



New Forest National Park Authority
Local Enforcement Plan
Adopted June 2013



Front cover images:

Main photo; A former unauthorised mobile home on the edge of the open Forest

Bottom left: Compliance monitoring of new buildings

Bottom centre: Unauthorised works to protected trees

Bottom right: Unauthorised earth works

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1 Introduction

2 Relevant legislation

1. Introduction

1.1 This Plan sets out the Authority's policy and procedures for enforcing planning control in the New Forest National Park. It is a guide for those affected by breaches of planning control who may wish to know what steps the Authority can take and the timescale involved in achieving a result.

1.2 The Authority recognises the importance of an effective planning enforcement service within the National Park and has a dedicated Enforcement Team which is responsible for investigating reported breaches of planning control and for monitoring new developments.

1.3 Relevant Government Guidance is found in the National Planning Policy Framework (NPPF) which came into effect in March 2012. With regard to planning enforcement, the relevant section of the NPPF is found in paragraph 207:

'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. Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so'.

2. Relevant legislation

2.1 The Town and Country Planning Act 1990 (as amended) and Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) underpin the planning process and provide almost all of the enforcement powers at a local authority's disposal. With regard to formal action Section 172 of the Act specifies that:

'The local planning authority may issue a Notice...where it appears to them:

a) that there has been a breach of planning control and

b) that it is expedient to issue the Notice, having regard to the provisions of the development plan and to any other material considerations'.

2.2 The Act also enables people who have carried out unauthorised development to apply for 'retrospective planning permission' in an attempt to regularise matters. In dealing with such applications, the Authority must consider them in exactly the same way as any other application, i.e. the fact that the development has already been carried out is not something that can be taken into account in the determination of the application.

3 Guiding principles of planning enforcement



A former unauthorised mobile home on agricultural land

3. Guiding principles of planning enforcement

Expediency

3.1 Planning enforcement remains a discretionary power. In deciding whether it is appropriate to take enforcement action the degree of harm the unauthorised development is causing, or is likely to cause, will be carefully considered.

Harm can arise through a range or combination of factors:

- Adverse impact on visual amenity due to poor design or inappropriate materials
- Inappropriate and conspicuous development that is harmful to the landscape or the setting of a heritage asset
- Failure to comply with a condition of a planning permission leading to an adverse impact
- Danger and disturbance due to significantly increased traffic flows
- Loss of privacy or overshadowing and loss of natural light
- Loss of protected trees or loss or damage to protected buildings (listed buildings) and demolition of buildings in a conservation area
- Development that contravenes the purpose and credibility of adopted national and local planning policies
- Untidy land and run down or derelict buildings that present a very poor quality environment and/or prejudice community safety.

- 3.2 Harm (for planning purposes) however does not include:
- Competition caused to another business
 - Loss of an individual's view or trespass onto their land (including ownership disputes)
 - Loss of value to a property.

Proportionality

- 3.3 Enforcement action should always be proportionate to the seriousness of the harm being caused. It should not be taken solely to 'regularise' development which is otherwise acceptable on its planning merits but for which planning permission has not been sought.

Consistency

- 3.4 We will take a similar approach to cases in order to achieve similar outcomes. This does not imply uniformity but a full consideration of all the circumstances of a case guided by our adopted Core Strategy, supplementary planning documents and village design statements to establish what reasonable and adequate requirements there are to remedy the breach. We will achieve this by:
- Following advice contained within Government guidance on legal procedures, planning policy and good practice
 - Adhering to the planning policies within our adopted Core Strategy and Supplementary Planning Documents in the interests of protecting our Conservation Areas, Listed Buildings as well as other designated land and features
 - Keeping up to date with Government circulars, case law and court judgements/ authorities.

Negotiation

- 3.5 In all but the most serious cases, we will seek to negotiate compliance rather than pursue formal enforcement action, providing that an appropriate resolution can be achieved in a timely manner. The negotiations aim to achieve one or more of the following outcomes:
- To undertake work to comply with the planning permission granted
 - To apply for planning permission for the works undertaken or a variation to the works that are more likely to secure permission (within the timescales as shown in our procedures flow-diagram on page eight)
 - To remove an unauthorised development
 - To cease an unauthorised use.
- 3.6 However, negotiations will not be allowed to hamper or delay whatever formal enforcement action may be required to make the development acceptable in planning terms, or to compel it to stop.

