

Planning Committee

24 June 2022

Agenda item number 8

Amendment to “Scheme of powers delegated to the Chief Executive and other authorised officers” to include planning enforcement matters

Report by Senior Governance Officer

Summary

The need to clarify the position regarding the handling of planning enforcement matters has come to light. Amendments to the “Scheme of powers delegated to the Chief Executive and other authorised officers” and to the Local Enforcement Plan are proposed to address this.

Recommendation

- i. To recommend to the Broads Authority the adoption of the proposed changes to the planning section of the “Scheme of powers delegated to the Chief Executive and other authorised officers”, and
 - ii. to delegate authority to the Director of Strategic Services to make the necessary changes to the Local Enforcement Plan.
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1. Introduction

- 1.1. In 2021 the Broads Authority reviewed its scheme of powers delegated to officers as a [document](#) entitled “Scheme of Powers delegated to Chief Executive and other authorised officers”. This was approved by the Authority on 19 March 2021. The revised scheme has been implemented following its adoption.
- 1.2. The seven principles of public life apply to anyone who works as a public office-holder. This includes people who are elected or appointed to public office, both nationally and locally, and as such applies to councillors and officers. The overarching principles were first set out by Lord Nolan in 1995 in the Government’s First Report on Standards in Public Life. They were reasserted and refined in subsequent reports of the Committee on Standards in Public Life, most recently the Local Government Ethical Standards Report published in 2019. These principles are:
 - Selflessness: holders of public office should act solely in terms of the public interest.

- Integrity: holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
 - Objectivity: holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
 - Accountability: holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
 - Openness: holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.
 - Honesty: holders of public office should be truthful.
 - Leadership: holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.
- 1.3. Section 27 of the Localism Act 2011 (as amended) requires local planning authorities to promote and maintain high standards of conduct and adopt policies which should reflect these principles.

2. Dealing with planning breaches in the Broads

- 2.1. The [Local Enforcement Plan](#) explains the planning enforcement process and how it works in the Broads Authority executive area. It is a guide for those who may be affected by breaches of planning control. The standard process is explained in section 5 of the Local Enforcement Plan.
- 2.2. The standard process includes the following steps:
- Checking the breach
 - Initial investigation and site visit
 - Following the site visit
 - Submitting a retrospective planning application
 - Taking formal enforcement action
- 2.3. In the step “Following the site visit”, there are two scenarios. 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, the process continues.

- 2.4. In other words, officers consider that an investigation is complete when one of the following points has been reached:
1. the investigation identifies that no breach of planning control has occurred or that due to the passage of time that no action can be taken;
 2. an alleged breach of planning has been identified but then resolved by negotiation;
 3. a planning application or other form of application has been submitted and approved following the investigation;
 4. a breach of planning control has been identified, including when an application has been requested but not submitted, and it is not considered expedient to take formal action; or
 5. formal action has been taken through taking enforcement action.
- 2.5. The proposed change for the scheme of delegation applies to point 4 and 5, when a breach of planning control has been identified.
- 2.6. The other situations listed in 2.3 do not apply, as:
- Point 1 and 2 refers to situations where there is no breach of planning. So, there would not be a decision to make about the need to take enforcement action.
 - It is noted that Point 1 covers the situation of an investigation carried out as a result of a malicious or spurious complaint.
 - Point 3 is covered under the current scheme of delegation, as there is no delegation to officers for planning applications where any Authority member or Authority officer is involved in the application.

3. Proposed change in the scheme of delegation

- 3.1. There is a provision in section (37)(ix) of the scheme of delegation, common to many Local Planning Authorities, to require that where any Authority member or Authority officer is involved in a planning application then that application must be determined by the Planning Committee. The purpose of this provision is to ensure transparency and probity of decision-taking.
- 3.2. The term “involved” is already used in the scheme of delegation in section (37)(ix). What is meant by “involved” is somebody with either:
- Disclosable Pecuniary Interests, which include business, trade, profession, contract and wider financial interests such as land, payments, securities, shares etc;
 - If a spouse or civil partner has interests which would be considered Disclosable Pecuniary Interests;
 - A personal interest which is likely to be seen as prejudicing their impartiality or ability to meet the principles of public life.

3.3. It has become apparent that there is no equivalent provision relating to enforcement matters where either a member of the Authority or officer employed by the Authority is involved. More precisely, this applies to cases where a breach of planning control has been identified, when it is considered whether it is expedient to take formal action. This omission could result in there being a perception of favourable treatment being shown, where either a member of the Authority or officer employed by the Authority is involved. There is currently no mechanism by which a third party can assess how any decision was reached, and for this information to be made public.

3.4. A report was presented to the Broads Authority in May 2022 with a proposal to include the following wording in the scheme of delegation:

“The determination of enforcement cases is considered to fall within the delegation scheme and will be undertaken by officers, unless any Authority member (including co-opted members of the Navigation Committee) or Authority officer is involved in the case.”

3.5. At its meeting on 13 May 2022, the Broads Authority requested that the wording above is amended, and that it gets checked that the proposal is legal. The proposed amended wording is included at section 3.7. The check on the proposal being legal is included at section 3.8.

3.6. It is the case that other Local Planning Authorities include such provisions in their scheme of delegations, such as:

3.6.1. At Pembrokeshire Coast National Park, it says that every enforcement case is delegated unless:

- the case relates to a Member of the Authority, or a Member of his /her immediate family or a Member who has left the Authority less than twelve months prior to the commencement of the investigation or
- the case relates to a site in which an officer employed by the Authority has an interest.

3.6.2. At Dartmoor National Park Authority, it says that matters are delegated to officers unless: *“the application or other matter (not being a Lawful Development Certificate) directly concerns the Authority, a Member or Officer of the Authority or any person living in the same household as a Member or Officer of the Authority”*.

3.7. Officers have looked at alternatives for the wording, and the revised proposal is:

“The determination of enforcement cases is considered to fall within the delegation scheme and will be undertaken by officers, unless any Authority member (including co-opted members of the Navigation Committee) or Authority officer is involved in a breach of planning control.”

The amended Scheme of Delegation in track change is available at Appendix 1.

- 3.8. A legal view was sought on amending the scheme of delegation as described in section 3.7. The response from solicitors is that they are “comfortable with the wording proposed, and consider that, as a public body, the Broads Authority should be open and honest regarding decisions and processes”. This captures a position where a member or officer is involved, in the same manner as the way planning applications are dealt with. Members and officers need to be conscious of their roles within the Authority and the perception of the public.

4. Proposed change in the Local Enforcement Plan

- 4.1. To reflect the proposed change in the scheme of delegation, it is proposed to amend the Local Enforcement Plan:

- by replacing the title “Following the site visit” by “Conclusion of the investigation following the site visit”, and
- by adding a new section 5.14, as follows:

“If an Authority member (including co-opted members of the Navigation Committee) or Authority officer is involved in a breach of planning control, the conclusion of the investigation phase will be presented to the Planning Committee.”

- 4.2. The amended Local Enforcement Plan in track change is available at Appendix 2.

5. Risk implications

- 5.1. There is a risk that without this amendment there may be a perception of impropriety and the consequent reputational damage. It is in the public interest for the Broads Authority as a local planning authority to have effective delegation arrangements in place.
- 5.2. The Authority’s Monitoring Officer has been consulted and has no objections to amending the Scheme of Delegation as proposed.

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Date of report: 15 June 2022

[Appendix 1 – Proposed updated Scheme of Powers delegated to officers](#)

[Appendix 2 – Proposed updated Local Enforcement Plan](#)



Scheme of powers delegated to Chief Executive and other authorised officers

March 2021

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1. Introduction

- 1.1 The members of the Broads Authority are responsible for setting and monitoring the strategies, policies and financial guidelines of the Authority, whereas the officers are responsible for its day-to-day operation, and for providing advice to members.
- 1.2 Members have a right to make sure the decisions for which they are statutorily responsible and accountable are implemented by officers in a timely and efficient manner. The purpose of the 'Scheme of powers delegated to Chief Executive and other authorised officers' ('the Scheme') is to make sure that officers have the powers to make decisions and take appropriate action within the guidelines laid down.

