



YORKSHIRE DALES NATIONAL PARK AUTHORITY

DRAFT PLANNING ENFORCEMENT POLICY

INTRODUCTION

The Yorkshire Dales National Park is an internationally recognised, protected landscape, with a diverse range of wildlife habitats and a rich cultural heritage. It is also a home and workplace for around 20,000 people, and is visited by over 8 million people a year. The special qualities of the National Park have been recognised by the nation as being worthy of conserving for the benefit of future generations. One of the many ways in which the National Park Authority ensures that this happens is through the operation of its statutory planning function. This comprises three interrelated areas of work; the making of planning policy, the control of development and planning enforcement. Any weakness in one of these will affect the other two, and so prejudice the effective operation of the function as a whole.

Planning enforcement

In order to maintain the integrity of its planning function, the National Park Authority must be ready to take effective enforcement action whenever it is necessary. Respect for the Authority will very quickly be undermined if unauthorised operations or changes of use, which are also unacceptable on their planning merits, are allowed to proceed without any apparent attempt to intervene. The public should rightly be able to expect that harmful activities being undertaken in breach of the planning regulations, whether intentionally or otherwise, are dealt with quickly, effectively and consistently.

The National Park Authority has a wide range of powers that can be used to investigate breaches of planning control, and to take formal enforcement action if a satisfactory outcome cannot be negotiated. For the purposes of this planning enforcement policy these are provided for within the following Acts of Parliament:

- The Town and Country Planning Act 1990;
- The Planning (Listed Buildings and Conservation Areas) Act 1990;
- The Planning Compensation Act 1991;
- The Planning and Compulsory Purchase Act 2004;
- The Cumbria Act 1982; and
- The Caravan Sites and Control of Development Act 1960.

In addition to primary legislation the following Statutory Instruments are also of significance to the operation of the enforcement function:

- Town and Country Planning (Control of Advertisements) Regulations 2007;
- Town and Country Planning (General Permitted Development) Order 1995; and
- Town and Country Planning (Use Classes) Order 1987.

Finally, Government advice and guidance on the enforcement of planning control is contained in the following two documents:

- Circular 10/97: The Enforcement of Planning Control
<http://www.communities.gov.uk/publications/planningandbuilding/circularenforcingplanning>
- Planning Policy Guidance 18: Enforcing Planning Control:
<http://www.communities.gov.uk/publications/planningandbuilding/planningpolicyguidance18>

Any enforcement action that is taken by the National Park Authority has to be proportionate to both the scale of the breach of planning control, and to the level of harm that is being (or could be) caused. However, it must also be born in mind that a breach of planning control is not a criminal offence and that the purpose of planning enforcement is to remedy the harm rather than to punish the perpetrator.

It is always important to remember that planning enforcement is a discretionary power. This means that the National Park Authority has to decide on a case by case basis whether it is in the public interest to take enforcement action. Action does not have to be taken in respect of every identified breach of planning control, and in most instances it would be inappropriate to take formal action against a trivial or technical breach of control which causes no harm to amenity in the locality of the site.

In accordance with the following policy and priorities the National Park Authority will investigate all potential breaches of planning control that come to it's attention and will, in those situations where it is necessary to do so, take appropriate enforcement action to resolve the issue.

THE ENFORCEMENT PROCESS

The National Park Authority's development control and enforcement functions are delivered through the operation of two area planning teams, both of which are based at Yoredale in Bainbridge. One team covers the northern part of the National Park, i.e. Richmondshire and South Lakeland (Cumbria), and the other the south, i.e. Craven, and each contains a **Planning Enforcement Officer**. Investigating potential breaches of planning control is the primary responsibility of these two officers, and they will be the first point of contact in respect of all new concerns that are registered.

What constitutes a breach of planning control?

There are essentially two main ways in which a breach of planning control can occur:

- Either **development**, e.g. building or engineering operations, or material changes to the use of land or buildings, are undertaken without the necessary planning permission; or
- Where permission or consent has been granted the approved plans, or the conditions attached to the approval, are not complied with.

Whilst controlled through a separate legislative regime, for the purposes of this policy, the unauthorised **display of advertisements** also constitutes a breach of planning control.