4 Enforcing planning control in the New Forest National Park

4. Enforcing planning control in the New Forest National Park

4.1 The New Forest National Park is a protected landscape and a special environment of national importance. We will not allow unauthorised development to detract from the special qualities of the New Forest and new cases will be prioritised according to the degree of harm caused.

Priority	Examples (not exhaustive)
Urgent: site visit within 24 hours.	This would be for a development causing serious threat to public health and safety, or permanent, serious damage to the natural or built environment.
High priority: site visit within five working days.	This is less urgent but considered harmful with the potential to get worse.
Standard priority: site visit within 15 working days.	This covers the majority of cases, where there is a possible breach but this is unlikely to get worse.
Low priority: site visit when workloads and resources allow (aim within 20 days).	This would be for less serious or immediate cases, such as satellite dishes, adverts, sheds, walls and fences.

- 4.2 We deal with complaints concerning unauthorised development and changes of use. We will investigate anonymous complaints providing they are not considered to be malicious. Breaches of planning control can include:
- Building works carried out without permission (if permission is needed)
 - Planning conditions not being adhered to
 - The change of use of a building or site without planning permission (if permission is needed)
 - The display of advertisements without consent (where they do not benefit from deemed or express consent)
 - The demolition of walls and buildings in conservation areas without consent
 - Trees and hedges that are protected by Tree Preservation Orders (TPOs) which are cut back or cut down as well as those protected in conservation areas. We are responsible for the entire New Forest District when it comes to monitoring and enforcing complaints concerning unauthorised works to trees
 - The carrying out of works in contravention of an Article 4 Direction.

4.3 If we receive a complaint that is not a planning matter (such as car sales on highway land or noise and odour abatement issues) we will either pass the details on to the appropriate authority or advise the complainant whom to contact.

4.4 We also provide a monitoring function to ensure that the conditions applied to planning permissions are adhered to. Furthermore, site visits will also be undertaken to ensure that developments are taking place in accordance with the approved plans.

4.5 In most cases of unauthorised developments and changes of use, a criminal offence has not been committed until formal enforcement action has been taken and the person concerned has failed to comply with the requirements that have been set. However, in the case of advertisements, trees, conservation areas and listed buildings, unauthorised works do constitute an immediate criminal offence which we could pursue through the magistrates court if we consider it expedient to do so.

Minerals and Waste Sites

4.6 We are also responsible for monitoring minerals and waste sites. Monitoring of permitted sites is an essential tool for controlling development and preventing problems from escalating. It is this proactive approach that enables us to anticipate likely breaches of planning control before they occur. A proactive approach can however only be pursued within a structured monitoring regime.

4.7 On 6 April 2006 The Town and Country Planning (Fees for Applications and Deemed Applications) (Amendment) (England) Regulations 2006 came into force. This amendment enables local authorities to charge operators, where sites have planning permissions for mineral extraction and/or waste landfill, for the reimbursement of the average costs of providing the monitoring service. We will therefore charge for our monitoring service in accordance with these regulations.

Common breaches of planning control in the New Forest National Park

4.8 In an average year, the Authority will be asked to investigate some 400 reported cases alleging a breach of planning control.

4.9 There are a particularly high number of incidences concerning the unauthorised residential occupation of mobile homes (and touring caravans). This trend has continued with a high proportion of the Enforcement Team's time and resources being spent on resolving these types of issues. To combat this ongoing problem, we will aim to resolve the issue of unauthorised mobile homes quickly owing to the harm that can arise. In cases where mobile homes and caravans have been stationed on land without planning permission we will proceed to serve an Enforcement Notice unless there is considered to be justification for its retention. If this is considered to be the case, an opportunity will be provided for the submission of a retrospective planning application.