2. General powers of all officers

- 2.1 The exercise of the delegated powers set out in the Scheme are subject to the following conditions.
 - a. The delegated powers shall at all times be exercised in accordance with:
 - (i) the statutory requirements of the Norfolk and Suffolk Broads Act 1988 and the Broads Authority Act 2009.
 - (ii) the Authority's strategies, policies and priorities as set out in the Broads Plan, guiding strategies, Broads Local Plan, Annual Business Plan and other relevant documents adopted by the Authority or its committees.
 - (iii) the Authority's Constitution, Standing Orders, Financial Regulations and approved budgets.
 - (iv) the law.
 - b. An officer shall not use a delegated power in any particular case if the matter appears to that officer to involve any matters of public controversy, questions of policy not yet decided by the Authority or its committees, or a significant change from established practice.
 - c. Where any matter involves considerations not within the professional or technical competence of the relevant officer, that officer shall seek appropriate advice from another officer or adviser before deciding what action, if any, to take.
 - d. Any power conferred upon the Chief Executive, including any power to act as the Proper Officer, may be exercised by another officer specifically nominated in writing by the Chief Executive. Details of the officers who have existing authorisation to exercise powers on behalf of the Chief Executive are set out in Section 4.
 - e. The Authority or a committee may request that action taken by an officer or officers under delegated powers be reported to it periodically.

- f. Failure to carry out the consultations in Table 2(a)(5) and Table 2(a) (47) of the powers delegated to the Chief Executive and paragraph (5.7) of the powers delegated to the Solicitor to the Authority (relating to cases of urgency or emergency) will not invalidate the exercise of the delegated power.
- g. The decision of the Chief Executive, in consultation with the Monitoring Officer, as to the scope and interpretation of these delegated powers shall be final.
- h. In accordance with the Openness of Local Government Bodies Regulations 2014, a decision-making officer must produce a written record¹ for any decision taken that has been delegated to them:
 - i. under a specific express authorisation, or
 - ii. under a general authorisation to officers to take such decisions and the effect of the decision is to:
 - grant a permission or licence;
 - affect the rights of an individual; or
 - award a contract or incur expenditure over £25,000.

The written record must be produced as soon as reasonably practicable after the decision-making officer has made the decision, and must contain the following information:

- iii. The date the decision was taken;
- iv. A record of the decision taken, along with the reasons for the decision;
- v. Details of alternative options, if any, considered and rejected; and
- vi. Where the decision is made under specific express authorisation, the name of any member of the Authority who has declared a conflict of interest in relation to the decision.

If there is a separate statutory requirement to record the decision, which includes the date and reasons for the decision, then this will be sufficient to satisfy the above requirement.

3. Proper Officers

- 3.1 The law makes provision for certain officers to be designated as the Proper Officer to carry out particular functions contained within various Acts of Parliament. The Authority's Proper Officer provisions are in Table 1(a) to (c).

¹ [Transparency \(broads-authority.gov.uk\)](https://transparency.broads-authority.gov.uk)

3.2 If the designated Proper Officer, not being the Chief Executive, is not available to exercise the function, then any officer authorised in writing by the Chief Executive will be entitled to do so.

Table 1

Proper Officer provisions

1(a) The Norfolk and Suffolk Broads Act 1988

Legislation	Provision	Proper Officer
Schedule 1, paragraph 2 (6)	Receipt of notice of resignation.	Chief Executive
Schedule 1, paragraph 2 (9)	Publication of notice of any appointment to the Authority, or ending of such an appointment.	Chief Executive
Schedule 1, paragraph 4 (4)	Signature of summons to attend meeting.	Chief Executive
Schedule 1, paragraph 4 (5)	Receipt of notices regarding address to which summons to meetings to be sent.	Chief Executive
Schedule 1, paragraph 5 (11)	Convening of meeting where a casual vacancy in the office of Chair or Vice-Chair is to be filled.	Chief Executive
Schedule 4, paragraph 2 (3)	Receipt of notice of resignation from the Navigation Committee.	Chief Executive
Schedule 4, paragraph 2 (4)	Publication of notice of appointments to the Navigation Committee, and of the ending of any such appointment.	Chief Executive
Schedule 5, paragraph 13 (8)	Receipt of objections to proposals to close parts of waterways for nature conservation purposes.	Chief Executive

1(b) Local Government Act 1972

Legislation	Provision	Proper Officer
Section 100 B (2)	Circulation of reports and agendas and the exclusion of 'exempt' items.	Chief Executive

Legislation	Provision	Proper Officer
Section 100 B (7) (c)	Decisions on supply of committee papers (and any other documents supplied to members in connection with the agenda items) to the press.	Chief Executive
Section 100 C (2)	Summaries of otherwise 'exempt' minutes.	Chief Executive
Section 100 D (1) (a)	Compilation of list of background papers.	The officer or advisor in whose name the report is designated.
Section 100 D (5) (a)	Identification of background papers.	The officer or advisor in whose name the report is designated.
Section 100 F (2)	Identification of exempt information not available to all members.	Chief Executive
Section 115 (2)	Receipt of money due from officers in connection with their office.	Chief Financial Officer
Section 225 (1)	Deposit of documents.	Chief Executive
Section 229 (5)	Certification of photographic copies of documents (relating to legal proceedings).	Chief Executive
Section 234	Signature of any notice, order or other document given, made or issued by the Authority.	The officer responsible for the exercise of the function which is the subject of the decision in question (if no such person, then the Chief Executive)
Sections 236 and 238	Certification of byelaws.	Chief Executive

1(c) Other legislation

Legislation	Provision	Proper Officer
Listed Buildings Act 1990, Section 2	Receipt on deposit of lists of buildings of special architectural or historical interest.	Chief Executive
Local Government Act 1974, Section 30 (5)	Giving notice of reports received by the Authority from the Local Ombudsman.	Chief Executive
Local Government (Miscellaneous Provisions) Act 1976, Section 41	Certifying copies of resolutions, orders, reports and minutes of the Authority.	Chief Executive
Localism Act 2011, Section 33	Granting dispensations from Section 31(4)	Monitoring Officer

4. Powers delegated to Chief Executive and other authorised officers

4.1 The exercise of any of the delegated powers specified in Table 2 (a) to (j) below is subject to the conditions set out in this Scheme. Where the Scheme allows for the exercise of powers by Directors, such power relates only to functions for which the particular Director is responsible. In all cases, the Chief Executive retains the power to perform the delegated powers.

