

# PLANNING ENFORCEMENT POLICY

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## 1. Introduction

This policy sets out how the Yorkshire Dales National Park Authority will undertake the role of enforcing planning control.

In order to maintain the integrity of its planning function, the National Park Authority must be ready and prepared to take effective enforcement action. Confidence will be undermined if unauthorised development, which is unacceptable on its planning merits, is allowed to proceed. The public should expect that harmful activities being undertaken in breach of the planning regulations will be dealt with quickly, effectively and consistently.

## 2. What constitutes a breach of planning control

The main background legislation is the Town and Country Planning Act 1990. Section 55 sets out what constitutes 'development' which the planning system has control over:

*“Subject to the following provisions of this section ..... “development,” means 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 any buildings or other land.”*

Section 171(A) specifies a breach of planning control as:

- “(a) carrying out development without the required planning permission; or*
- (b) failing to comply with any condition or limitation subject to which planning permission has been granted.”*

Breaches of planning control can relate to a wide range of different unauthorised activities, including new buildings and structures and changes of use of land or buildings. Other activities are also subject to planning enforcement powers including unauthorised works to listed buildings and protected trees, and the display of advertisements. These breaches can attract criminal liability.

The Act is supported by Government policy and guidance set out in the National Planning Policy Framework (NPPF) and Planning Practice Guidance (PPG). Paragraph 207 of the NPPF states:

*“Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control....and take action where it is appropriate to do so.”*

Even if it is technically possible to take enforcement action, a Local Planning Authority must first decide whether it is expedient to do so. This is a test of proportionality as to whether the unauthorised development is causing planning harm, having regard to the provisions of the Development Plan and to any other material planning considerations.

As planning enforcement powers are discretionary they must be exercised fairly and in the public interest.

### **3. How the Authority will investigate a complaint**

Anybody who reports a suspected breach of planning control can expect:

- **their details to remain confidential\*;**
- **to receive a written acknowledgement within five working days of the date of receipt;**
- **to be notified at key stages of the investigation;**
- **to be informed of the outcome of the investigation.**

\*There may be rare circumstances during prosecution proceedings where the Authority must divulge the name of a complainant if directed by the Court to do so.

Anybody who is suspected of a breach of planning control can expect the Authority to:

- **formally identify themselves whenever we visit your property\*\***
- **Investigate the complaint thoroughly before making any decision on what action to take**
- **explain what you need to do to put matters right, how long you have to do this and what the consequences might be if this does not happen**
- **Inform you if we decide to issue an Enforcement Notice or start legal action.**

\*\*As Officers are required to investigate and gather evidence a pre-arranged appointment to visit a site cannot usually be accommodated.

All complaints will be prioritised according to the level of harm that the alleged breach of control appears to be causing. The Authority aims to investigate and resolve the most harmful cases within the shortest possible timescale. The following categories will be used as a guide:

**Priority A** – A breach which may cause immediate and irreparable harm. For example:

- unauthorised works to a listed building;
- unauthorised works to a tree protected by a Tree Preservation Order

**Priority B** – A breach which would cause significant harm. For example:

- alterations which cause significant harm to the character or appearance of a conservation area;
- building work which would affect the privacy or amenity enjoyed by residents.

**Priority C** – A breach where there is risk of harm. For example:

- Siting of caravans;

- The tipping of waste/untidy land.

**Priority D** – A breach where there is limited harm. For example:

- where planning permission is likely to be granted following the receipt of a retrospective application;
- Neighbour disputes which have limited public impact.

#### **4. The Authority's approach to enforcement decisions**

The Authority will approach enforcement investigations positively. This means that if it appears reasonably possible that the unauthorised development can either be brought within the scope of regulations, regularised through the grant of planning permission, or its impact lessened to an acceptable level, then Officers will work positively towards that goal. However if that is not reasonably possible Officers will work towards ensuring that the unauthorised development is stopped or removed as soon as possible.

Following an investigation of the facts of the case the Authority will make a reasoned decision whether it is expedient to take action. In making this decision the circumstances of the case will be assessed against the following criteria:

- **The statutory purposes for which National Parks were designated;**
- **The impact on the 'special qualities' of the Yorkshire Dales National Park;**
- **Whether the unauthorised development or works conflict with the relevant policies of the local plan;**
- **Government advice and guidance;**
- **The level of harm that is being caused, or could potentially be caused, to the natural or built environment, and to public amenity;**
- **Whether there are any public safety implications;**
- **Whether it is in the public interest to pursue enforcement action; and**
- **Whether it is fair and reasonable to take action.**

In considering "expediency" the decisive issue is whether the breach would unacceptably affect public amenity or use of land that should be protected in the public interest.

Enforcement action should be proportionate to the breach, so for example, it would be inappropriate to take formal action against a trivial or technical breach. In practice, the duty to act proportionately effectively means that the Authority would not be acting reasonably if it enforced against every reported breach of planning control in the National Park. There will be cases where there is a breach of planning legislation but the breach or harm is so minor that action cannot be justified i.e. it is not expedient to pursue the case.

