

Broads Authority Local Enforcement Plan

1 Introduction

- 1.1 The purpose of the enforcement of planning control is to ensure that development which takes place has the necessary planning permissions and that where development is permitted, it is built and used in accordance with that planning permission. It is an important part of the planning system and protects our landscape and built environment against damaging change. The enforcement of planning control is important to local communities and stakeholders as it affects the way in which our area is developed and it ensures a level playing field for everyone.
- 1.2 This Local Enforcement Plan explains about the planning enforcement process and how it works in the Broads. It is a guide for those affected by breaches of planning control and sets out what the Broads Authority can do and the timescales for this. It explains how the public, local communities and stakeholders can help the Broads Authority in monitoring against unauthorised development. It also sets out what services the Broads Authority will provide and what service standards the public can expect.
- 1.3 The Government recognises the importance of effective planning enforcement. National policy around planning is set out in the National Planning Policy Framework (2012) and in respect of planning enforcement this says at 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 Planning and the law

- 2.1 The planning system deals with development and development is defined in law as:
- “The carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.” (*s55 of the Town and Country Planning Act 1990)
- 2.2 This is a very wide description and more detail around the interpretation is given in the law. It should be noted that development falls broadly into two types – one of which is physical structures or alterations and the other is a material change in the use of land or buildings.

2.3 A planning breach will have occurred when development has taken place without planning permission, or where it is not in accordance with a planning permission which has been granted. The following are examples of breaches of planning control:

- Building works carried out without planning permission;
- The use of a site or building has changed;
- Conditions on a planning consent have not been complied with;
- Approved development has not been built in accordance with the agreed plans;
- The display of adverts without consent (where they do not benefit from deemed or express consent);
- The demolition of walls and buildings within a Conservation Area without planning permission;
- Internal and external works to Listed Buildings without Listed Building Consent;
- Works undertaken to a tree within a Conservation Area or to a tree protected by a Tree Preservation Order (TPO) without permission;
- Land raising where this is an engineering operation, without planning permission.

2.4 It is important to note that if works are not classed as development in the law then they do not fall within the scope of planning control.

2.5 It is also important to note that the point at which something becomes 'development' is not always straightforward and this is the case particularly where there is a change of use. The law states that development will have occurred when the change is 'material' and 'material' can be broadly defined as being significant or having impacts. The point at which a change becomes 'material' will be a matter of fact and degree and will usually involve an element of judgement.

2.6 The law gives all Local Planning Authorities specific legal powers to deal with breaches of planning control and these include powers of investigation as well as powers to take formal legal action to correct breaches of planning control. These are set out in The Town and Country Planning Act 1990 (as amended) and the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended).

2.7 The law says that a Local Planning Authority must investigate reported or suspected breaches of planning control, but the requirement to take action is discretionary. In deciding what action to take when a planning breach has occurred the Local Planning Authority must exercise its powers carefully and with proportion and there are clear guiding principles around this.

3 Guiding principles of planning enforcement

- 3.1 When a breach of planning control has taken place and the Local Planning Authority is considering what action is appropriate it will need to look carefully at a number of factors.
- 3.2 The first factor is expediency. This may be explained as an assessment of the harm that is being caused by the breach. Harm may arise through a range or combination of factors, for example:
- Adverse impact on visual amenity due to poor design or materials;
 - Adverse impact on neighbouring amenity due to noise, overlooking or loss of privacy;
 - Inappropriate or conspicuous development that has an adverse impact on a protected landscape or Conservation Area;
 - Loss of protected trees.
- 3.3 In considering expediency it is also necessary to take account of the impacts and costs of taking action, which would include the resources required to, as well as what is likely to be achieved.
- 3.4 The more harm that is being caused then the more likely it is that it will be expedient to take enforcement action due to the necessity to stop the harm. Conversely, if there is little harm it may not be expedient to pursue the matter, particularly if the costs are high.
- 3.5 The second factor is one of proportionality and 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.
- 3.6 The third factor is consistency and it is important to take a similar approach to similar cases in order to achieve similar outcomes. This provides consistency for local communities and stakeholders and enables them to understand what to expect from the Broads Authority.
- 3.7 Whilst the law gives a Local Planning Authority strong legal powers to deal with breaches of planning control, in most cases the first choice of approach is to use negotiation to reach a satisfactory resolution in a timely manner. The negotiations would aim to achieve one of the following outcomes:
- To apply for retrospective planning permission if the development is acceptable and would have got planning permission in the first place; or
 - To amend the development so it is acceptable and then apply for retrospective planning permission if the development is capable of being acceptable; or
 - To amend the development so it is in accordance with the approved plans if the amendments are acceptable; or

- To remove the unauthorised development or cease the unauthorised use if the development is unacceptable and incapable of being made acceptable.