Table 2

Powers delegated to Chief Executive and other authorised officers

2(a) General management and administration

Powers delegated to Chief Executive	Other authorised officers
(1) To act as the Head of Paid Service under Section 4 of the Local Government and Housing Act 1989.	Retained by Chief Executive
(2) To undertake the day-to-day management and control of the Authority, its officers, premises and services to give effect to the strategies, policies and priorities of the Authority as set out in the documents listed at (2.1)(a)(ii) of this Scheme.	Retained by Chief Executive

Powers delegated to Chief Executive	Other authorised officers
(3) To authorise any action necessary to implement the documents listed at (2.1)(a)(ii) , and for this purpose to incur expenditure not exceeding the limits provided for in Standing Orders and Financial Regulations.	Directors
(4) To authorise any action necessary to give effect to any decision of the Authority or its committees.	Directors or Chief Financial Officer
(5) In cases of urgency or emergency, to take any appropriate action (if possible, in consultation with the Chair, or in the absence of the Chair with the Vice-Chair), including the institution of legal proceedings, to protect the position of the Authority. In such cases, the Chief Executive will report any action taken to the Authority.	Directors or Chief Financial Officer
(6) To take appropriate action to preserve the Authority's position pending the scrutiny by the Authority of local and personal Parliamentary Bills, statutory orders and instruments or any other proposal, plan, scheme or other matter affecting the interests of the Broads.	Directors or Chief Financial Officer
(7) To make sure all expenditure is monitored regularly against approved budgets, and any significant over expenditures are reported to the Authority or any appropriate committee.	Chief Financial Officer

2(b) Finance and audit matters

Powers delegated to Chief Executive	Other authorised officers
(8) To be responsible for regulating and controlling the Authority's financial resources to achieve its objectives.	Retained by Chief Executive
(9) To transfer expenditure between budget heads, provided the action taken complies with Financial Regulations, is consistent with the Authority's policy	Directors, in consultation with Chief Financial Officer

Powers delegated to Chief Executive	Other authorised officers
and does not conflict with any decisions taken by the Authority or any of its committees.	
(10) To manage the Authority's insurances.	Chief Financial Officer
(11) To make sure arrangements are in place to pay all sums to creditors.	Chief Financial Officer
(12) To approve the Selective Tendering standing list of contractors to be invited to submit tenders.	Directors and Chief Financial Officer

2(c) Personnel matters

Powers delegated to Chief Executive	Other authorised officers
(13) To determine the Authority's staffing requirements and organisational structure, including amendments to its staff establishment.	Retained by Chief Executive
(14) To determine matters relating to the remuneration and conditions of service of all employees in accordance with the national conditions of service and the Authority's Scheme of Local Conditions of Service.	Management Team – in agreement between Directors and Chief Financial Officer
(15) To adopt local agreements in respect of conditions of service where there are no unresolved objections from trade unions or members of staff.	Management Team – in agreement between Directors and Chief Financial Officer
(16) (a) To appoint staff, subject to such appointments being made in accordance with the Business Plan and subject to sufficient funding being available in the appropriate budget. (b) If the appointment is to a Director position, to consult with the Chair of the Authority and any other appropriate committee chair.	In respect of (a), Directors in consultation with Head of Human Resources In respect of (b), retained by Chief Executive

Powers delegated to Chief Executive	Other authorised officers
(17) To determine politically restricted posts in accordance with the provisions of the Local Government and Housing Act 1989 s2.	Management Team – in agreement between Directors and Chief Financial Officer
(18) To appoint the Broads navigation officer and any deputy (after consultation with the Navigation Committee) in accordance with s10(7) of the Norfolk and Suffolk Broads Act 1988.	Retained by Chief Executive
(19) To determine matters concerned with employee relations generally within the Authority, including the recognition of appropriate trade unions and the establishment of appropriate consultative and negotiating processes.	Management Team – in agreement between Directors and Chief Financial Officer
(20) To determine health and safety matters.	Director of Operations
(21) To determine all matters relating to the employment and management of Authority officers, including but not limited to those relating to appointment (in accordance with C (16) above), and terms and conditions of employment, discipline and dismissal, in accordance with the Authority’s policies and procedures.	Directors or Chief Financial Officer or Head of Human Resources
(22) In disciplinary cases involving officers, to convene an Appeals Panel to hear and determine appeals in relation to disciplinary, grievance and other personnel-related matters.	Directors or Chief Financial Officer or Monitoring Officer
(23) In disciplinary cases involving a Director, to be the Chair of the disciplinary hearing, and to establish a Member Appeals Panel of three members.	Monitoring Officer and Head of Human Resources
(24) To extend an employee’s period of sick leave on full pay or half pay for a period not exceeding twelve months.	Management Team – in agreement between Directors and Chief Financial Officer

Powers delegated to Chief Executive	Other authorised officers
(25) To reimburse the costs of damage to an employee's personal property up to a maximum of £5,000 in any one case, provided the Chief Executive is satisfied that the damage was caused as a result of the employee pursuing Authority business.	Chief Executive, in consultation with the Head of HR and Directors
(26) To authorise the payment of any ex-gratia payments or honoraria to an employee up to a maximum of £5,000.	Chief Executive, in consultation with the Head of HR and Directors
(27) To authorise the payment of any severance or settlement payments to a former employee up to a maximum of £5,000.	Management Team – in agreement between Directors and Chief Financial Officer
(28) To exercise the discretions as set out in paragraphs 3 (where there are no financial implications for the Authority), 6, 7, 10 and 11 of the Authority's Local Pension Scheme Policy Statement.	Management Team – in agreement between Directors and Chief Financial Officer, in consultation with Head of Human Resources

2(d) Land

Powers delegated to Chief Executive	Other authorised officers
(29) To approve the acquisition by the Authority of: <ul style="list-style-type: none"> (i) the leasehold interest in property for any term to an annual rent not exceeding £25,000; (ii) the freehold interest in property at a price not exceeding £75,000. 	Management Team – in agreement between Directors and Chief Financial Officer
(30) To approve increases in rent not exceeding £20,000 per annum.	Management Team – in agreement between Directors and Chief Financial Officer

Powers delegated to Chief Executive	Other authorised officers
(31) To enter into permissive path agreements and access agreements.	Head of Construction, Maintenance & Ecology
(32) After taking appropriate advice, to authorise and approve the granting, securing or variation of leases or licences, wayleaves, easements and highway dedications over the Authority's land.	Management Team – in agreement between Directors and Chief Financial Officer
(33) To give written notice proposing to seek permission for Authority development or the development of land vested in the Authority which it does not propose to carry out itself, in accordance with the Town and Country Planning General Regulations 1992.	Director of Strategic Services or Head of Planning
(34) To authorise named officers to enter land (including buildings) for the purpose of surveying, investigation, prosecution or enforcement in connection with any of the Authority's functions.	Directors
(35) To authorise the disposal of land and property to a maximum value of £25,000, in accordance with advice from the Authority's Property Advisers.	Management Team – in agreement between Directors and Chief Financial Officer
(36) To authorise maintenance works on Authority owned, leased or rented land up to a ceiling figure of £10,000 or within any budget provision made for such works (whichever is higher).	Directors

2(e) Planning and heritage

Note: Where reference is made to ‘Planning Team’, it includes the following roles: Planning Policy Officer, Senior Planning Officer, Planning Officer, Planning Assistant, Historic Environment Manager, Planning Officer (Heritage), Planning Officer (Compliance and Implementation), and Planning administration team.

Powers delegated to Chief Executive	Other authorised officers
<p>(37) All planning applications² are considered to fall within the delegation scheme and will be determined by officers, unless:</p> <ul style="list-style-type: none"> (i) it is for a major development as defined in the Town and Country Planning (Development Management Procedure) (England) Order 2015; (ii) the application represents a departure from the development plan policies, including the Broads Local Plan and any relevant policy adopted by the Authority, and it is proposed to grant planning permission; (iii) objections are received from any statutory consultee (excluding parish councils) in respect of any proposed development within the 21-day period for consultation, and it is proposed to grant planning permission; (iv) representations are received in writing from parish councils in respect of any proposed development within the 21-day period for consultation where these raise material planning considerations of significant weight; (v) representations are received in writing from other persons in respect of any proposed development within the 21-day period for consultation where these raise material planning considerations of significant weight; 	<p>Director of Strategic Services or Head of Planning or Senior Planning Officer</p>

² The applications and notification shall include planning permission, approval of reserved matters, advertisement consent, listed building consent, conservation area consent submitted under the Town and Country Planning (General Permitted Development) Order 1995 and consent under the Hazardous Substances regulations. ©