Where it is expedient to do so, and in accordance with Government advice, the Authority will seek to resolve a breach of planning control through negotiation with those responsible for the unauthorised development.

Officers will provide those responsible for unauthorised development with advice on their options for resolving the breach. Options may include stopping work on site or applying for

planning permission retrospectively. Any advice that is given will relate solely to resolving the planning breach and will not take into account the financial consequences of doing so or make a prejudgement over the outcome of a planning application.

The Authority will only invite the submission of a retrospective application where there is a good prospect of the development being granted consent, having regard to how the appropriate use of conditions may make the development more acceptable. Retrospective applications may not always be successful; however, they are a means by which the Authority is able to make a more informed decision about a particular development in conjunction with the views of consultees and other interested parties, including neighbours.

If it is not possible to resolve an enforcement matter through negotiation or regularisation, the Authority will pursue enforcement action which may involve serving a formal notice on those responsible for the unauthorised works. For example, an Enforcement Notice may be served which specifies how a breach should be rectified within a prescribed timescale. Should an enforcement notice not be complied with, the Authority will consider other enforcement powers available, eg. it can instigate prosecution proceedings, or undertake direct action against those responsible, or it can seek an injunction. Appendix A sets out the enforcement options available to the Authority.

## 5. Monitoring and compliance

There are two strands to planning enforcement:

- **Reactive enforcement** - Investigating complaints relating to unauthorised building operations and uses.
- **Pro-active enforcement** - Monitoring developments to ensure compliance with planning permissions, associated conditions and agreements - and continued compliance with extant Enforcement Notices.

The Authority has previously concentrated on investigating reactive complaints. However, it will now pursue a more proactive approach with the aim of monitoring approved schemes to check compliance with plans and conditions.

As the Authority approves around 600 applications a year, it would not be sensible or practical to try to monitor every one. Therefore, the Authority will prioritise key types of development that have given rise to enforcement cases in the past. These types of development will include large agricultural buildings, barn conversions, work to listed buildings and new housing development.

This pro-active approach will help to identify and resolve breaches of planning control at an early stage.

## **Appendix A**

### **Enforcement Tools**

#### **Planning Contravention Notice (PCN)**

This seeks to establish what is happening on a site and who is responsible. It is intended to act as an information gathering tool. The notice requires details and information on an alleged breach of planning control to be submitted to the Authority to clarify whether a breach has occurred. Failure to respond within 21 days or submission of false or misleading information may result in prosecution in the Magistrates Court and a potential fine.

#### **Breach of Condition Notice (BCN)**

This requires the owner or occupier to comply with any outstanding requirements of a condition imposed on the grant of planning permission. A notice cannot be used in respect of listed buildings, conservation area control and protected trees. The compliance period is a minimum of 28 days from date of service of the notice and there is no right of appeal. Failure to comply is an offence liable to prosecution.

#### **Enforcement Notice**

The Authority may issue a notice where it considers there has been a breach of planning control and it is expedient to do so; for example, the development is likely to be unacceptable in policy terms. The enforcement notice specifies the steps required to remedy the breach and a period for compliance. Failure to comply with an enforcement notice within the time specified is an offence liable to prosecution. However, there is a right of appeal to the Secretary of State against the notice.

#### **Stop Notice**

A stop notice may be issued to support an enforcement notice and is only used where the breach of planning control is causing severe, serious and irreversible harm. The notice usually takes effect after a period of 3 days and prohibits continuation of any, or all of the activities specified in the enforcement notice. Compensation may be payable by the Authority if the enforcement notice to which the stop notice relates is quashed on appeal. Failure to comply with a Stop Notice is an offence liable to prosecution.

#### **Temporary Stop Notice**

This notice does not require the issue of an enforcement notice and can require the immediate cessation of a breach of planning control for a period of up to 28 days. There is no right of appeal and failure to comply is an offence liable to prosecution.

#### **Injunction**

Where the Authority considers that a serious actual or intended breach of planning control is likely to take place it may seek an injunction in the County or High Court. It is not necessary to have considered or exercised any other enforcement power prior to seeking an injunction. The Injunction is generally sought where a developer continues to ignore an enforcement or stop notice, and/or where there are irreversible consequences; for example, the threatened demolition of a Listed Building. Failure to comply with an Injunction constitutes a contempt of court and can lead to imprisonment.

## **Direct Action**

If any steps which are required by an enforcement notice to be taken (other than the discontinuance of a use of land), have not taken place within the compliance period, the Authority may enter the land and take those steps; and recover from the person who is the owner of the land any expenses reasonably incurred by them in doing so.

## **Section 215 Notice**

This notice requires land to be cleared and tidied up when its condition adversely affects the amenity of the area. The notice must specify clearly and precisely what needs to be done to remedy the condition of the land and state a period of time within which the works shall be completed. Failure to comply is an offence liable to prosecution.

## **Section 225 Notice**

This notice enables the Authority to remove an unauthorised advertisement. The display of an unauthorised advertisement also constitutes an offence liable for prosecution.