

Date: 29 September 2009

Report: PROPOSED IMPROVEMENTS TO THE OPERATION OF THE NATIONAL PARK AUTHORITY'S PLANNING ENFORCEMENT FUNCTION

Purpose of the report

- 1. To adopt a planning enforcement policy, to agree an amended scheme of officer delegation relative to planning enforcement, and to inform Members of a range of further proposed improvements to the operation of the Authority's planning enforcement function.

Strategic Planning Framework

- 2. The information and recommendation(s) contained in this report are consistent with the Authority's statutory purposes and its approved strategic planning framework:

National Park Management Plan objectives

- L1. Maintain and enhance the quality and distinctive character of the Yorkshire Dales' landscape (as measured through the national 'Countryside Quality Counts' indicator)
- L4. Prevent the introduction of significant new 'detractors' from the landscape:

Corporate Plan objectives

Objective13: Provide a Development Control service that helps to conserve and enhance the special qualities of the National Park, while supporting appropriate opportunities for economic and community development:

- a) minimise environmental harm by regularising 60% of cases within 16 weeks
- c) prevent the introduction of significant new development detractors from the landscape.

Background

- 3. This report, and its attachments, have been prepared following a review of the Authority's enforcement procedures and practises by an independent planning consultant specialising in enforcement matters. He has previous experience of the

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operation of planning enforcement in other National Park Authorities. The review followed on from the Structural Review of Development Control and is intended to improve the efficiency and effectiveness of our enforcement service. The report was deferred from the July meeting of the Authority for discussion with the Member Champion for Planning.

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4. One of the many ways in which the National Park Authority ensures the successful delivery of its aims 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. In order to maintain the integrity of the function, the Authority must be ready to take effective enforcement action whenever it is necessary. Respect for the Authority, and its planning function, can be quickly undermined if unauthorised operations or changes of use, which are 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 planning regulations, whether intentionally or otherwise, are dealt with quickly, effectively and consistently.

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Proposed Planning Enforcement Policy

5. This paper is in 3 parts. Part 1 seeks the approval of the attached Planning Enforcement Policy (**Appendix 1**). Its aim is to place planning enforcement firmly at the heart of the Authority's statutory planning function. It explains the enforcement process, from the receipt of a concern regarding any alleged planning breach, through to taking formal enforcement action. It also establishes a set of clear and deliverable priorities for the investigation of complaints and sets measurable targets for the critical initial inspection of sites.
6. The adoption of the proposed enforcement policy will act as a guide to enforcement priorities and practice, and will serve as a basis for the effective deployment of the full range of enforcement powers. The provision of a statement of planning enforcement policy will also:
- Provide a clear policy basis for the application of the Authority's discretionary powers, particularly in respect of those breaches of planning control where no formal enforcement action is being proposed;
 - Ensure a clear, consistent and fair approach to pursuing breaches of planning control, based upon an assessment of harm;
 - Reinforce enforcement as a mechanism for implementing planning policy, as well as planning law;
 - Provide a clear indication of the National Park Authority's commitment to its planning enforcement function; and

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- Help to deter appeals, and enhance cases for prosecution, on the basis that enforcement action had been taken in accordance with the provisions of an agreed enforcement policy.

Proposed Delegated Powers

7. Part 2 of this report concerns a range of proposed amendments to the scheme of delegation relative to planning enforcement. The main reasons for having a scheme of officer delegation generally are to:

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- Maximise the efficient use of staff resources;
- Maximise the efficient use of Members' time; and
- Minimise unnecessary time delays in responding to applicants, agents, members of the public etc.

8. At the present time, other than in an emergency or in respect of a Breach of Condition Notice, no enforcement action can be taken without the authority of Members. In order for the Authority's planning and enforcement officers to deliver the suggested enforcement policy it is considered essential that they have delegated powers that will enable them to serve, when appropriate, certain types of enforcement notice. Conversely, it is also considered that, where a minor or technical breach of planning control is identified, and no public interest would be served by the taking of enforcement action, officers should be able to determine that enforcement action would not be expedient. At present such a decision can only be taken by Members of the Authority's Planning Committee, following their consideration of a monthly 'closure report'.

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Members should note that it is not proposed that the power to serve Enforcement Notices be delegated to officers.