Powers delegated to Chief Executive	Other authorised officers
<p>(vi) any member of the Authority requests, within 21 days of receipt of the schedule of planning applications, that the application is placed before the Planning Committee for a decision, and provides appropriate planning reasons in writing;</p> <p>(vii) the Ward member of the relevant District Council requests, within 21 days of receipt of the schedule of planning applications, that the application is placed before the Planning Committee for a decision, and provides appropriate planning reasons in writing;</p> <p>(viii) the Director of Strategic Services considers the matter ought more appropriately to be referred to the Planning Committee for a decision;</p> <p>(ix) any Authority member (including co-opted members of the Navigation Committee) or Authority officer is involved³ in the application.</p>	
<p>(38) In respect of planning applications:</p> <p>(i) to sign and issue the formal decision notices on planning matters that have been before the Planning Committee or determined under delegated powers;</p> <p>(ii) to impose detailed conditions on planning permissions granted by the Authority (including deemed permissions);</p> <p>(iii) to determine the appropriate grounds where permission is either refused or approved;</p> <p>(iv) to refuse a planning application, if within six months of any decision to enter into a Section 106</p>	<p>Director of Strategic Services or Head of Planning or Senior Planning Officer</p>

³ Involvement in this context means somebody with either: Disclosable Pecuniary Interests, which include business, trade, profession, contract and wider financial interests such as land, payments, securities, shares etc; If a spouse or civil partner has interests which would be considered Disclosable Pecuniary Interests; A personal interest which is likely to be seen as prejudicing their impartiality or ability to meet the principles of public life.

Powers delegated to Chief Executive	Other authorised officers
<p>Agreement by Committee that Agreement has not been signed;</p> <p>(v) to settle the terms of Section 106 Agreements required in connection with planning applications, including amendments to existing Section 106 agreements.</p>	
<p>(39) To approve details submitted in accordance with a condition of a planning consent.</p>	<p>Director of Strategic Services or Head of Planning or Senior Planning Officer</p>
<p>(40) To determine reasons for decisions.</p>	<p>Director of Strategic Services or Head of Planning or Senior Planning Officer</p>
<p>(41) To formally discharge planning conditions upon compliance.</p>	<p>Director of Strategic Services or Head of Planning or Senior Planning Officer</p>
<p>(42) In respect of non-material amendments to planning applications:</p> <p>(i) to define in individual cases what constitutes a non-material amendment; and</p> <p>(ii) to determine applications for non-material amendments except in cases that fall within paragraph 37 (ix) of this scheme.</p>	<p>In respect of (i), Head of Planning or member of Planning Team</p> <p>In respect of (ii), Director of Strategic Services or Head of Planning or Senior Planning Officer</p>
<p>(43) In respect of Prior Approval applications, to exercise the power available to the Authority with regard to the siting, design and external appearance and all other matters.</p>	<p>Director of Strategic Services or Head of Planning or Senior Planning Officer</p>
<p>(44) To determine which planning applications should be referred to the Navigation Committee for consultation, in accordance with Section 9 (6) (a) (iv) of the Norfolk and Suffolk Broads Act 1988.</p>	<p>Director of Strategic Services or Head of Planning or Senior Planning Officer</p>

Powers delegated to Chief Executive	Other authorised officers
<p>(45) In respect of applications for a Lawful Development Certificate (Existing or Proposed):</p> <p>(i) to consider and determine the application on the facts presented, subject to consultation with the Authority’s solicitor in complex cases or where the evidence is not clear; and</p> <p>(ii) to sign and issue the formal decision.</p>	<p>Director of Strategic Services or Head of Planning or Senior Planning Officer</p>
<p><u>(46) The determination of enforcement cases is considered to fall within the delegation scheme and will be undertaken by officers, unless any Authority member (including co-opted members of the Navigation Committee) or Authority officer is involved⁴ in a breach of planning control.</u></p>	<p><u>Director of Strategic Services or Head of Planning or Senior Planning Officer</u></p>
<p>(46)(47) _____ To serve Breach of Condition Notices, Planning Contravention Notices, Section 330 Notices and Section 215 Notices.</p>	<p>Director of Strategic Services or Head of Planning or Planning Officer (Compliance and Implementation)</p>
<p>(47)(48) _____ 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:</p> <p>(i) to serve Building Preservation Notices;</p> <p>(ii) to issue Listed Building Enforcement Notices and Conservation Area Enforcement Notices;</p> <p>(iii) to issue Enforcement Notices, Stop Notices and Temporary Stop Notices;</p>	<p>Director of Strategic Services, or:</p> <p>in respect of (i) and (ii), Historic Environment Manager or Head of Planning;</p> <p>in respect of (iii) and (iv), Head of Planning</p>

⁴ Involvement in this context means somebody with either: Disclosable Pecuniary Interests, which include business, trade, profession, contract and wider financial interests such as land, payments, securities, shares etc; If a spouse or civil partner has interests which would be considered Disclosable Pecuniary Interests; A personal interest which is likely to be seen as prejudicing their impartiality or ability to meet the principles of public life.

Powers delegated to Chief Executive	Other authorised officers
(iv) to take enforcement action in respect of unauthorised advertisements.	
<p>(48)<u>(49)</u> In respect of Conservation Areas:</p> <ul style="list-style-type: none"> (i) to agree the scope of a Conservation Area reappraisal (existing) or appraisal (new) with the relevant District Council; (ii) to undertake an assessment of an existing Conservation Area and prepare a draft reappraisal for consultation; and (iii) to identify areas suitable for Conservation Area designation and prepare a draft appraisal for consultation. 	Director of Strategic Services or Head of Planning or Historic Environment Manager
<p>(49)<u>(50)</u> In respect of Tree Preservation Orders:</p> <ul style="list-style-type: none"> (i) to make and serve Tree Preservation Orders; (ii) to confirm Tree Preservation Orders where no objection in writing to the provisional Order has been received. 	Director of Strategic Services or Head of Planning or Historic Environment Manager
<p>(50)<u>(51)</u> To deal with applications to lop, top and fell trees in Conservation Areas; and</p> <p>To determine applications to lop, top or fell trees within Tree Preservation Orders or Groups.</p>	Director of Strategic Services or Head of Planning or Historic Environment Manager
<p>(51)<u>(52)</u> To implement the Hedgerow Regulations 1997 in authorising rights of entry, administrative consultation arrangements and the use of outside assistance.</p>	Director of Strategic Services or Head of Planning or Historic Environment Manager
<p>(52)<u>(53)</u> To comment on non-controversial felling licence applications and broadleaved woodland grant schemes.</p>	Director of Strategic Services or Head of Planning or Historic Environment Manager
<p>(53)<u>(54)</u> To respond to consultations from the Forestry Commission on applications for grants and</p>	Director of Strategic Services or

Powers delegated to Chief Executive	Other authorised officers
Forestry Grant Schemes in relation to areas up to 10 hectares.	Head of Planning or Historic Environment Manager
(54) (55) To give observations in respect of development by other authorities, government departments and statutory undertakers, subject to consideration by the Planning Committee of those applications that have serious implications for the Broads.	Director of Strategic Services or Head of Planning or Senior Planning Officer or Historic Environment Manager
(55) (56) To submit observations on environmental issues and to lodge holding objections in respect of applications for Goods Vehicle Operators Licences.	Director of Strategic Services or Historic Environment Manager or Head of Planning
(56) (57) To reply to consultation on certified sites for camping and caravanning and for caravan and tent rally sites.	Director of Strategic Services or Head of Planning or member of Planning Team
(57) (58) To determine whether an environmental impact assessment is required, and to agree the scope of any environmental statement under the Environmental Impact Regulations 2017.	Director of Strategic Services or Head of Planning or Senior Planning Officer
(58) (59) To determine whether applications are likely to have a significant effect on a European Site, following consultation with Natural England, under the terms of the Conservation (Natural Habitats Etc) Regulations 1994.	Director of Strategic Services or Head of Planning, in consultation with Environment Policy Adviser
(59) (60) To respond to consultations on planning applications in respect of land outside the Authority's Executive Area, subject to consideration by the Planning Committee of those applications that have serious implications for the Broads.	Director of Strategic Services or Head of Planning or Senior Planning Officer
(60) (61) In respect of applications that are located across the boundary of the Authority's area and partly in the area of the adjacent LPA:	Head of Planning or member of Planning Team

