

Planning Enforcement – Policy and Practice

1 Introduction

- 1.1 This document describes the National Park Authority's procedures for enforcing compliance with planning controls. It is a guide for those affected by breaches of planning and listed building control who may wish to know what steps the Authority can take and the timescale involved in achieving a result.
- 1.2 Enforcing compliance with planning controls can be both time consuming and complex. In many cases the Authority will try to negotiate compliance rather than pursue formal action. However, in those cases where serious environmental damage or harm to the amenities of neighbouring residents is taking place, or where damage is being caused to protected landscapes, trees and/or listed buildings, then we will use the full range of powers available to us to bring the matter speedily under control.
- 1.3 Whilst it is a criminal offence to carry out unauthorised works to a listed building or a protected tree, it is not illegal or an offence to carry out a development or use that does not have proper planning permission. It is merely unauthorised and no criminal offence has been committed. Only when the Authority has served formal enforcement or similar notices, all avenues of appeal have been exhausted and time periods for compliance have expired, does the person responsible for the unauthorised use or development become liable to prosecution and, if found guilty, will have a criminal record.
- 1.4 The person against whom an enforcement notice is served has rights of appeal which must be respected and this can result in some delay in securing a resolution of the matter.
- 1.5 The Authority can only use its enforcement powers effectively if there is sufficient evidence available to demonstrate clearly that a breach of planning and/or listed building control has occurred.

2 What is a breach of Planning Control?

- 2.1 There are two main ways in which a breach of planning control can occur:
 - *Building works or engineering operations or changes in the use of land or buildings that are carried out without the necessary planning permission.*

However, not all building/engineering work or changes of use require planning permission. Many are either considered not to be development at all or are defined as 'permitted development', meaning that an application for planning permission is not necessary. For example, the erection of a house extension within specified limits is defined as 'permitted development'. Help in understanding 'permitted development' can be found in a booklet published by the Government entitled 'Planning – A Guide for Householders' that is available from the Authority's Development Control service.

- *Where planning permission has been granted but the approved plans and/or the conditions attached to the approval have not been followed properly.*

For example, a building may be larger than shown on the approved plans or a condition that specifies the working hours of a business may have been breached. To assist in identifying such breaches the Authority liaises with the local authority building control departments. Where a breach is suspected, a site visit will be carried out to ensure the development is in accordance with the approved plans.

3 Our Enforcement Policy

- We will investigate all complaints about breaches of planning and listed building control, however they are received.
- All complaints are logged onto the Authority's planning computer system and acknowledged by letter within 3 working days. The acknowledgement letter provides the complainant with the name of the investigating officer and a contact telephone number.
- Within 15 working days of receipt of a complaint we aim to notify the complainant as to how the Authority intends to deal with the matter although at this stage we may not be able to say precisely what action we can take.
- High priority will be assigned to cases involving unauthorised works to protected trees and listed buildings, which may result in immediate enforcement action being taken.
- All complaints will be treated in confidence. The identity of the complainant will not be revealed unless consent is given to do so. It is likely that any requests made under the Freedom of Information Act to disclose the identity of a complainant will be resisted on the grounds that to reveal them would be unlikely to be in the public interest, as it would discourage others from reporting alleged breaches of planning control to the Authority, thereby prejudicing the proper enforcement of planning laws within the National Park. That said, any request must be

considered individually and on its merits and there may be occasions where the Authority cannot justify the withholding of such information.

- Anonymous complaints may receive a lower priority as we will be unable to contact the complainant for further information which may be needed to assist our enquiries.
- All complainants will be advised of the outcome of our investigations and what action, if any, the Authority proposes to take to remedy the breach. In those circumstances where the Authority does not take enforcement action, an explanation will be provided.
- We will advise those responsible for a breach of planning control that it is open to them to try and regularise the matter through the submission of a retrospective planning application. In such circumstances, it will be made clear that the offer to submit a retrospective planning application is made without prejudice to any final decision the Authority may take in the matter.
- We will normally suspend enforcement proceedings whilst considering a valid retrospective planning application unless there are good reasons not to.
- If appropriate, we will try to suggest an alternative site where a use could perhaps be more appropriately located.
- We will work together with our external partners to ensure that joint investigations are undertaken where it is known that a suspected breach may involve other regulatory agencies.
- We will pass on complaints which fall within the province of other agencies to the relevant department.
- We will liaise with the local authority Building Control Services in monitoring new developments and checking compliance with planning conditions imposed on planning permissions.