3.8 Negotiations will need to proceed in a timely and committed manner and this approach should not be allowed to hamper or delay the resolution of the planning breach.

4 The importance of enforcing planning control in the Broads

4.1 The Broads are a protected landscape and an environment of national importance. They are Britain's finest wetland and include wetlands of international importance, whilst the network of rivers and lakes make it a unique area precious for its rich wildlife and landscapes. The villages and settlements reflect the traditional building styles and material and have a distinctive and valued vernacular. The Broads has the same status as a National Park and the Broads Authority has a legal responsibility for its protection.

4.2 Development is carefully controlled in the Broads, and strong emphasis is placed on investigating and remedying breaches of planning control. This is due to the impact unauthorised development can have on the character and qualities of the area. It also demonstrates our commitment to protection of the Broads.

4.3 Cases are prioritised according to the degree of harm being caused, with highest priority being given to the cases where the harm (or the potential for harm) is highest. The priority classification is as follows:

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| Priority One | Development causing serious threat to public health and safety, or permanent, serious damage to the natural or built environment. This would apply particularly where a breach is affecting an SSSI, the water environment or navigation, a Listed Building, Ancient Monument, tree protected by a Tree Preservation Order or any breach which would damage the character of a Conservation Area. An example might be the unauthorised demolition of a listed building. |
| Priority Two | Development causing threat to public health and safety, or serious damage to the natural or built environment. This is considered harmful, but with the potential to get worse. An example might be the commencement of the construction of an unauthorised and unacceptable extension to a listed building. |
| Priority Three | This covers the majority of cases, where there is a possible breach but the damage is unlikely to be serious and it is unlikely to get worse. An example might be the construction of an unauthorised extension to a non-listed building. |
| Priority Four | This covers less serious or urgent cases. An example might be the construction of an outbuilding. |

- 4.4 Some matters are not breaches of planning control and the Broads Authority does not deal with these. These may include boundary disputes between neighbours, which are a legal issue, or matters around a building's structure or safety, which is covered by Building Regulations. Public nuisances such as light, noise or odour pollution are covered by the Environmental Health Teams at the relevant District Council. Flytipping is usually a matter for the Environment Agency or the relevant District Council.

5 Dealing with planning breaches in the Broads

- 5.1 The Broads Authority has a standard procedure for dealing with enforcement matters. This ensures that breaches are dealt with in a consistent and timely manner proportionate to the potential for harm. Whilst this is a 'standard' approach, the progress of any particular investigation, and the timescales, will vary depending on the nature of the breach, the harm being caused and the actions and response of the landowner or operator. The standard process is explained below

Checking the breach

- 5.2 When a complaint or report of a suspected breach is received, an initial check will be done to ensure that the development which is alleged falls within the legal definition of 'development' (i.e. that it is something which is covered by planning control) and that planning permission has not already been granted. Some types of development are allowed without the need to apply for planning permission (this is called 'permitted development'), so this too will be checked. If the development which is alleged to have taken place is found to be development and it is not permitted development and there is no record of planning permission being granted, the matter will be investigated. The complainant will be notified whether the matter is a planning breach and whether it is being investigated.