Powers delegated to Chief Executive	Other authorised officers
<ul style="list-style-type: none"> (i) to consider and decide whether the application should be dealt with by one or both LPAs; and (ii) to delegate to the adjacent LPA where appropriate; or (iii) to determine the applications on behalf of both LPAs. 	
<p>(61)(62) To fulfil the Authority's role as a Competent Authority with regard to consideration of development proposals affecting Special Protection Areas and Special Areas of Conservation in the Broads, including the determination of Appropriate Assessments.</p>	<p>Director of Strategic Services or Head of Planning, in consultation with Environment Policy Adviser</p>
<p>(62)(63) To make recommendations to Historic England on buildings worthy of inclusion on the national list of buildings of historical or special interest.</p>	<p>Director of Strategic Services or Head of Planning or Historic Environment Manager</p>
<p>(63)(64) To respond to consultations on planning policy documents in respect of land outside the Authority's Executive Area, subject to consideration by the Planning Committee of those documents that have serious implications for the Broads.</p>	<p>Director of Strategic Services or Head of Planning or Planning Policy Officer</p>

2(f) Recreation and tourism

Powers delegated to Chief Executive	Other authorised officers
<p>(64)(65) To exercise the powers and duties of the Authority in accordance with the overall policy determined by the Authority in relation to the following matters:</p> <ul style="list-style-type: none"> (i) tourism, including interpretation, information and associated visitor services; (ii) common land; (iii) access to open country; 	<p>In respect of (i), Head of Communications.</p> <p>In respect of (ii), (iii), (iv), (vi), (vii) and (viii), Head of Ranger Services.</p> <p>In respect of (v), (vi) and (xi), Head of Construction, Maintenance & Ecology</p>

Powers delegated to Chief Executive	Other authorised officers
<ul style="list-style-type: none"> (iv) open spaces; (v) caravan, camping and picnic sites; (vi) recreation provision and associated facilities, including car parks and public toilets; (vii) country parks; (viii) public paths (except where delegated to the Planning Committee); (ix) the provision of accommodation, meals, refreshments, parking places and toilets; (x) environmental education; (xi) staithes. 	<p>and Waterways & Recreation Officer.</p> <p>In respect of (x), Education Officer.</p>
<p>(65)(66) _____ To confirm orders creating, diverting, extinguishing or downgrading public paths in respect of which there is no unresolved objection.</p>	<p>For Orders not made under the Town and Country Planning Act, Head of Construction, Maintenance & Ecology or Waterways & Recreation Officer.</p> <p>For Orders made under the Town and Country Planning Act only, Director of Strategic Services or Head of Planning.</p>
<p>(66)(67) _____ To respond to consultations from other public authorities on proposals to create, divert, extinguish or downgrade public rights of way.</p>	<p>Head of Construction, Maintenance & Ecology and Waterways & Recreation Officer.</p>

2(g) Conservation

Powers delegated to Chief Executive	Other authorised officers
<p>(67)(68) _____ To exercise the powers and duties of the Authority in accordance with the overall policies</p>	<p>In respect of (i), (ii), (iii), (iv), (v), (vi), (vii) and (viii), Environment Policy Adviser.</p>

Powers delegated to Chief Executive	Other authorised officers
<p>determined by the Authority in relation to the following matters:</p> <ul style="list-style-type: none"> (i) responding to notifications of operations within the Broads under Section 5(2) of the Norfolk and Suffolk Broads Act 1988; (ii) nature reserves; (iii) land drainage (including the preparation and review of a code of practice for drainage works); (iv) water quality; (v) responding to consultations on proposals to discharge trade and sewage effluent; (vi) responding to notifications on the making of farm capital grants; (vii) nature conservation (except where other provision is made in this scheme), including woodland and fen management, grazing marshes, research, site management and grant aid for conservation purposes; and (viii) the designation of areas of natural beauty under Section 4 of the Norfolk and Suffolk Broads Act 1988. 	<p>In respect of (v), Head of Construction, Maintenance & Ecology and Waterways & Recreation Officer.</p> <p>In respect of (vii), Environment & Design Supervisor.</p>
<p>(68)(69) To respond to consultations under Section 36 of the Control of Pollution Act 1974.</p>	<p>Head of Construction, Maintenance & Ecology or Environment Policy Adviser.</p>
<p>(69)(70) To enter into management agreements under Section 39 of the Wildlife and Countryside Act 1981 up to £20,000 for the duration of the lease agreement, limited to a period of 25 years.</p>	<p>Environment Policy Adviser or Environment & Design Supervisor</p>
<p>(70)(71) To make holding objections to the making of farm capital grants.</p>	<p>Environment Policy Adviser</p>
<p>(71)(72) To make representations to the Environment Agency following notification of applications for</p>	<p>Director of Operations or Head of Construction, Maintenance & Ecology or Environment Policy Adviser</p>

Powers delegated to Chief Executive	Other authorised officers
significant discharges under Section 36 of the Control of Pollution Act 1974.	
(72) (73) To make written representation on applications received under the Water Resources (Licences) (Amendment) Regulations 1989.	Head of Construction, Maintenance & Ecology or Environment Policy Adviser
(73) (74) To fulfil the Authority's role as a Competent Authority with regard to consideration of proposed works affecting Special Protection Areas, Special Areas of Conservation and stipulated species in the Broads, including the determination of Appropriate Assessments.	Environment Policy Adviser or Ecology & Design Supervisor

2(h) Navigation

Powers delegated to Chief Executive	Other authorised officers
<p>(74)(75) In respect of the Norfolk and Suffolk Broads Act 1988 (as amended): To exercise the following powers and duties of the Authority, in accordance with the overall policy determined by the Authority in relation to such matters and, where appropriate, in consultation with the Navigation Committee:</p> <ul style="list-style-type: none"> (i) the maintenance and improvement of the navigation area; (ii) the provision of moorings and other navigational facilities; (iii) the closure of waterways (other than for nature conservation purposes); (iv) the repair of landing places, embankments, private moorings and other similar structures. (v) To determine works licences. (vi) To seek modifications to plans submitted with applications for works licences. (vii) To enforce works licences. 	<p>In respect of (i), (ii) and (iv), Director of Operations or Head of Construction, Maintenance & Ecology</p> <p>In respect of (iii), (viii), (x), (xii) and (xiii), Director of Operations or Head of Ranger Services.</p> <p>In respect of (v), (ix) and (xi), Director of Operations, Head of Construction, Maintenance & Ecology or Rivers Engineer.</p> <p>In respect of (vi), Director of Operations, Head of Construction, Maintenance & Ecology, Head of Ranger Services or Rivers Engineer.</p> <p>In respect of (vii), Director of Operations, Head of</p>