What is not a breach of planning control?

Certain minor works or activities do not fall within the definition of development, and therefore do not require planning permission. For example, internal works to buildings, or works that do not materially affect their external appearance, or operations undertaken to inspect, repair or renew sewers, pipes or cables are exempt from planning control.

Furthermore, certain types of building works that fall within the meaning of development, are defined as **permitted development**, in respect of which a formal application for planning permission is not required. Extensive permitted development rights are available to householders in order that domestic properties can be altered or extended without the need to seek National Park Authority's permission beforehand.

The **Planning Portal** provides guidance on many common householder projects: <http://www.planningportal.gov.uk/england/genpub/en/1115311947777.html>

The National Park Authority is only responsible for enforcing breaches of planning control, although there is some overlap with controls exercised by other authorities and organisations. The following matters are not, however, under the control of the National Park Authority:

- Matters relating to private rights of access, boundary disputes and overhanging tree branches. These are matters of private law and the advice of a **Solicitor** should be sought;
- Matters relating solely to the emission of noise, smells, dust and other forms of environmental pollution (unless also involving a breach of a planning condition) are dealt with by the **Environmental Health** section of the relevant District Council (either Craven, Richmondshire or South Lakeland);
- Matters relating solely to methods of building construction, dangerous structures and drainage are normally dealt with by the **Building Control** Section of the relevant District Council;
- Queries relating to **Business Rates** or **Council Tax** will be dealt with by the relevant District Council; and

- The **Environment Agency** normally deals with matters relating to the pollution of groundwater or watercourses.

Registering a concern

Enquiries about potential breaches of planning control are received from many sources including individuals, Parish Councils and amenity bodies. Anybody wishing to ask the National Park Authority to investigate works or activities that cause them concern may do so in one of the following ways.

In writing

Letters should be addressed to the **Planning Enforcement Officer** at Yoredale, Bainbridge, Leyburn, North Yorkshire, DL8 3EL

By e-mail

E-mails should have **Planning Enforcement** typed in the subject line and should be sent to planning@yorkshiredales.org.uk

Via the National Park Authority web-site

Concerns can be registered using the following on-line form:

http://www.yorkshiredales.org.uk/index/living/planning_1/planning_applications/enforcement_search/enforcement_report_form.htm

By fax

The National Park Authority's fax number at Yoredale is **01969 652399**.

By telephone

It is helpful, other than in emergency cases, if all concerns can be expressed in writing. Nevertheless, to register a concern by telephone, or to make an appointment to see the one of the Planning Enforcement Officers, the National Park Authority's telephone number is **0300 456 0030**.

However a concern is registered, a name, address (postal or e-mail) and contact telephone number should be provided. This is in order that a response, setting out any action that the National Park Authority has taken, or proposes to take, can be given. Complaints and enquiries should not, if possible, be made anonymously. In all instances the following is the minimum amount of information necessary to enable an effective investigation to be undertaken:

- the name of the person or company undertaking the alleged unauthorised development;
- the address of the building or site (a location plan will usually be helpful);
- details of any relevant planning permission for the development of the land;
- the nature of the alleged breach, when it first occurred, whether it is continuing and the frequency of the activity; and
- details of the particular problems being caused; for example noise, smells or traffic generation.

Anybody who registers a concern with the National Park Authority can expect:

- *the National Park Authority to respect the confidentiality of third parties; and*
- *to receive:*
 - *an acknowledgement of written or e-mail enquiries within five working days of the date of receipt;*
 - *an invitation to comment on any resulting retrospective application for planning permission; and*
 - *notification of the outcome following the closure of the enforcement investigation.*

Enforcement priorities

The National Park Authority receives a significant number of enquiries relating to potential breaches of planning control every year, and these vary considerably in their nature. Common concerns relate to building or engineering operations, changes of use of buildings to commercial uses, unauthorised advertisements and problems associated with equestrian uses and tipping. Clearly all enquiries cannot be given an equal priority. Neither can priorities be determined on the basis of who the complainant, or the developer, is, or on the number or strength of complaints received. The National Park Authority acknowledges that, to a complainant, their concern is of considerable importance however enforcement resources are limited and some matters will cause considerably more harm to the environment, to public safety or to residential amenity than others. The cumulative impact of otherwise less significant matters can also have a considerable overall impact.