Initial investigation and site visit

- 5.3 If the matter is to be investigated a planning officer from the enforcement team will open a case and contact the landowner/operator by letter, advising of the investigation and requesting that they contact the officer within 14 days to arrange a site meeting. It is beneficial to make contact with the landowner/operator prior to the site meeting as it gives the officer an opportunity to ask for further details of the alleged breach and undertake investigations. In the case of a potentially very minor breach, or where there is some doubt as to whether the matter is a planning one, a site visit may be made prior to formal contact.
- 5.4 Whilst we will in most cases try to contact the landowner/operator prior to entering the site, it should be noted that the law gives planning officers of the Broads Authority a right to enter land to investigate a potential breach of planning control. This right extends to any land, including land adjacent to the site of the breach. It is an offence to wilfully obstruct an authorised person acting in the exercise of a right of entry.

Actions after the site visit

- 5.5 Following the site visit or meeting, if it is clear that there is no planning breach, or that the development is permitted development or has planning permission, the case will be closed. If a planning breach is found, there are a number of options as follows, depending on the breach:
- if the development is acceptable and would be likely to get planning permission, the landowner/operator is requested to apply for retrospective planning permission;
 - if the development could be made acceptable and would be likely to get planning permission if amended, the landowner/operator is requested to make the amendments and then apply for retrospective planning permission;
 - If the development is not acceptable and is incapable of being made acceptable, the landowner/operator is requested to remove the unauthorised development or cease the unauthorised use.
- 5.6 The landowner/operator will be given a timescale for each of the above options, and these will vary depending on the scale of the development and the seriousness of the breach. For example, for a serious breach where demonstrable harm is being caused immediate cessation would be required; whilst where a retrospective application is required to remedy a minor change a period of 28 days to submit a planning application would be appropriate.
- 5.7 The approach of the Broads Authority is to seek to negotiate a solution wherever possible. When we ask for information to be submitted or actions to be taken we expect this to be done within the timescale given, or a request for further time to be made promptly with an explanation of the reason for the delay. We will not enter into protracted or cyclical correspondence as this delays resolution and is not the most effective use of our resources.

Submitting a retrospective planning application

- 5.8 In many cases, the unauthorised development which has taken place either is acceptable or can be made acceptable and the Broads Authority will receive and approve a retrospective application. The granting of planning permission will enable the Broads Authority to impose conditions on the development and this is a mechanism for mitigating harm and obtaining benefits, for example additional tree planting. We consider this to be a success as the development is now authorised and harm is controlled.
- 5.9 It should be noted that whilst retrospective applications may be unpopular with local communities, who see the landowner/operator as having 'got away with it', they are allowed in law.
- 5.10 Where a landowner/operator declines to submit a retrospective application the Broads Authority will have to consider the expediency of enforcement action, taking into account the guiding principles of expediency, proportionality and

consistency. This is also the case where the development is unacceptable and is incapable of being made acceptable and the submission of a retrospective application would not be appropriate.

Taking formal enforcement action

- 5.11 Where harm is being caused it is necessary to consider formal enforcement action. The law gives Local Planning Authorities wide ranging powers to deal with breaches of planning control and the main ones which are regularly used are summarised below. A full list and further details are set out at Appendix 2.
- 5.12 The Broads Authority has a published scheme of delegated powers, which identifies the level at which decisions may be made and delegates certain powers to make certain decisions to certain officers of the Authority. This ensures that officers are empowered to make decisions and take appropriate action within the guidelines laid down, and enables members to focus on key strategic and policy issues.
- 5.13 The scheme of delegated powers allows officers to investigate and process enforcement cases, including serving requisitions for information and Breach of Condition Notices. The authority for taking formal enforcement action remains with the Planning Committee, although provision is made for decisions to be taken at officer-level in cases of urgency. The current scheme of delegation (March 2013) is as follows:

[Officers are authorised:]

- (38) To serve Breach of Condition Notices, Planning Contravention Notices and Section 330 Notices.
- (39) In cases of urgency and (subject to consultation (if possible) with the Chair, or in the absence of the Chair the Vice-Chair, of the Planning Committee):
- (i) to serve Building Preservation Notices;
 - (ii) to issue Listed Building Enforcement Notices and Conservation Area Enforcement Notices;
 - (iii) to issue Enforcement Notices, Stop Notices Temporary Stop Notices;
 - (iv) to take enforcement action in respect of unauthorised advertisements.
- 5.14 A planning Enforcement Notice is a formal notice which is used to remedy a breach of planning control. It identifies what the planning breach is, the harm that is being caused and lists what the landowner/operator must do to remedy the breach and gives an identified period for compliance. An Enforcement Notice takes 28 days to come into effect. Failure to comply with an Enforcement Notice is a criminal offence. There is a right of appeal against an Enforcement Notice.