Powers delegated to Chief Executive	Other authorised officers
<p>(viii) To remove obstructions from waterways.</p> <p>(ix) To dispose of dredgings.</p> <p>(x) To authorise named officers to require owners of craft to give information of the person in charge of their craft at any time, under Schedule 5, paragraph 9.</p> <p>(xi) To serve Notices under paragraphs 11 and 12 of Schedule 5 (which relate to the repair of landing places, etc and the removal of wrecks, etc) and to enforce such Notices. In the case of the removal of wrecks, this is subject to such vessels being raised and removed to a place of safety allowing an owner to be given prior notice to destruction, unless it had to be destroyed in situ as a result of its size and/or position.</p> <p>(xii) To mitigate oil pollution either as the harbour authority or if necessary as an agent for the Environment Agency.</p> <p>(xiii) To discount cargo tolls.</p>	<p>Ranger Services or Rivers Engineer.</p>
<p>(75)(76) _____ In respect of the Speed Limit Byelaws 1992, to approve registration marks for vessels.</p>	<p>Collector of Tolls</p>
<p>(76)(77) _____ In respect of the Navigation Byelaws 1995:</p> <p>(i) giving consent or approval to the following activities and imposing conditions on those consents or approvals:</p> <ul style="list-style-type: none"> a. towing; b. the use of blue lights and light signals; c. stern on or bow on mooring, approving places for such mooring and designating times when this is permitted; d. the mooring of vessels otherwise than broadside to a bank; e. anchoring in a channel; f. the turning of vessels; 	<p>Director of Operations or Head of Ranger Services</p>

Powers delegated to Chief Executive	Other authorised officers
<ul style="list-style-type: none"> g. pyrotechnics; h. use of firearms; i. fun events; <ul style="list-style-type: none"> (ii) restricting mooring at specific places; (iii) prohibiting vessels to be moored abreast at specific locations, imposing conditions in respect of multiple mooring and permitting exceptions to these restrictions; (iv) securing the removal of obstructions; (v) authorising officers to authorise passage through Carrow Bridge; (vi) giving directions in respect of precautions to be taken when loading and unloading vessels; (vii) appointing assistants to the Navigation Officer. 	
<p>(77)(78) _____ In respect of the Vessel Registration Byelaws 1997:</p> <ul style="list-style-type: none"> (i) to request copies of registration certificates; (ii) to charge a fee for replacing certificates; (iii) to determine position of toll receipt on vessels; (iv) to prescribe the form of a toll application and specifying the details to be included in it; (v) to designate areas which private watercraft can use and prescribing the conditions for such use. 	<p>Head of Ranger Services or Collector of Tolls.</p>
<p>(78)(79) _____ In respect of the Broads Authority Act 2009:</p> <ul style="list-style-type: none"> (i) enforcing directions relating to the loading and unloading of vessels (section 10); (ii) exercising the powers and duties relating to the registration and licensing of vessels (section 11); (iii) designating authorised officers for the purpose of: <ul style="list-style-type: none"> a. entering and inspecting vessels and exercising related powers (section 17); 	<p>In respect of (iv), (vi), (viii)(c) and (xi), Director of Operations, Head of Ranger Services and Head of Safety Management.</p> <p>In respect of (ix) and (x), Head of Construction, Maintenance & Ecology.</p>

Powers delegated to Chief Executive	Other authorised officers
<ul style="list-style-type: none"> b. exercising powers relating to unsafe vessels (section 19); (iv) determining whether a vessel is unsafe (section 18). (In this respect, it is intended that the authorised officers include qualified Boat Safety Scheme examiners and qualified Marine Surveyors); (v) exercising the powers and duties relating to the removal of unsafe vessels (section 20); (vi) designating authorised officers for the purposes of: <ul style="list-style-type: none"> a. requesting information about vessels (section 21); b. entering land, including adjacent waters (section 24); c. the inspection provisions in hire boat licences; (vii) serving notices requiring information from: <ul style="list-style-type: none"> a. masters and owners, etc as to vessels (section 22); b. landowners, etc as to vessels (section 23); (viii) exercising the following functions relating to water-skiing and wakeboarding: <ul style="list-style-type: none"> a. displaying directional signs (section 28(1)); b. designating authorised officers for the purposes of giving directions as to water-skiing and wakeboarding (section 28(2)); c. issuing, cancelling and amending permits for water-skiing and wakeboarding (sections 27 and 30); (ix) removing vegetation that is an obstruction or danger to vessels in the navigation area including the service of notices (section 39); (x) serving notices and exercising default powers in respect of vegetation that obstructs or is a potential danger to vessels in the navigation area (section 39); 	<p>In respect of (ii), (viii)(c) and (xi), Collector of Tolls.</p>

Powers delegated to Chief Executive	Other authorised officers
(xi) powers and duties relating to the licensing of hire boats (section 40).	

2(i) Broads Local Access Forum

Powers delegated to Chief Executive	Other authorised officers
(79) (80) _____ To appoint and reappoint members to the Broads Local Access Forum, in consultation with the Chair of the Forum.	Director of Strategic Services

2(j) Miscellaneous

Powers delegated to Chief Executive	Other authorised officers
(80) (81) _____ To remove abandoned vehicles.	Head of Ranger Services
(81) (82) _____ To accept gifts of property on behalf of the Authority.	Management Team – in agreement between Directors and Chief Financial Officer
(82) (83) _____ To approve single grant requests up to £10,000.	Management Team – in agreement between Directors and Chief Financial Officer
(83) (84) _____ To approve payments of up to £5,000 to complainants who have suffered a direct identifiable loss as a result of the Authority's actions.	Management Team – in agreement between Directors and Chief Financial Officer
(84) (85) _____ In relation to matters under the Members' Code of Conduct: (i) To appoint three members of the Authority (from a group of six nominated by the Authority at its annual meeting), and an Independent Person as a co-opted non-voting member, to a Hearings Committee to hear	Monitoring Officer

Powers delegated to Chief Executive	Other authorised officers
<p>and determine allegations of breaches of the Code of Conduct referred to it by the Monitoring Officer.</p> <p>(ii) To determine the procedure to be followed by the Hearings Committee.</p>	

5. Powers delegated to the Chief Executive to instruct a Solicitor

- 5.1 To institute, settle and enforce as appropriate, claims and proceedings:
 - a. for the possession of property belonging to the Authority or for protection against trespass;
 - b. for the recovery of fees, tolls, rent and other sums owing to the Authority;
 - c. in respect of other financial loss suffered by the Authority.
- 5.2 To defend, counterclaim, settle, as appropriate, civil proceedings against the Authority, in relation to claims not covered by the Authority's insurance policies and to lodge an appeal.
- 5.3 To institute and prosecute proceedings relating to any function of the Authority and to lodge an appeal.
- 5.4 To defend or lodge an appeal in any criminal proceedings against the Authority.
- 5.5 To determine applications for Certificates of Lawful Use and for Certificates of Lawfulness of Proposed Use or Development.
- 5.6 To serve notices requiring information to be given as to interests in land and, if necessary, to institute proceedings for failure to respond.
- 5.7 In cases of urgency and after consultation (if possible) with the Chair, or in the absence of the Chair the Vice-Chair, of the Planning Committee:
 - a. to issue Listed Building Enforcement Notices and Conservation Area Enforcement Notices concurrently with District Officers;
 - b. to issue Enforcement Notices, Stop Notices Temporary Stop Notices and Article 4 Directions;
 - c. to take enforcement action in respect of unauthorised advertisements.
- 5.8 To authorise officers who otherwise have no right of audience to appear in Magistrates Court and County Court proceedings.

- 5.9 To execute deeds, contracts and other legal documents on behalf of the Authority to give effect to decisions taken by the Authority, its committees, the Chief Executive or other officers exercising delegated powers.
- 5.10 To make minor amendments to the Authority's constitutional documents such as to give effect to changes to job titles, reflect legislative changes and to improve layout or correct typographical errors.
- 5.11 To implement policies and procedures and take appropriate steps to protect the Authority from unlawful disclosure of personal information and to report data breaches to the data regulatory authority.