The Authority has identified the following three categories of priority and each new investigation will initially be placed into one of these, in order to determine the appropriate course of action, and speed of response.

In this context a reference to a **breach of planning control** includes:

- Development or works without the necessary permission or consent;
- Breaches of conditions attached a planning permission or other consent;
- Breaches of the terms of a Section 106 Agreement;
- Non-compliance with approved drawings and plans; and
- The unauthorised display of advertisements.

PRIORITY 1 (HIGH)

Breaches of planning control of the following specific types:

- The demolition of, or major alteration to, a Listed Building, or the demolition of a building within a Conservation Area;
- Works to trees protected by a Tree Preservation Order, or to trees in a Conservation Area, where trees are likely to be either seriously damaged or removed; or
- Non-compliance with a residential or holiday occupancy restriction, or unauthorised development in conflict with the housing or tourism accommodation policies of the Authority.

Breaches of planning control of the following general types:

- Unauthorised development that may represent a serious danger to members of the public;
- Works being undertaken in contravention of the requirements of an Enforcement Notice, or any continuing breach of planning control where enforcement action has previously been authorised or is currently being considered for action;
- Unauthorised development that may lead to substantial and/or permanent damage to sites of international or national importance, for example Natura 2000 Sites, Sites of Special Scientific Interest or Scheduled Ancient Monuments;
- Unauthorised development normally falling within Priority 2, but where the relevant 4 or 10 year period for immunity from the taking of enforcement action is approaching; or
- Any other matter, including breaches of conditions, causing, or likely to cause, significant harm to natural or cultural heritage or to residential amenity, for example by reason of noise, smell or other forms of environmental pollution.

PRIORITY 2 (MEDIUM)

Breaches of planning control of the following specific types:

- Any breach of either listed building or conservation area control (including breaches of conditions attached to either listed building or conservation area consents) other than those of a minor or technical nature;
- The unauthorised siting and occupation of residential or holiday caravans, or the unauthorised use of land for tented camping;
- Unauthorised development leading to the obstruction of a Public Right of Way;
- The tipping of waste materials, the 'dumping' of scrap vehicles and untidy land;
- The formation or significant alteration of access tracks and hardstandings;
- The siting of mobile snack-bars or the use of premises for the sale of hot food to take-away;
- The use of land or buildings for business/commercial purposes not falling into any of the above categories; or
- The unauthorised display of any advertisement causing significant harm to either amenity or public safety.

Breaches of planning control of the following general type:

- Any other matter having or causing a moderate level of harm to visual or residential amenity, conservation interests or public safety.

PRIORITY 3 (LOW)

Breaches of planning control of the following specific types:

- Disputes between neighbours which relate to householder or similar development, and where there is limited public impact or interest (for example the erection of a fence or the construction of a shed or a greenhouse); or
- The unauthorised display of an advertisement not falling within Priority 2.

Breaches of planning control of the following general types:

- Any breach of planning control falling within Priority 2 which, by reason of the length of time that the investigation had remained unresolved, could be closed. For an investigation to be closed on this basis there should be no significant conflict with the provisions of the development plan such that its closure would undermine the long term implementation of the Authority's policies;
- Any other minor or technical breaches of planning control where limited harm to amenity is caused; or
- Any other alleged breach of planning control not falling into Priority 1 or 2.

Investigation timescales

The initial inspection of the site of a potential enforcement issue will very often be crucial for determining the continuing priority to be afforded to the investigation, and the likely subsequent course of action. The following are the initial response times that the National Park Authority considers to be both appropriate and reasonable in respect of each category of priority. These are maximum response times and, as individual circumstances dictate, some sites may need to be inspected sooner rather than later.

Officers will aim to inspect 80% of sites within the following timescales:

- **PRIORITY 1 (HIGH) 7 working days**
- **PRIORITY 2 (MEDIUM) 14 working days**
- **PRIORITY 3 (LOW) 28 working days**

Immunity from enforcement action

Development carried out without planning permission can become lawful, and therefore immune from the taking of enforcement action, if it remains unchallenged by the Authority for a set period of time. These time periods are:

- Four years from the substantial completion of building or other operations, or for the change of use of any building to a single dwellinghouse; and
- Ten years for all other changes of use, or for a breach of a condition.