5 How to report a breach of Planning Control

- 4.10 The conversion of incidental or ancillary outbuildings within residential curtilages to independent units of accommodation are also increasingly of concern and warrant a similar approach.
- 4.11 We also investigate a large number of cases relating to unauthorised signage. All local planning authorities have powers to remove or obliterate unauthorised signage and prosecute those who display signs without the benefit of deemed or express consent. We therefore intend to rely on these powers to control unauthorised signage in the interests of public amenity and highway safety.
- 4.12 In cases where an Enforcement Notice has not been complied with, we will proceed to seek either a prosecution in the magistrates court or, if the breach is considered to be flagrant, injunctive action at the High Court. It is necessary to adopt such an approach in the interest of protecting the special qualities of the New Forest and the amenities of local residents. There has been some notable success in pursuing these matters through the courts and we consider such action to be both appropriate and in the public interest. We will proceed with such action even if further planning applications or appeals are lodged.

5. How to report a breach of Planning Control

- 5.1 All suspected breaches of planning control should be reported to the Enforcement Team. We rely upon the help of the public to bring breaches to our attention and provide us with evidence as to when the breach started. The details of the complainant will remain confidential.
- 5.2 Suspected breaches of planning control can be reported via the following:
The Enforcement Team
New Forest National Park Authority
Lymington Town Hall
Avenue Road
Lymington
SO41 9ZG
Phone: 01590 646626
Fax: 01590 646666
Web: newforestnpa.gov.uk/enforcement
- 5.3 The Authority can only use its enforcement powers effectively if there is sufficient evidence available to demonstrate clearly that a breach of planning control has occurred. In reporting a suspected breach, it is therefore very important to provide as much detail as possible including the exact nature of the alleged breach, when it first started (or was first observed) and the harmful impact the development or use is having. Furthermore, the complainant should consider whether they are prepared to provide evidence at a public inquiry or in court to help support and sustain any action that we may take. We will keep the complainant updated as to the progress of an investigation at appropriate stages.

6 Why can enforcement action take so long?

6. Why can enforcement action take so long?

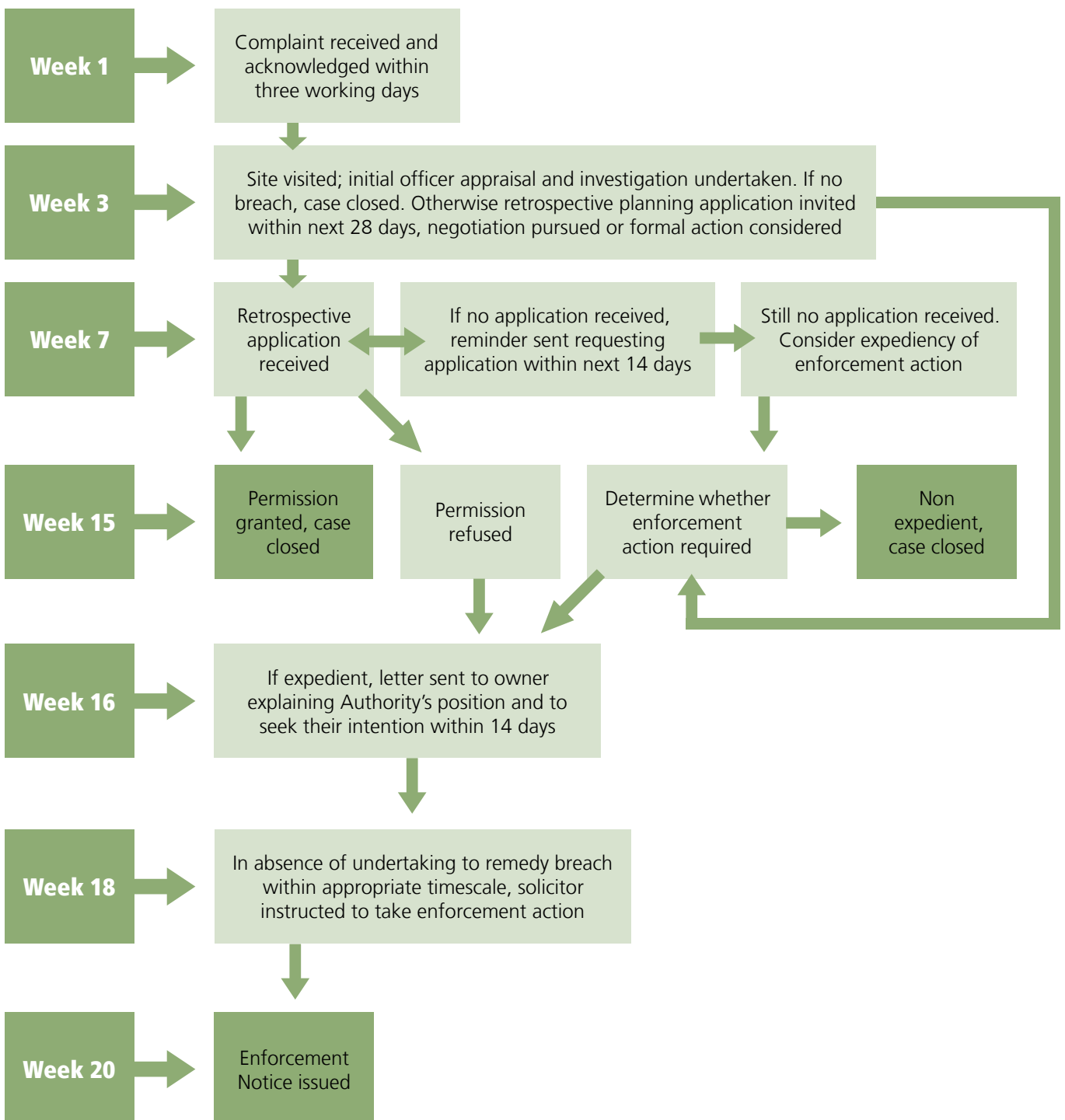
- 6.1 It is acknowledged that it can be frustrating that despite contacting us the activity which is causing concern still persists. Some of the factors which can result in perceived slow progress include:
- The gathering of satisfactory and robust evidence in order to take action
 - Continuing negotiation to try to resolve the matter
 - Consideration of a retrospective planning application seeking to remedy the breach and
 - Awaiting the determination of an appeal against formal Notices.