4 How to complain about a breach of planning control

- 4.1 All suspected breaches of planning and listed building control should be reported to the Authority - we rely upon the help of the public to bring such breaches to the Authority's attention.
- 4.2 Unauthorised works to listed buildings and protected trees should be reported immediately. In all other circumstances, it is normally best if complaints about possible breaches of planning control are made in writing and give us as much detail as possible about the site and what is happening there. This will enable

the investigation to be targeted precisely and effectively. Your letter should be addressed to the Senior Monitoring and Enforcement Officer:

Mrs S Tolmay
Senior Monitoring and Enforcement Officer
New Forest National Park Authority
South Efford House
Milford Road
Lymington
S041 0JD

or emailed to dev.control@newforestnpa.gov.uk

4.3 In respect of unauthorised works to protected trees and other urgent queries, please telephone 01590 646615.

5 What do we do next ?

- Investigate the details of the complaint.
- Establish whether a breach of planning or listed building control has taken place.
- Try to negotiate a solution with the “offender” if the development/use can be stopped or if there is a possibility that planning permission might be granted.
- Where there is insufficient evidence, advise the complainant that no action is proposed.
- Otherwise we will gather evidence as necessary to be satisfied that formal action is justified and has a reasonable prospect of success.
- Consider the expediency of taking formal enforcement action having regard to the development plan and all other material considerations.

6 How do we take formal action ?

- Notify the complainant and offender that enforcement action is being considered - this allows a further chance for a negotiated settlement.
- Begin preparing the formal Notices in consultation with the Authority’s Solicitor.
- Serve the Notices on all parties with an interest in the site, as defined under the Town and Country Planning Act.

- The Notice will specify the steps that need to be undertaken within an appropriate timescale.
- In the case of unauthorised works to listed buildings and/or to protected trees, the Authority can proceed to instigate prosecution proceedings without having to first serve an Enforcement Notice (as such unauthorised works are unlawful and therefore potentially constitute a criminal offence).

7 What happens after notices are served?

7.1 The recipient of a Notice will either:

- comply with the Notice (in which case the matter is closed); or
- contest the Notice by way of an appeal to the Secretary of State or challenge in a Court of Law, where this is appropriate.

7.2 Hearing a case on appeal will take time and can often delay proceedings particularly if a public inquiry has to be arranged.

7.3 If the appeal against the Notice does not succeed the formal Notice comes into force, although there can be further challenges to the Authority's action. If the appeal is successful and/or planning permission is granted, then this is normally the end of the matter.

7.4 If the Notice is upheld or there is no appeal but it is still not complied with, the Authority may then consider prosecuting the perpetrator in the criminal courts.

7.5 We will try to keep complainants advised of progress at regular intervals during these proceedings.

8 Government guidance on how and when to take enforcement action

8.1 Enforcement action is a **discretionary power** and guidance on when and how that power should be exercised is set out in the Government's Planning Policy Guidance Note No. 18 and Circular 10/97. In summary, the advice from government is as follows:

- the decisive issue for the Authority should be whether the breach of control would unacceptably affect amenity or the existing use of land and buildings which merit protection in the public interest;
- enforcement action should always be commensurate with the breach of planning control to which it relates;

- negotiations should not be allowed to hamper or delay whatever formal enforcement action may be required to make the development acceptable on planning grounds, or to compel it to stop;
 - enforcement action should not be taken solely to “regularise” development which is acceptable on its planning merits but for which permission has not been sought;
 - if a breach of control is causing serious harm to public amenity, the Authority should normally take vigorous action.
- 8.2 Many courses of formal action are dependant upon how long the use or development has been carried out.
- 8.3 In the case of breaches arising as a result of building operations, or the use of a building as a single dwelling house, an Enforcement Notice cannot be served after 4 years from the commencement of the breach.
- 8.4 Under planning legislation, all cases other than those subject to the 4 year rule set out above are subject to a time limit of 10 years beginning with the date of the breach. After that time, no enforcement action can be taken and the use may have become lawful. Indeed, in those circumstances, a Certificate of Lawfulness may be applied for, the merits of which have to be considered on the ‘balance of probabilities’.
- 8.5 However, there are no time limits for taking enforcement action against breaches of listed building control. Further government advice on enforcing listed building control is set out in Planning Policy Guidance Note No. 15.