9. The following paragraph proposes changes to delegated powers relative to planning enforcement. The attached Action Plan sets out an appropriate level of decision making being delegated to the Head or Deputy Head of Planning, the Principal Planning Officers and the Planning Enforcement Officers respectively:

- The Head of Planning (or Deputy in his absence) following consultation with the Solicitor and the Chairman of Planning (or Deputy-Chairman in his absence) to be able to authorise the service of Stop Notices, including Temporary Stop Notices. These powers are rarely used, but when they are needed it is a matter of urgency and are normally authorised by the Chief Executive on that basis. The proposed arrangement formalises this practise by an appropriate mechanism.

It is recommended that delegated powers be given to enable minor or technical breaches of planning control to be written off when judged as inexpedient to pursue in the public interest. The attached Policy provides guidance and criteria for this judgement to be made. An 'example' of a completed inexpediency report is attached as **Appendix 3**. Inexpediency reports would be public documents, and a

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copy would as a matter of course be sent to all those persons who registered the original concern with the National Park Authority.

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- It is also recommended that delegated powers be given to serve S215 (Wasteland) Notices (requiring rubbish, debris etc to be cleared from unsightly sites), S225 (Posters and Placards) Notices, and notices under the provisions of S20 of the Cumbria Act 1982 (Removal of Advertisements).

A further explanation of how each particular type of notice might be used is set out in the attached policy.

All decisions made under the scheme of officer delegation would be reported, for Members' information, to the first available meeting of the Authority's Planning Committee.

10. Other than the above, the authority of the Planning Committee would, as at present, continue to be sought for the following:
 - The service of an enforcement notice (unless served in conjunction with a stop notice in an emergency), a listed building enforcement notice or a conservation area enforcement notice;
 - The taking of direct action in circumstance where the requirements of a previously authorised enforcement notice have not been met, and the harm caused by the breach of planning control is continuing;
 - The commencement of legal proceedings
11. Where the Committee authorises the service of an enforcement notice, it is important to the credibility of the Authority that further action is taken if the developer then commits a criminal act by not complying with it. Therefore, it is intended that all recommendations to Committee for the service of an enforcement notice will be accompanied by a recommendation to prosecute in the event of non-compliance. Prior to any prosecution the Solicitor and the Head of Planning will assess whether there are any material circumstances that suggest it would not be in the public interest to prosecute. Where more than 18 months has passed since the committee resolution to authorise prosecution, members will be advised prior to prosecution then taking place.

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Proposed Enforcement Action Plan

12. Part 3 of this report informs members of a proposed planning enforcement service action plan, which contains a series of recommendations (**Appendix 2**). This action plan is in two parts. The first part contains recommendations relating to the development of a strategy to reduce the current enforcement caseload to a manageable level.
13. At present the Authority has approximately 300 'live' enforcement cases. Basic details of these are currently reported to members of the Planning Committee (for

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information only) on a quarterly basis. Implementation of the strategy has involved the following steps, all of which have been successfully carried out since April:

- The re-prioritisation of the existing enforcement caseload in accordance with the high, medium and low priority categories set out in the proposed enforcement policy;
 - The temporary appointment of a contract planning enforcement officer;
 - The re-allocation of the existing enforcement caseload.
14. The second part of the action plan contains recommendations relating to a number of longer term improvements to the operation of the Authority's planning enforcement function. These cover the matters set out below.

Reporting to the Planning Committee

15. Enforcement matters are currently reported to Members of the Authority's Planning Committee in the following two ways:

- On a monthly basis members receive a report containing the following:
 - A list of investigations requiring Members' authority to close; and
 - A list of investigations closed on the basis that there has been no breach of planning control, or that an identified breach has been regularised.
- On a quarterly basis Members receive a report containing:
 - Information relating to the number of unresolved cases; and
 - A list of the unresolved cases giving details of the age of the investigation, the site and the breach of control, its priority and rank and summary of the previous/current position.

16. Assuming that the scheme of delegation set out in paragraph 9 of this report is agreed, it is considered that in the future enforcement matters should be reported to the Members of the Planning Committee on the following basis:

- On a monthly basis Members would receive a report containing the following information relative to decisions taken under the agreed scheme of delegation, i.e.:
 - A list of cases that have been closed on the basis that enforcement action would not be expedient in the public interest; and
 - Details of all enforcement and other notices served.
- On a quarterly basis, enforcement information relative to:
 - Caseload - including details of the numbers of new cases opened during the previous quarter, cases closed and outstanding investigations; and
 - Enforcement action – with a schedule detailing all outstanding enforcement actions (both delegated or with Committee authority). This schedule would provide information relating to the site and the breach of control, the date that authority to take action was given, the date that action was taken (if it had been), the type of action taken and a status update.