If anyone wants to find out whether a breach of planning control has become immune from enforcement action, by virtue of the passage of time, they can apply to the National Park Authority for a **Lawful Development Certificate**. The onus of proof when submitting an application for a Lawful Development Certificate is firmly on the applicant, in most cases it will be the applicant who is best placed to produce information about the land.

There is no statutory requirement for the National Park Authority to notify neighbours, to consult Parish Councils, or to publicise Lawful Development Certificate applications in the press or on site. The relevant test of the submitted evidence in all instances is the **balance of probability**, not the stricter criminal burden of proof beyond reasonable doubt. Furthermore, the applicant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If issued by the National Park Authority, a Lawful Development Certificate will confer lawfulness upon the development that has taken place, at the time when the application was made.

Further information is provided in 'Lawful Development Certificates: A Users Guide' which is available on the Communities and Local Government web-site:

<http://www.communities.gov.uk/publications/planningandbuilding/developmentcertificates>

Expediency and public interest

When taking enforcement action the most important consideration for the National Park Authority will always be whether public amenity or safety, or the existing use of land or buildings meriting protection in the public interest, is unacceptably affected in any way. The cause of good planning is not served by the pursuit of unimportant breaches of control but not to take action, where it is clearly necessary, can be considered to be maladministration. Enforcement action will not be taken solely to resolve planning issues of an essentially private nature where there is limited public impact, for example, disputes between adjacent landowners.

The National Park Authority does not therefore have a 'duty' to take enforcement action in respect of every breach of planning control that it is made aware of. This is made explicit in Section 172 of the Town and Country Planning Act 1990 which states that:

“where it appears to the Local Planning Authority that there has been a breach of planning control, and the Authority consider it expedient to do so having regard to the provisions of the development plan and to any other material considerations, they may issue a notice requiring the breach to be remedied”.

Enforcement action should not therefore be used solely to regularise a situation where no planning permission exists. Neither will action be taken only on the basis of a perceived loss of property value, the loss of a view or potential competition with a similar business.

In considering whether or not to take formal enforcement action the National Park Authority will assess all breaches of planning control against the following criteria:

- *Whether the unauthorised development or works conflict with the relevant policies of the structure or local plan;*
- *The statutory aims of the National Park and the provisions of the National Park Management Plan;*
- *The content of Government advice and guidance contained in Planning Policy Guidance (PPGs) or Planning Policy Statements (PPSs);*
- *The level of harm that is being caused, or could potentially be caused, to the natural or built environment;*
- *The level of harm that is being caused, or could potentially be caused, to visual or residential amenity; and*
- *Whether there are any public safety implications.*

In respect of any minor or technical breach, where no significant harm is caused to public amenity, the power to determine that enforcement action should not be taken has been delegated, by the National Park, to officers. It is anticipated that the majority of those investigations falling into Category 3 (Low) of the priority system will be dealt with in this manner. This power will not, however, be exercised where there has been a significant level of public concern.

Where it determined that enforcement action would not be in the public interest, those individuals or organisations who initially raised their concerns with the National Park Authority will be informed of the decision in writing.

If you are a developer

The planning legislation is complex, sometimes confusing, and often requires careful interpretation. Genuine mistakes do occur. The National Park Authority's planning staff will always be pleased to work with developers, before works begin on site, in order to ensure that planning problems do not arise part way through a development. Carrying out development without the necessary planning permission may have far reaching consequences, and is therefore not something to be undertaken lightly.

Planning conditions

If planning permission has been granted for a development all of the conditions that may be attached to that permission should be read carefully, and full compliance with their requirements must be achieved within the specified time limits. This is especially important with any conditions that require certain aspects of the development to be approved by the National Park Authority before development commences. Failure to comply with conditions of this nature can, in certain circumstances, have the effect of invalidating the planning permission. A further planning application would then be necessary to remedy the situation.