- 5.15 An Enforcement Notice is an appropriate tool for planning breaches where harm is being caused and it is expedient to take formal action. This may be because negotiation (the first course of action) has failed to produce a solution or the landowner/operator is unwilling to amend the unauthorised development to make it acceptable. It may also be because there are no changes which could be made to make the unauthorised development +acceptable and the landowner/operator will not desist voluntarily. An Enforcement Notice is usually effective at achieving compliance.
- 5.16 Where a landowner/operator appeals against an Enforcement Notice, the requirements of the Enforcement Notice are held in abeyance pending the outcome of the appeal. The decision on an appeal will take time and can often delay proceedings particularly if a Public Inquiry has to be arranged. If the appeal does not succeed the Enforcement Notice comes into effect. If the appeal is successful and/ or planning permission is granted, then this is normally the end of the matter.
- 5.17 The Broads Authority serves Enforcement Notices where negotiations have failed to achieve an acceptable resolution within a timely period or where it appears unlikely that resolution can be achieved informally.
- 5.18 Where the breach of planning control relates to non-compliance with a planning condition a Local Authority has the power to serve a Breach of Condition Notice which requires compliance with the relevant condition. Failure to comply with a Breach of Condition Notice is a criminal offence. There is no right of appeal against a Breach of Condition Notice.
- 5.19 The Broads Authority has rarely used Breach of Condition Notices. This is because of the absence of a right of appeal. We consider that in most cases it is appropriate to ensure that the landowner/operator is able to challenge the decision of the Local Planning Authority as this is an important part of the accountability of a public authority. There are circumstances, however, where the use of a Breach of Condition Notice is appropriate, including where a landowner/operator persistently and deliberately breached planning regulations.
- 5.20 The law gives a Local Planning Authority the power to serve a Stop Notice in urgent cases where serious and/or irreversible harm is being caused. A Stop Notice identifies what the planning breach is, the harm that is being caused and requires the landowner/operator to follow the specified steps to cease the development. A Stop Notice takes three days to come into effect. Failure to comply with a Stop Notice is a criminal offence. There is no right of appeal against a Stop Notice.
- 5.21 In order to address the 3 day window before a Stop Notice takes effect, the law gives a Local Planning Authority the power to serve a Temporary Stop Notice which takes immediate effect and persists for 28 days. A Temporary Stop Notice can be served on its own, or with a Stop Notice in which case the combination provide for an immediate and permanent cessation of the

unauthorised development. Failure to comply with a Temporary Stop Notice is a criminal offence. There is no right of appeal against a Temporary Stop Notice.

- 5.22 The Broads Authority uses Stop Notices and Temporary Stop Notices in urgent cases where there is serious and/or irreversible harm being caused to an important interest – which might be amenity, navigation, landscape, ecological interest or a building. When serving a Stop Notices a Local Planning Authority is required to undertake a formal cost/benefit assessment to demonstrate expediency. Stop Notices can be a very effective tool. Temporary Stop Notices are used in urgent cases to support a Stop Notice. A Temporary Stop Notice on its own is also very useful tool to provide an immediate and temporary cessation of an unauthorised activity or operation and allow time to obtain information or evidence on the impact of the planning breach.
- 5.23 The Broads Authority recognises that Enforcement Notices, Breach of Condition Notices, Stop Notices and Temporary Stop Notices are all serious notices and it exercises its power carefully and with proportion in their use. Other than in urgent cases, a report outlining the case and the recommended action will be presented to the Planning Committee for authority to be given prior to the taking of formal action. This is in accordance with the scheme of delegated powers.