6. Powers delegated to the Chief Financial Officer

- 6.1 To be responsible for the proper administration of the Authority's financial affairs in accordance with section 17 of the Norfolk and Suffolk Broads Act 1988, including:
 - a. the regulation and control of finance, and the making of safe and efficient arrangements for the receipts of monies;
 - b. External and internal audit matters, including the appointment of auditors;
 - c. pension fund matters;
 - d. insurances.
- 6.2 To make suitable arrangements for the investment and realisation of short-term monies surplus to the Authority's requirements.
- 6.3 To operate the Authority's bank accounts, including:
 - a. to arrange overdraft facilities as and when necessary and within such limits as may be approved by the Authority from time to time;
 - b. to arrange the opening, operation and closing of such subsidiary bank accounts as are deemed necessary for the control of, and accounting for, the Authority's money;
 - c. to manage the day-to-day cash resources of the Authority and arrange such temporary borrowing or investment of surplus money as is deemed necessary;
 - d. to negotiate and receive or repay loans subject to the receipt of the necessary government sanctions and consents.
- 6.4 In consultation with the Chief Executive, to write off:
 - a. any obsolete stores or equipment, or loss of property not exceeding £25,000;
 - b. all bad debts to a maximum of £25,000 where all reasonable recovery action has been exhausted.
- 6.5 To borrow in accordance with the Authority's policy.

6.6 To lend in accordance with the Authority's policy.

7. Powers delegated to the Monitoring Officer

7.1 To carry out the statutory duties and powers of Monitoring Officer to the Authority under Sections 5 and 5A of the Local Government and Housing Act 1989 (as amended).

7.2 To grant dispensations under Section 33 of the Localism Act 2011.

(end of document)

Broads Authority
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Norwich NR1 1RY

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Broads Authority Local Enforcement Plan



December 2020

Broads Authority
Yare House
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1 Introduction

1.1 This Local Enforcement Plan explains the planning enforcement process and how it works in the Broads Authority executive area. It is a guide for those who may be affected by breaches of planning control and sets out:

(a) what the Broads Authority can do and the timescales involved;

(b) how the public, local communities and other stakeholders can help the Authority in monitoring against unauthorised development

(c) what services the Authority will provide, and the service standards the public can expect.

1.2 The Broads Authority produced its first Local Enforcement Plan in 2016. This was reviewed and updated in 2020 to take account of changes in national legislation and the best practice set out in the NAPE.

1.3 The enforcement of planning control is designed to make sure that any development that takes place has the necessary planning permissions and that, where development is permitted, it is built and used in accordance with those planning permissions. Enforcement is an important part of the planning system, and protects our landscape and built environment against damaging change. It is also important to local communities and other stakeholders, as it affects how their area is developed and ensures a level playing field for everyone concerned.

1.4 The Handbook of the National Association of Planning Enforcement Officers (NAPE) explains what effective planning enforcement means:

“At its heart, the planning system relies on trust and our enforcers provide the backbone of this trust – trust that those who flout our planning laws (and often other laws at the same time) will be brought to account; trust that those who strive for high quality will not be undermined by those who would deliver ill-planned and ill-designed development; and trust that the high quality schemes that achieve planning permission will be delivered with that same quality – that planning will deliver what is promised.”

1.5 The Government recognises the importance of effective planning enforcement. National policy is set out in the National Planning Policy Framework (2019) and paragraph 58 says:

“Effective enforcement is important to maintain 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. They 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 appropriate.”

2 Planning and the law

2.1 The planning system deals with development, which is defined in the Town and Country Planning Act 1990 (as amended), 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.” (Section 55)

2.2 This is a wide description and the Act gives more detail on its interpretation. Broadly, development falls into two types – one is physical structures or alterations, and the other is a material change in the use of land or buildings.

2.3 A planning breach is defined in section 171A of the Act as:

- the carrying out of development without the required planning permission; or
- failing to comply with any condition or limitation subject to which planning permission has been granted.

2.4 Examples of planning control breaches include:

- Building works carried out without planning permission;
- A change in the use of a site or building without planning permission
- Conditions on a planning consent that have not been complied with;
- Development that has not been built in accordance with the approved 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.

- 2.5 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.
- 2.6 The point at which something becomes ‘development’ is not always straightforward, particularly where there is a change of use. The law states that development will have occurred when the change is ‘material’, which can be defined broadly as being significant or having impacts. When considering whether or not a change is ‘material’, the Local Planning Authority (LPA) will look at any change in the character of the use itself (including the land where it is), and the effects of the change upon neighbouring uses and the locality. The point at which a change becomes ‘material’ will be a matter of fact and degree, and will usually involve an element of judgement.
- 2.7 The law gives all LPAs specific legal powers to deal with breaches of planning control, including powers of investigation and powers to take formal legal action to correct breaches of planning control. These powers 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).
- 2.8 The law says that a LPA 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 LPA must exercise its powers carefully and with proportion, and there are clear guiding principles on this.

3 Guiding principles of planning enforcement

- 3.1 When a breach of planning control has taken place, the LPA will look carefully at a number of factors when considering what action is appropriate.
- 3.2 The first factor is **expediency**. This is about assessing the harm being caused by the breach. Harm may arise through a range or combination of issues, such as:
- ☐ 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; and/or
 - ☐ Loss of protected trees.
- 3.3 In looking at expediency, the LPA will consider the Development Plan and whether or not the unauthorised development conflicts with the adopted policies. The more harm being caused, the more likely it is that there is a conflict with the development

plan, and the more likely it is that it will be expedient to take enforcement action due to the need to stop the harm.

- 3.4 The LPA will also need to consider the impacts and costs of taking action, including the resources to do so and what is likely to be achieved. 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 **proportionality**. Enforcement action should always be proportionate to the seriousness of the harm being caused. It should not be taken solely to 'regularise' development that is otherwise acceptable on its planning merits, but for which planning permission has not been sought. The Courts have been clear that the role of the enforcement system is to secure compliance, not to punish.
- 3.6 The third factor is **consistency**. It is important to take a similar approach to similar cases to achieve similar outcomes. This provides reliability for local communities and other stakeholders and allows them to know what to expect from the LPA.
- 3.7 While the law gives a LPA strong legal powers to deal with breaches of planning control, in most cases the first approach is to use **negotiation** to reach a satisfactory resolution in a timely manner. The aim of negotiation is to achieve one of the following outcomes:
- The submission of an application for retrospective planning permission if the development is acceptable and would have got planning permission in the first place; or
 - The amendment of the development to make it acceptable and then the submission of an application for retrospective planning permission if the development is capable of being made acceptable; or
 - The amendment of the development so it is in accordance with the approved plans; or
 - The removal of the unauthorised development or the cessation of the unauthorised use if the development is unacceptable and incapable of being made acceptable.
- 3.8 Negotiations should proceed in a timely and committed manner and 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 Norfolk and Suffolk Broads is a protected landscape of national and international importance, with a status equivalent to a national park. It is Britain's finest wetland, with a network of meandering rivers and shallow lakes ('broads') that make it a unique area, precious for its rich wildlife and 'big sky' landscapes, as well as a popular destination for visitors. The villages and settlements reflect the area's traditional building styles and materials and have a distinctive and valued vernacular. The Broads Authority has a duty to manage the Broads, and is the LPA for the Broads executive area.
- 4.2 Development is carefully managed in the Broads. The Broads Authority places strong emphasis on investigating and remedying breaches of planning control, due to the impact that unauthorised development can have on the area's character and qualities, and to demonstrate its commitment to protecting this important landscape. Protecting the integrity of the planning system and demonstrating that breaches of planning control will not be tolerated is also important.
- 4.3 We prioritise cases according to the degree of harm being caused, with highest priority given to cases where the harm (or the potential for harm) is highest. The priority classification is outlined in Table 1.

Table 1

Priority status for consideration of planning control breaches

Priority level	Details of priority status
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 level	Details of priority status
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 Authority does not deal with these. These may include boundary disputes between neighbours, which are a legal or civil 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. Fly-tipping 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. While 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 of planning control is received by the Authority’s planning department, we will carry out an initial check to make sure the alleged development works fall within the legal definition of ‘development’ and is therefore covered by planning control. We will also check whether the works fall within the ‘permitted development rights’ and can be done without planning permission, or whether planning permission has already been granted. If the works alleged to have taken place are found to be development, but are not permitted development and there is no record of planning permission being granted, the matter will be investigated. We will notify the complainant as to whether or not the matter appears to be a planning breach, and if it is being investigated.