Developers who have been made aware that a breach of planning control has occurred should stop work immediately. This can avoid further, possibly abortive work and expense.

Developers who have breached the planning regulations can expect:

- ***to receive a written explanation of how the regulations have been breached, what action needs to be taken to remedy the situation, and when this must be done by;***
- ***an opportunity to discuss the matter with the National Park Authority before action is taken; unless immediate action is necessary in the interests of public safety or amenity; and***
- ***the right to be advised of the appeal procedures that are available should formal enforcement action be taken.***

Taking enforcement action

Should formal enforcement action be necessary the National Park Authority has a wide range of available powers that can be used. An assessment will be made, in each case, of which power (or mix of powers) is best suited to dealing with any suspected or actual breach of control in order to achieve a satisfactory, lasting and cost-effective remedy. Rapid initiation of enforcement action is often essential to prevent an unauthorised situation becoming well established, and subsequently more difficult to remedy. In considering enforcement action the National Park Authority will always be mindful of the provisions of the Human Rights Act, and will only take action that is proportionate to the degree of harm that is being caused.

Where there may be uncertainty as to whether or not a breach of planning control has actually occurred the National Park Authority will often first serve a **Planning Contravention Notice**. These require details of land ownership and the use of

land to be provided and may also request that developers attend a 'time and place' meeting in order that the facts of the matter can be ascertained.

Breaches of Conditions

Where breaches of planning conditions are identified, the National Park Authority will, if appropriate, serve a **Breach of Condition Notice**. A Breach of Condition notice will specify the steps which the National Park Authority consider ought to be taken, or the activities which ought to cease, to secure compliance with the conditions or conditions specified in the notice. A minimum compliance period of 28 days must be given. There is no right of appeal against the service of a Breach of Condition Notice.

Enforcement Notices

Enforcement Notices can be served in respect of any breach of planning, listed building or conservation area control. Serving an enforcement notice will normally be considered to be a last resort, to be taken where negotiations have failed to resolve a situation. In appropriate cases consideration will be given to other remedial measures such as requesting the submission of retrospective application for planning permission, agreeing that the breach be remedied within a reasonable time-scale or negotiating relocation in respect of certain uses of land or buildings.

The service of an enforcement notice, other than in an emergency, must be authorised by the Authority's Planning Committee. A notice must specify clearly the nature of the breach of planning control, the reasons for serving the notice and the steps to be taken to remedy the situation. A reasonable period of compliance must also be given. There is a right of appeal against an enforcement notice. If an appeal is lodged an enforcement notice does not take effect unless and until the appeal is dismissed by the Planning Inspectorate. Such decisions will often not be made until after a public inquiry has been held.

Stop Notices

In circumstances where the continuation of unauthorised development will cause irreparable damage, or is significantly harmful, the National Park Authority may serve a **Temporary Stop Notice** or a **Stop Notice**. This will require the immediate cessation of the unauthorised operations or use of land or buildings, either for 28 days or permanently. Temporary Stop Notices and Stop Notices can be authorised for service by the Head of Planning, in consultation with the Chairman of the Planning Committee.

Criminal offences

Non-compliance with the requirements of a Planning Contravention Notice, Breach of Condition Notice, Temporary Stop Notice, Stop Notice, or Enforcement Notice that has taken effect, is a criminal offence. In such circumstances the Authority will view any continuing breach of control very seriously and legal proceedings will usually be necessary in order to ensure full compliance.

Injunctions

Whether or not the Authority has exercised, or proposes to exercise, any of the above powers an application for an injunction, to restrain or prevent any actual or apprehended breach of planning control, may be raised in the Courts. This enforcement option may be used to require unauthorised uses to cease, operations which have been carried out to be undone, or can restrain further operational development on a site. Injunctions are an extremely powerful tool and, in certain exceptional circumstances, can provide the most expedient and effective remedy to a breach of planning control. As with Stop Notices and Temporary Stop Notices, the power to seek an injunction, in an emergency, has been delegated to the Head of Planning, in consultation with the Chairman of the Planning Committee.