9 The enforcement powers

- 9.1 Listed below is a brief description of the various enforcement powers available to the Authority. This is not intended to set out in full all the detailed legal considerations, but simply to try to explain the general nature of the available enforcement powers. In all cases, the Authority will seek to use the most effective power available to remedy a breach of planning control.

Planning Contravention Notice (PCN)

- 9.2 This Notice enables the Authority to require detailed information about suspected breaches of planning control. A PCN may require the person on whom it is served to give information such as:
- a) details of all operations being carried out on the land which might be suspected as being a breach of planning control;
 - b) matters relating to the conditions or limitations subject to which any planning permission has been granted;

- c) names and addresses of any person known to use the land for any purpose; and
 - d) the nature of any legal interest in the land and the names and addressees of any other person known to have an interest.
- 9.3 The service of a PCN does not stop the Authority taking other formal action against a breach of planning control. The recipient of a PCN has 21 days to respond to it, but if there is no response a legal offence has been committed which can be subject to prosecution by the Authority in a Court of Law.
- 9.4 Penalties for non-compliance with a PCN can result in a fine of £1,000. Similarly, if any person makes a false or misleading statement he/she shall be guilty of an offence on conviction (maximum penalty £5,000).
- 9.5 A PCN can not be served in respect of any suspected breaches of listed building control.

Enforcement Notice

- 9.6 This is the principal form of Notice used to deal with unauthorised development. As in all other forms of action it is subject to the Authority and its legal advisors being satisfied that a breach of planning control has occurred and that there is sufficient and robust evidence to ensure that there is a reasonable prospect of success in pursuing formal action.
- 9.7 Above all, the Authority must be satisfied that it is expedient to serve an Enforcement Notice having regard to the development plan and to any other material considerations.
- 9.8 Such a Notice must specify the time at which it takes effect, what steps must be undertaken to remedy the breach and a time period in which those steps must be undertaken.
- 9.9 An appeal against an Enforcement Notice must be made before the date on which the Notice takes effect (normally within 28 days of service). If an appeal is made, the requirements of the Notice are suspended until the appeal has been decided.
- 9.10 Non compliance with the requirements of an Enforcement Notice is a criminal offence against which the Authority can instigate prosecution proceedings. The maximum fine in the Magistrates Court is £20,000 and is unlimited in the Crown Court. The Authority can also enter the site and carry out the works required by the Notice in default and then seek to recover its costs from the owner/occupier.

Listed Building Enforcement Notice

- 9.11 This is similar to an Enforcement Notice. The Notice may (a) require the building to be brought back to its former state; or (b) if that is not reasonably practicable or desirable, require other works specified in the Notice to alleviate the effects of the unauthorised works; or (c) require the building to be brought into the state it would have been in if the terms of any listed building consent had been observed. The Notice must specify time constraints for securing compliance with the requirements of the Notice.
- 9.12 There is a right of appeal against a Listed Building Enforcement Notice. The procedures are similar to those for an appeal against an Enforcement Notice.
- 9.13 If works subject to a Listed Building Enforcement Notice are later authorised by a retrospective application for Listed Building consent, the Listed Building Enforcement Notice will cease to have any effect although the liability to prosecution for an offence committed before the date of any retrospective consent remains.

Breach of Condition Notice (BCN)

- 9.14 If any conditions imposed on a grant of planning permission or listed building consent have not been complied with, the Authority can serve a BCN to require the recipient to secure compliance with the condition/s.
- 9.15 The BCN will specify the steps which the Authority considers should be taken or the activities which the Authority considers ought to cease, in order to secure compliance with the condition/s specified in the Notice.
- 9.16 There is no right of appeal against a BCN although the Authority's decision to issue a BCN can be challenged in the Court.
- 9.17 If the requirements of the Notice have not been met within the prescribed period, the person responsible is in breach of the Notice and shall be guilty of an offence on conviction (maximum penalty £1000) should the Authority decide to prosecute the matter.