Initial investigation and site visit

- 5.3 If the matter is to be investigated, a planning officer from our enforcement team will open a case and contact the landowner or operator by letter, advising them of the investigation and asking them to contact the officer within 14 days to arrange a site meeting. Contacting the landowner or operator before the site meeting 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.

While we will, in most cases, try to contact the landowner or operator before entering the site, Section 196 of the Town and Country Planning Act 1990 gives the Authority's planning officers 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.

Conclusion of the investigation Following the site visit

- 5.4 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, we have the following options, depending on the breach:
- if the development is acceptable and would be likely to get planning permission, the landowner or operator will be asked 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 or operator will be asked 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 or operator will be asked to remove the unauthorised development or cease the unauthorised use.
- 5.5 The landowner or 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, while for a retrospective application to remedy a minor change, a period of 28 days to submit a planning application would be appropriate.
- 5.6 The Authority's approach is to negotiate a solution wherever possible. When we ask for information to be submitted or action 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 for the delay. We will not enter into lengthy or cyclical correspondence, as this delays resolution and is not an effective use of our resources.

Submitting a retrospective planning application

- 5.7 In many cases, the unauthorised development that has taken place either is acceptable or can be made acceptable, and the Authority will receive and approve a retrospective application. The granting of planning permission will enable us to impose conditions on the development, and this is a mechanism for mitigating harm and gaining benefits, such as additional tree planting. We would consider this to be a successful outcome, as the development is now authorised and harm is controlled.
- 5.8 It should be noted that while retrospective applications may be unpopular with local communities, who may see the landowner or operator as having ‘got away with it’, they are allowed in law. The Courts have been clear that LPAs should not use the planning process to punish.
- 5.9 Where a landowner or operator declines to submit a retrospective application, we will have to consider the appropriateness of enforcement action, taking into account the guiding principles of expediency, proportionality and consistency.
- 5.10 Where the unauthorised development is unacceptable and is incapable of being made acceptable, we will not request a retrospective application as this is inappropriate and will delay the resolution of the matter.

Taking formal enforcement action

- 5.11 Where harm is being caused, it is necessary to consider formal enforcement action. The law gives LPAs wide ranging powers to deal with breaches of planning control, and the regularly used powers are summarised below. A full list and further details are in Appendix 2.
- 5.12 The Broads Authority has a Scheme of Powers Delegated to Officers, which identifies the level at which decisions may be made and delegates certain powers 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 the Authority’s 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. Under the scheme, 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 If an Authority member (including co-opted members of the Navigation Committee) or Authority officer is involved in a breach of planning control, the conclusion of the investigation phase will be presented to the Planning Committee.

5.145.15 A planning **Enforcement Notice** is a formal notice used to remedy a breach of planning control. It identifies the planning breach and the harm being caused, and lists what the landowner or operator must do to remedy the breach. An Enforcement Notice comes into effect a minimum of 28 days after service, with the period set by the LPA, and there is then a period given for compliance. . Failure to comply with an Enforcement Notice is a criminal offence. There is a right of appeal against an Enforcement Notice.

5.155.16 An Enforcement Notice is a useful 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 an acceptable solution, or the landowner or operator is unwilling to amend the unauthorised development to make it acceptable, or there are no changes that could be made to make the unauthorised development acceptable and the landowner or operator will not desist voluntarily. An Enforcement Notice is usually effective at achieving compliance.

5.165.17 Where a landowner or operator appeals against an Enforcement Notice, the requirements of the 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 the matter is dealt with through a Public Inquiry. If the appeal does not succeed, the Enforcement Notice comes into effect. If the appeal is successful then this is normally the end of the matter.

5.175.18 The Broads Authority serves Enforcement Notices where negotiations have failed to achieve an acceptable resolution within a reasonable period or where it appears unlikely that resolution can be achieved informally.

5.185.19 Where the breach of planning control relates to non-compliance with a

planning condition, a LPA may 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.

[5.195.20](#) The Broads Authority is cautious about the use of Breach of Condition Notices because there is no right of appeal. We consider that, in most cases, it is appropriate to make sure the landowner or operator is able to challenge the Authority's decision 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 or operator has persistently and deliberately breached planning regulations.

[5.205.21](#) The law gives a LPA 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 and the harm that is being caused, and requires the landowner or 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.

[5.215.22](#) To address the 3-day window before a Stop Notice takes effect, the law has made provision for a LPA 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 provides for an immediate 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.

[5.225.23](#) 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, such as a local amenity, the Broads' navigation or the landscape. When serving a Stop Notice a LPA must first undertake a formal cost/benefit assessment to demonstrate expediency. Stop Notices can be a very effective tool and Temporary Stop Notices are used in urgent cases to support them. 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.

[5.235.24](#) 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 seeking authority for formal action. This is in accordance with the scheme of delegated powers.

Following up formal enforcement action

[5.24](#)[5.25](#) 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 or operator to remedy the planning breach. Unfortunately, there are occasions where this does not happen and the Authority has to pursue the matter further to remedy the breach and maintain public confidence in the planning system.

[5.25](#)[5.26](#) The Authority will prosecute where there has been non-compliance with an Enforcement Notice.

[5.26](#)[5.27](#) The Authority will consider taking direct action where this appears to offer the only realistic opportunity to secure compliance with planning legislation. We will seek to reclaim the costs of direct action from the landowner or operator and will pursue this through the Magistrates Court if necessary.

6 Preventing breaches of planning control in the Broads

6.1 The Authority has a proactive condition monitoring programme, through which it checks that development is undertaken in accordance with the approved plans and planning conditions. There is a regular monitoring schedule and planning permissions for major developments, development that affects listed buildings and all development that has been authorised by Planning Committee are checked at least three times a year. Monitoring takes place at the start of the development and, where appropriate, at subsequent development stages. We will carry out site visits, sometime unannounced, to check that the development is in accordance with the approved plans and planning conditions.

6.2 Information is also received from Parish Councils, Building Control teams and other stakeholders notifying us of development that is underway. This information is very important to us. The public also plays a vital role in reporting breaches of planning control, and all reports or complaints about development are investigated, subject to passing the initial screening process shown at paragraph 5.2 above.

6.3 As breaches in planning control often require significant 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.

- 6.4 Contact details of the complainant are also required to process a complaint or report so that progress updates can be given. Anonymous complaints will not normally be dealt with. All complaints or reports of unauthorised development are treated as confidential, but Freedom of Information requests and Court Orders may require the provision of information, so confidentiality cannot be completely guaranteed.
- 6.5 Complaints or reports of unauthorised development that appear to be malicious or based on discrimination will not be dealt with.

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, a Parish Council, or someone who has undertaken development without planning permission. The Authority will aim to deal with all persons fairly and politely, 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 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 not do so deliberately. They may have thought that the works were not development, or were covered by permitted development rights. The most effective way to make sure you avoid a breach in planning control is to check whether any works you propose require planning consent. You can do this by visiting the Planning Portal at www.planningportal.gov.uk/permission or by contacting a Planning Officer at the Broads Authority before undertaking the works.
- 7.5 If you have undertaken works without planning permission, we will seek to work with you to find a solution. We will tell you in writing what the planning issue is and confirm our advice, as well as telling 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.

8 Contact us

8.1 For more information, or to give your feedback on anything in this document, please contact:

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

Email: planning@broads-authority.gov.uk

Appendix 1 – Enforcement Powers

Table 2

Enforcement powers available to a Local Planning Authority.

Enforcement Power	Description
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.

Enforcement Power	Description
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 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.