Direct action

Should an Enforcement Notice not be complied with the National Park Authority has powers to enter land, carry out remedial works and to seek to recover from the developer the costs incurred. These steps are exceptional and the National Park Authority will carefully assess the implications of interference with property against the effects of non compliance in deciding to engage in such action. A **notice of entry** will be served upon the affected landowner prior to the undertaking of direct action. If they cannot be recovered at the time the works are carried out the costs incurred can be registered as a charge on the land in order that they can be recovered at a later date.

Unauthorised Advertisements

The legislation relating to the control of advertisements is separate from that dealing with mainstream planning matters. An **advertisement** is anything employed wholly or partly for the purposes of advertisement, announcement or direction, and the display of an advertisement without the necessary consent is a criminal offence. Should the National Park Authority consider that an unauthorised advertisement is harmful to either amenity or public safety, its removal can be required. The power to secure the removal or obliteration of unauthorised advertisements has been delegated to officers in order that their display can be effectively controlled.

Untidy land

Where the appearance of land or buildings is causing serious harm to the appearance of the National Park, even if no breach of planning control exists, the Authority has the power to remedy the situation. A notice served under these provisions, known as a **Wasteland Notice** (Section 215 of the Town & Country Planning Act 1990), will specify steps for improving the appearance of the land or buildings, and a time period for doing so. If the steps specified in the notice are

not undertaken within the required time period, the National Park Authority may enter the land and carry out works. Failure to comply with the requirements of a wasteland notice is also a criminal offence.

Trees

The National Park Authority can provide for the preservation of important trees through the making a **Tree Preservation Order**. Once made, it is an offence to cut down, uproot, or wilfully destroy a tree, or wilfully damage, top or lop a protected tree in such a manner as to be likely to destroy it. Trees in Conservation Areas are similarly protected. Concerns about works to protected trees, because they are considered to be an irreplaceable asset, will always be afforded the highest priority.

The Freedom of Information Act 2000

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

Requests to disclose the identity of a complainant will however be resisted. Releasing this information would discourage others from reporting alleged breaches of planning control to the National Park Authority, thereby prejudicing the proper enforcement of the planning legislation within the National Park. Where the National Park Authority does refuse a request to disclose information under the Act, a written explanation will be provided setting out the exemptions relied upon for withholding the information, and the relevant appeal procedures.

The Human Rights Act 1998

As of October 2000 the Human Rights Act incorporated provisions from the European Convention on Human Rights into UK law. Article 8 of the Convention states that public authorities may only interfere with someone's private and family life, home and correspondence where they have legal authority to do so, where the interference is necessary in a democratic society for one of the aims stated in the Article. Article 1 of Protocol 1 states that no one can be deprived of their property except where the action is permitted by law and is justifiable in the public interest. However, under the Convention, the Authority must also consider the harm that may be done by a decision not to take enforcement action, where there may be a serious risk of harm. The National Park Authority will always be mindful of weighing up such considerations when a decision is being taken regarding enforcement action, and will only take action that is proportionate to the degree of harm that is being caused.

COMPLAINTS ABOUT POOR SERVICE

The National Park Authority is committed to providing a high standard of service to the public. Sometimes, unfortunately, mistakes will be made. The National Park Authority has an effective procedure for recording and dealing with complaints, details of which can be found in the document **Compliments, Complaints and Comments – A Guide to the Authority’s Procedures** which can be downloaded by clicking the link below:

http://www.yorkshiredales.org.uk/compliments_and_complaints

Alternatively, National Park Authority’s Secretariat Administrative Officer should be contacted by telephone on 01969 652326 or e-mail at secretariat@yorkshiredales.org.uk

The Local Government Ombudsman:

If you are still unhappy you have the right to lodge a complaint with The Local Government Ombudsman (LGO), For advice on making a complaint to the LGO, or to make a complaint over the telephone, please call the LGO Advice Team on 0300 061 0614 or 0845 602 1983. The Advice Team are available Monday to Friday from 8.30am to 5.00pm. Alternatively the LGO’s postal address is:

The Local Government Ombudsman
PO Box 4771
Coventry CV4 0EH

and e-mail address is advice@lgo.org.uk

You will find further information on the role and scope of the Local Government Ombudsman at www.lgo.org.uk