7 Procedures

7. Procedures

- 7.1 The following flow-diagram represents our standard approach to handling and investigating an alleged breach of planning control. However, each investigation will evolve depending upon the severity of the breach, its scale and the degree of harm (see also the table at paragraph 4.1). We will therefore make specific requests for information or the submission of a planning application within a certain timeframe. When requests are made, we will not enter into protracted or cyclical correspondence in the interests of focussing our resources on resolving the matter. The following flow-diagram is therefore based on a generic case and is intended to give an indication as opposed to a steadfast approach in every instance.
- 7.2 When planning permission has been granted for a revised development (i.e. because an alternative has been negotiated) we will normally expect active steps to have been taken by the owner to implement the permission within 28 days of the date of the consent and to finish the works within an appropriate and timely fashion in order to bring about the final cessation of the breach of planning control.

Procedures flow diagram



8 Concealment

9 Enforcement powers

8. Concealment

- 8.1 The Localism Act (2011) brought into effect concealment provisions on 6 April 2012. These provisions allow the Authority to apply to the magistrates court for a 'Planning Enforcement Order' in cases where it is considered the breach has been concealed and would otherwise have become immune from enforcement action. In cases where we consider that a breach of planning control has been concealed, and it is considered expedient to do so in light of the policies of the Core Strategy, we will proceed to apply for a Planning Enforcement Order following which an Enforcement Notice will be served.

9. 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.
- **Enforcement Notices** can be served on unauthorised development and uses where the development can be remedied by alteration, complete demolition or the ceasing of the unauthorised use. For these Notices there is a right of appeal to the Planning Inspectorate.
 - **Listed Building Enforcement Notices** are served where unauthorised works to listed buildings have taken place and requirements are made to remove those works or improve upon their impact. For these Notices there is a right of appeal to the Planning Inspectorate.
 - **Breach of Condition Notices** are served to require compliance with a condition attached to a planning permission. These Notices are suitable for specific breaches of planning control that need to be corrected within a specified deadline. There is no right of appeal for these Notices.
 - **Stop Notices** would normally be served in cases where the unauthorised development or use is considered to be so harmful that the outcome of the enforcement process could not be waited for. These will be served together with an Enforcement Notice. There is no right of appeal for these Notices.