Injunctions

- 9.18 Where the Authority considers it necessary or expedient for any actual or apprehended breach of planning or listed building control to be restrained, it can apply to the Court for an injunction. Such action would normally only be sought if the breach was particularly serious or protracted and was causing, or was likely to cause, exceptional harm to the local environment. Failure to comply with an Injunction may result in imprisonment.

Temporary Stop Notice

- 9.19 Where the Authority considers that an alleged unauthorised activity is likely to cause irreparable harm, then it can issue a Temporary Stop Notice requiring that activity to cease immediately. The Temporary Stop Notice will be valid for 28 days following the date of issue during which time the Authority may serve a formal Stop Notice (see below) and Enforcement Notice. Failure to comply with a Temporary Stop Notice is a criminal offence for which an individual may be prosecuted.

Stop Notice

- 9.20 The Authority can serve a Stop Notice at the same time as an Enforcement Notice where it considers it expedient to take urgent action, in order to bring a particularly offensive activity to stop sooner than an Enforcement Notice.
- 9.21 The exercise of the power to serve a Stop Notice is discretionary, and the fact that it is expedient to issue an Enforcement Notice, will not automatically mean that it will be expedient to serve a Stop Notice. If a Stop Notice is served it will have effect either immediately or within a few days and even if an appeal is made against the accompanying Enforcement Notice, the Stop Notice must be complied with or if not the Authority can prosecute the offender.
- 9.22 As a breach of listed building control is in itself a criminal offence, there is no need or provision for serving a Stop Notice in respect of a breach of listed building control.

Untidy Site Notices

- 9.23 The Authority can serve a Section 215 Notice on the owner/occupier of any land or building which is considered to be in an untidy condition to the extent that it is having an adverse affect on the amenity of a neighbourhood. The Notice requires the person/s on whom the Notice is served to tidy up the site and if not legal proceedings can be taken by the Authority.

Advertisements

- 9.24 Some advertisements may not be displayed without prior approval by the Authority. In such cases, the Authority can prosecute persons responsible for displaying an illegal advertisement or serve a Discontinuance Notice (in cases where an advertisement does not need express consent but where it causes offence to amenity or traffic safety).

10 Why can enforcement action take so long?

- 10.1 Many of the reasons have been explained above but it is often frustrating to complainants that despite contacting the Authority, the activity which is

causing concern still persists. Some of the factors which can result in apparently slow progress include:

- the gathering of satisfactory robust evidence;
- continuing negotiation to try to resolve the matter with the offender without pursuing formal action;
- consideration of an application seeking to remedy the matter; and
- awaiting determination of an appeal against formal Notices.

11 Complaints about the Monitoring and Enforcement Service

11.1 All complaints relating to the Monitoring and Enforcement service will be acknowledged by the Authority within three working days. All complaints will be fully investigated by the Authority and the complainant will receive a written response within 20 working days of receipt of the complaint.

11.2 In the first instance, all Monitoring and Enforcement complaints should be addressed to:

Steve Avery
Head of Development Control
New Forest National Park Authority
South Efford House
Milford Road
Lymington
S041 0JD

11.3 If a complainant remains dissatisfied with the written response from the Head of Development Control, then details will be supplied for pursuing the complaint further through the Authority's officer dealing with complaints in accordance with the Authority's formal corporate complaints procedure. The Authority will always strive to resolve a complaint locally but if this is not possible, then the complainant will be advised on how to pursue the matter further with the Commissioner for Local Administration (the Ombudsman).

12 Freedom of Information

12.1 The Freedom of Information Act 2000 gives a general right of access to information held by public authorities. The Authority holds much information including information relating to pre-application advice, planning applications and appeals. The presumption will always be in favour of disclosure of such information. This is because it is important for the Authority to promote accountability and transparency in the planning process and to allow individuals to understand views expressed and the reasons underlying decisions that have been taken.

- 12.2 However, requests to disclose the identity of a complainant are likely to be resisted on the grounds that to do so would not be in the public interest, as it would discourage others from reporting alleged breaches of planning control to the Authority, thereby prejudicing the proper enforcement of planning laws within the National Park. However, as previously stated at Section 3, each request will be considered individually to establish whether an exemption applies.
- 12.3 Where the Authority does refuse a request to disclose information under the Act, a written explanation will be provided setting out the exemptions relied on by the Authority for withholding the information and the relevant appeal procedures.

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