number and contact details for the investigating officer.
- Respond to members of the public who provide information within 20 working days of receipt of their letter or e-mail. They will also be advised of the proposed action to be taken. This may include the need for additional investigation prior to deciding on a course of action. They will be advised if the matter does not involve a breach of planning control.

Possible breaches of planning control can include:

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

Members of the public have a vital role in reporting breaches of control. Any concerns should be raised with Aberdeenshire Council. You can make preliminary enquiries by telephone or in person at the Council offices. It is not necessary to follow up in writing or by e-mail, but this is recommended and is essential if you wish to be kept informed.

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 the enquiry is to be treated confidentially.

While the Council 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.



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Members of the public also have an important role in monitoring the conditions that are placed on certain planning permissions. Details of the conditions are included within the decision notice attached to the permission and can be found on the Council's website (www.aberdeenshire.gov.uk). Monitoring is undertaken by the Council's development management service. However, there are a large number of permissions granted each year and it is not practical, nor is it expected, that development management staff monitor all conditions at all times.

Your involvement is therefore invaluable in providing information where it is believed that conditions attached to a permission are not being complied with or have not been discharged in a satisfactory way. Breaches of conditions are investigated in the same way as breaches of planning control.

Information received by the Aberdeenshire Council's planning development management teams is checked to ensure that it involves a possible breach of control and includes all the detail 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.

Some complaints, such as neighbour disputes over boundaries, relate to matters over which the planning service has no control and cannot be investigated.



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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.

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

- breaches of condition for major development;
- irreversible damage to listed buildings;
- unauthorised felling of trees and matters affecting trees protected by Tree Protection Orders;
- significant detrimental impact on amenity

An investigation begins with a planning inspector visiting the site. Following this visit, the individual who has made the complaint will be informed of what action, if any, is proposed. In some cases, additional investigation may be needed.

The length of time required to resolve a case or take action can be affected by a number of factors. Progress can be delayed for the gathering of further evidence, to allow negotiations to take place or for formal procedures to be concluded. Similarly, an application to regularise the breach of control or an appeal against a decision of the planning authority can also delay resolution of the case.

Aberdeenshire Council 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 of 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 four to six (4-6) weeks, the Council will write to complainants to explain the delay.

Acting on Breaches of Planning Control

In some cases action may not be appropriate, even though planning controls have been breached. As stated previously, the purpose of planning enforcement is to resolve problems, not punish mistakes. Aberdeenshire Council has to consider each case on its merits and decide on the best solution. The Council 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.

Only a relatively small number of cases require formal enforcement action. This begins with either an enforcement or breach of condition notice being served on those involved in the development. Both 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;
- where appropriate, 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 Inquiry Reporters Unit. 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.

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

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 work and charging the person for the costs involved;
- seeking a Court interdict to stop or prevent a breach of planning controls.

For more detail, see the 'Enforcement Powers' section later in this Charter.

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

- direct action by the Council and/or
- the matter being referred to the Procurator Fiscal for possible prosecution .

Details of enforcement notices, breach of condition notices and stop notices are entered into an Enforcement Register. You can inspect these documents at the offices listed on page 15 or on the council's website www.aberdeenshire.gov.uk

The Council has 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.

Enforcement action has to be taken within strict time limits.

- **A 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 dwellinghouse. After four years following the breach of planning control, the development becomes lawful, and no enforcement action can be taken.
- **A ten year limit** – this applies to all other development including change of use (other than to a single dwellinghouse) and breaches of condition. After ten years, the development becomes lawful if no enforcement action has begun.

Enforcement Powers

The Planning Enforcement powers available to Aberdeenshire Council are set out in Part IV of the Town and Country Planning (Scotland) Act 1997 and in Chapter IV of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. The Planning Acts are available from HMSO, 71 Lothian Road, Edinburgh and at www.scotland.gov.uk/legislation/hmsso.gov.uk.

Government policy on planning enforcement is set out in Circular 4/1999, “Planning Enforcement.” Advice on good practice is given in Planning Advice Note 54 (PAN 54), “Planning Enforcement.” Both documents are available from the Scottish Government and can be viewed electronically at www.scotland.gov.uk/planning

Types of Notice

Breach of Condition Notice - this is used to enforce the conditions applied to any planning permission. It is effective from the date it is 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 Council deciding to prosecute, with a fine of up to £1,000.



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Enforcement Notice - this is generally used to deal with unauthorised development, but can also apply to 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 time period to take effect (a minimum of 28 days -but see the section below on advertisements); the steps that must be taken to remedy the breach and the time for this to be completed.

There is a right of appeal and 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 Council 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 the 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 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 Council may face claims for compensation. The use of stop notices therefore needs to be carefully assessed by the Council.

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 Aberdeenshire Council will normally only seek interdicts in serious cases or where enforcement notices have been ignored in the past. However a Council 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 Council carrying out the specified work. The Council may recover any costs it incurs from the landowner.

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 advertising consent 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 Council 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 Council 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 Council also has powers to remove or destroy placards and posters that do not have advertising consent 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 Council intends to take the poster down. If they cannot be readily identified, then the advert can be removed immediately.

Council 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.

3 COMPLAINTS PROCEDURE

Planning Enforcement is a complex procedure and individuals may consider that their application has not been dealt with effectively or efficiently. Aberdeenshire Council is committed to continually improving the services which it provides to the people of Aberdeenshire and has developed a four step complaints procedure for all Council Services.