10 What happens after a Notice is served?

- **Temporary Stop Notices** are served where a harmful unauthorised development or use has occurred and needs to be stopped immediately (for up to 28 days). This allows time for negotiation between us and offending parties. There is no right of appeal for these Notices.
 - **Section 215 Notices** can be served on any interested party where land or buildings have become untidy and are considered by us to adversely affect the amenity of the area. There is a right of appeal to the magistrates court for this Notice.
 - **Planning Contravention Notices** can be served on any known interested party where it is suspected that a breach of planning control has occurred. They contain a number of relevant questions relating to the alleged breach of planning control. Failure to respond within a specified timescale is a criminal offence which can result in a prosecution in the magistrates court.
 - **Section 330 Notices** require information from any occupier of land asking what his interest is in it. Failure to respond within a specified timescale is a criminal offence which can result in a prosecution in the magistrates court.
 - **Section 225 Notices** enable us to issue Notices on any interested parties against unauthorised advertisement displays on buildings and on other surfaces. Subject to these provisions, we will invoice the recipient of any such action in order to recover the costs that have been reasonably incurred in taking the action.
10. What happens after a Notice is served?
- 10.1 The recipient of a Notice will either:
- Comply with the Notice (in which case the matter is then closed)
 - Contest the Notice by way of an Appeal to the Planning Inspectorate or challenge in a Court of Law - where this is appropriate.
- 10.2 Hearing a case on appeal will take time and can often delay proceedings particularly if a Public Inquiry has to be arranged. If the appeal against the Notice does not succeed the formal Notice comes into effect. If the appeal is successful and/or planning permission is granted, then this is normally the end of the matter. If the Notice is upheld or there is no appeal but it is still not complied with, we will then take steps to prosecute the offender in Court.

11 Court and Direct Action

11. Court and Direct Action

- 11.1 Prosecutions will be undertaken by us in incidences such as unauthorised works to listed buildings and protected trees, demolition in conservation areas, the display of advertisements and the failure to comply with the other Notices listed in this plan.
- 11.2 Injunctive Action is used where a breach of planning control is severe, or there is a threat of it becoming severe, and which can be halted by the successful application to the High Court (or County Court) for an Injunction. It will also be used in longstanding cases where the offender has failed to comply with an Enforcement Notice and the harm is ongoing and now needs to be brought to an end. We will always look to recover our costs from the offender when placed in the position of taking such action even if this results in placing a charge on the land to aid future recovery.
- 11.3 Direct Action will be used so we can ensure remedial works are undertaken to secure satisfactory compliance with an Enforcement Notice. In cases such as this it may also be necessary to apply for an Injunction to prohibit parties from entering the land during the period when direct action is taken. We will always look to recover our costs from the offender when placed in the position of taking such action even if this results in placing a charge on the land to aid future recovery.

12 Complaints about our service

12. Complaints about our service

- 12.1 Complaints relating to the service will be acknowledged within three working days. The complaint will be investigated and the complainant will receive a written response within 20 working days of receipt of the complaint.

In the first instance, all complaints should be addressed to:
Paul Hocking
Enforcement Manager
New Forest National Park Authority
Lymington Town Hall
Avenue Road
Lymington
SO41 9ZG
- 12.2 If a complainant remains dissatisfied with the written response then details will be supplied for pursuing the complaint further through our Complaints Officer in accordance with the Authority's formal corporate complaints procedure. We will always strive to resolve a complaint locally but if this is not possible, the complainant will be advised on how to pursue the matter further with the Commissioner for Local Administration (the Ombudsman).



A former unauthorised domestic outbuilding (right) on agricultural land.

Other useful Documents

New Forest National Park Authority Website:
www.newforestnpa.gov.uk

New Forest National Park Authority Core Strategy (2010)

New Forest National Park Authority Supplementary Planning Documents

New Forest National Park Authority Conservation Area Character Appraisals

Village Design Statements

Planning Portal Website:
www.planningportal.gov.uk

National Planning Policy Framework (2012):
www.gov.uk/government/uploads/system/uploads/attachment_data/file/6077/2116950.pdf

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Back cover image: A former unauthorised mobile home and caravan on agricultural land

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www.newforestnpa.gov.uk/enforcement