Following up formal enforcement action

- 5.24 In the majority of cases where it is necessary to take formal enforcement action, the use of an Enforcement Notice will prompt actions on behalf of the landowner/operator to remedy the planning breach. Unfortunately there are occasions where this does not happen and the Broads Authority needs to pursue the matter further in order to remedy the breach and maintain public confidence in the planning system.
- 5.25 The Broads Authority will prosecute where there has been non-compliance with an Enforcement Notice.
- 5.26 The Broads Authority will consider taking direct action where this appears to offer the only realistic opportunity to secure compliance with planning legislation. The Broads Authority will seek to reclaim the costs of direct action from the landowner/operator and will pursue this through the Magistrates Court if necessary.

6 Preventing breaches of planning control in the Broads

- 6.1 The Broads Authority will proactively monitor development in its area and will check that development is constructed in accordance with the approved plans and planning conditions. We have a regular monitoring schedule and as a minimum will monitor major developments, development which affects listed buildings and all development which has been authorised by Planning Committee. We will monitor at the commencement of the development and

where appropriate at subsequent development stages. We do this by visiting the site, sometime unannounced, to check what is being built is in accordance with the approved plans and planning conditions.

- 6.2 We ask Parish Councils, Building Control teams and other stakeholders to notify us of development which is underway so that we can check this. This information is very important to us.
- 6.3 The public also play a vital role in reporting breaches of planning control and we respond to and investigate all reports or complaints about development.
- 6.4 As breaches in planning control often require a significant amount of evidence gathering, it is always helpful if a complainant provides as much information as possible at the initial contact, including:
- the address of the property or location of the land concerned;
 - the name of the person or company involved;
 - details of the suspected breach with times and dates if relevant;
 - how the breach affects the area or any problems caused by the breach.
- 6.5 We also require contact information in order to process a complaint or report. This is so that we can update you on the progress of the matter. We will treat all complaints or reports of unauthorised development confidentially as far as possible, but we are subject to freedom of information requests and court orders so cannot guarantee complete confidentiality.
- 6.6 We will not deal with complaints or reports of unauthorised development that appear to be solely malicious or based on discrimination.

7 Our service standards and what you can expect from us

- 7.1 Getting involved with planning enforcement can be stressful, whether you are a concerned neighbour or Parish Council, or someone who has undertaken development without planning permission. The Broads Authority will aim to deal with all persons fairly and with politeness, in a timely manner. We will provide the appropriate level of advice and keep local people informed.
- 7.2 If you report a suspected planning breach or make a formal complaint to us we will acknowledge this within three working days. The matter will be investigated and we will update you on the matter within 20 working days of receipt of the complaint. We will continue to update you regularly on the progress of the case until the matter is resolved.
- 7.3 Enforcement matters often take a long time to resolve. This may be due to:
- Continuing negotiation to try to resolve the matter;
 - Consideration of a retrospective planning application seeking to remedy the breach;
 - The gathering of sufficient satisfactory and robust evidence in order to take action;

- Awaiting compliance with the requirements of a formal notice; or
- Awaiting the determination of an appeal against formal Notices.

7.4 We understand that in many cases people who commit a planning breach do so without knowing they have done so. They may have thought that the works were not development, or were covered by permitted development rights. The most effective way of ensuring you avoid a breach in planning control is to check to see if any works you propose requires planning consent. You can check to see if your works requires consent by visiting the Planning Portal at www.planningportal.gov.uk/permission or you can check directly with a Planning Officer at the Broads Authority prior to works being undertaken.

7.5 If you have undertaken works without planning permission we will seek to negotiate with you to find a solution. We will tell you in writing what the planning issue is and confirm our advice, as well as tell you what you need to do. We will expect you to respond promptly and within any given timescales and to engage constructively with us. We will not engage in repetitive or cyclical correspondence as this is not a good use of our resources.

7.6 We would be pleased to receive your feedback, which should be sent to:

Cally Smith
Head of Planning
Broads Authority
Yare House
62-64 Thorpe Road
Norwich
NR1 1RY

APPENDIX 1

The table below gives a brief description of the various enforcement powers available to a Local Planning Authority.

| Enforcement Power | Description |
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| Enforcement Notices | 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 | 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 | 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 | 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. |
| Temporary Stop Notices | 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 | 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 | 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 |

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| | criminal offence which can result in a prosecution in the magistrates court. |
| Section 330 Notices | 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 | 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. |
| Court | 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. |
| Injunctions | 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. |
| Direct Action | 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. |