A copy of the leaflet entitled "Have your say" can be obtained from each of the main Service Centres, Area Offices and on-line. The leaflet sets out the steps that you can take if you wish to make a complaint relating to the standard of service that you have received, or alternatively have any ideas that you wish to suggest in order that we can improve our services.

Essentially the procedure involves:

Step 1

Contact the person that you have been dealing with in the first instance and discuss what is troubling you. If you do not wish to speak to that person you may contact his/her manager.

Step 2

If you cannot resolve the matter you may wish to consider submitting a formal complaint. You can do this by:

- 1 **Returning the complaint form to Freepost Aberdeenshire Council.**
- 2 **Writing to the Area Manager responsible for the relevant area of Aberdeenshire Council.**
- 3 **Ask a member of staff to write down the complaint for you.**
- 4 **Phone the Area Manager with your complaint.**

The names and addresses of each Area Manager can be found at all of the main Service Centres or the Area Offices, or on the complaints procedure leaflet.

Your complaint will be acknowledged within five working days. A senior officer will investigate your complaint within 28 days and will write to you saying what we have found and what we intend to do to answer your complaint.

Step 3

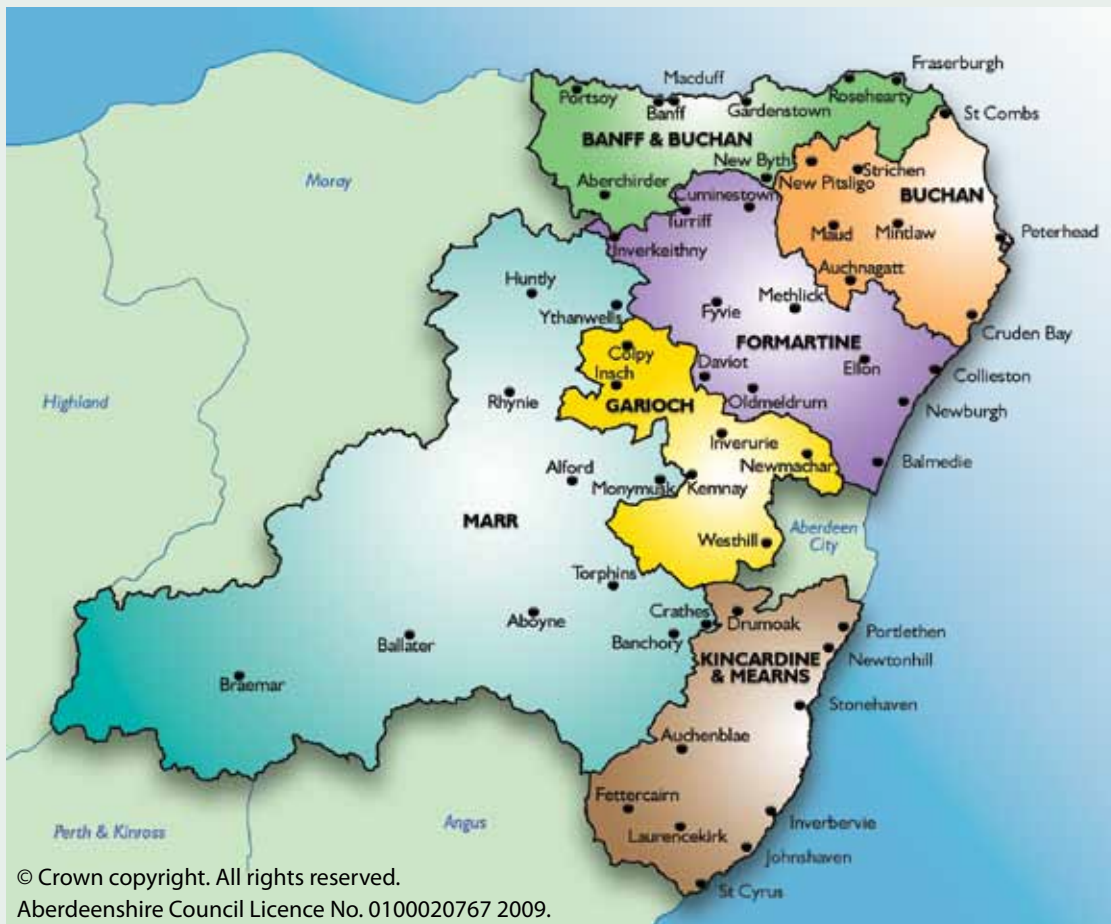
If you think that the response does not fully answer your complaint you should write again to the Council's Chief Executive at Woodhill House, Aberdeen. The Chief Executive will consider the matter and then write to you.

Step 4

You can also contact the Local Government Ombudsman in Edinburgh if you consider that your complaint has not been dealt with properly. The full address is provided in the 'Have your say' leaflet.



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Planning Enforcement Main Offices

Banff & Buchan

Town House, Low Street, BANFF, AB45 1AU

☎ 01261 813200

Buchan

Arbuthnot House, Broad Street, PETERHEAD, AB42 1DA

☎ 01779 483274

Formartine

45 Bridge Street, ELLON, AB41 9AA

☎ 01358 726429

Garioch

Gordon House, Blackhall Road, INVERURIE, AB51 3WA

☎ 01467 620981

Marr

Viewmount, Arduthie Road, STONEHAVEN, AB39 2DQ

☎ 01569 762001

Kincardine & Mearns

Viewmount, Arduthie Road, STONEHAVEN, AB39 2DQ

☎ 01569 762001

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