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Roles and responsibilities

17. Members will be aware that the Planning Department has recently been restructured, with the existing development control and enforcement staff being moved into one of two newly created area planning teams, one covering the north of the National Park (Richmondshire and South Lakeland), and one covering the south (Craven). Each team now contains the following officers:
- A Principal Planning Officer/Team Leader;
 - Two Planning Officers;
 - A Planning Enforcement Officer; and
 - A Planning Assistant.
18. In order that these new teams can effectively deliver the Authority's planning enforcement remit it is essential that individual roles and responsibilities with respect to enforcement are clarified. It is proposed that:
- The Principal Planning Officers will have the lead responsibility within their geographical areas, for planning enforcement. They will have delegated authority to deal with some enforcement matters, and to determine, in respect of minor or technical breaches of planning control, whether enforcement action would be expedient. They will also be responsible, within their teams, for guiding and advising other officers who are dealing with enforcement matters, and in order to do so will meet with their team members on a regular basis;
 - The Planning Officers will assume a greater degree of responsibility for enforcement matters relating to either non-compliance with conditions and/or approved plans, particularly in respect of those applications where they were the original case officer;
 - The Planning Enforcement Officers will be the first point of contact in respect of all new concerns that are registered with the National Park Authority, and will have primary responsibility for their investigation and initial assessment.
 - The Planning Assistants will, under the leadership of the Principal Planning Officers, support equally the delivery of both development control and enforcement.

Development monitoring

19. Each year the Authority will determine 650-750 applications for planning permission, listed building consent, advertisement consent etc., and approximately 90% of these will be approved. As applications are processed a considerable amount of time and resources will be spent ensuring the highest standards of development commensurate with the aims of the National park. All of these efforts, however, will be undermined if no checks are made to ensure that the development that is carried out complies fully with the detailed plans that have been approved, or the conditions imposed. It is also clearly beneficial to all parties involved in the development if any departures from the approved scheme can be addressed at an early stage.

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20. In order that an effective system of monitoring can be established a number of key steps will need to be taken. At the present time these need not be discussed in detail but will fall under the following headings:

- The development of computer based systems for recording approvals given by the Authority, and the details of the requirements of any conditions attached to those approvals;
- The implementation of procedures necessary to alert the Authority to the commencement of development; for example the issue of a 'Start Notice' with every decision and/or the receipt of building control commencement and completion data from the three District Councils; and
- Consideration during the six month review of the new team structure of the adequacy of staff resources necessary for the efficient operation of the systems that have been put into place, including administrative and legal support.

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Review of PACS

21. PACS (Planning Application Control System) is the computer system used by the planning department to record details of planning applications and enforcement investigations. PACS should be integral to the production of enforcement statistics, reports and notices however at the present time it is clear that the 'enforcement module' is not being used to its full potential. The action plan prepared for the Authority recommends that a review of the use of the PACS enforcement module is undertaken. This is considered to be integral to the delivery of an improved enforcement function, and is to be regarded as a high priority.

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Conclusion

22. In conclusion, a combination of a high level of workload and prolonged vacancies has left the Authority with a significant backlog of enforcement cases. The Structural Review of the Development Control section has sought to address the staffing issues and will ensure that the work of the Enforcement Officers is closely integrated with that of the Planning Officers in future.

23. In preparing to tackle the backlog, we have reviewed our approach to enforcement work. This review has identified a number of ways in which the efficiency and effectiveness of the Authority's enforcement service can be improved. This includes developing enforcement policy and procedures to provide a clear and consistent basis for determining which cases to pursue and the most appropriate means to use. It also includes a revision to delegated powers to make the most efficient use of the time of both Officers and Members.

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24. An action plan has been prepared to deal with both the immediate problem of the backlog of cases and other measures to improve the efficiency and effectiveness of the service in the future.

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RECOMMENDATION

25. That:
- the planning enforcement policy attached as **Appendix 1** to the report be adopted;
 - the amended scheme of officer delegation contained in **Paragraph 9** of the report be agreed; and
 - the content of the planning enforcement function action plan attached as **Appendix 2** to the report be noted.
 - That the effectiveness of the approved systems and procedures be reviewed within 9 months.

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Peter Watson
Head of Planning

9 September 2009

Background documents:

Planning Policy Guidance 18: Enforcing Planning Control
Circular 10/97: The Enforcement of Planning Control
RTPI Practical Advice Note 6: Enforcement of Planning Control

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