

Broads Authority Local Enforcement Plan



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Contents

1	Introduction	3
2	Planning and the law	4
3	Guiding principles of planning enforcement	5
4	The importance of enforcing planning control in the Broads	7
5	Dealing with planning breaches in the Broads	8
	Checking the breach	8
	Initial investigation and site visit	9
	Following the site visit	9
	Submitting a retrospective planning application	10
	Taking formal enforcement action	10
	Following up formal enforcement action	13
6	Preventing breaches of planning control in the Broads	13
7	Our service standards and what you can expect from us	14
8	Contact us	15
	Appendix 1 – Enforcement Powers	16

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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 Officer (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.

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 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.
- 5.15 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.
- 5.16 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.
- 5.17 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.
- 5.18 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.

- 5.19 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.
- 5.20 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.
- 5.21 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.
- 5.22 The Broads Authority uses Stop Notices and Temporary Stop Notices in urgent cases where there is serious and/or irreversible harm being caused to an important interest, 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.
- 5.23 The Broads Authority recognises that Enforcement Notices, Breach of Condition Notices, Stop Notices and Temporary Stop Notices are all serious notices and it exercises its power carefully and with proportion in their use. Other than in urgent cases, a report outlining the case and the recommended action will be presented to the Planning Committee seeking authority for formal action. This is in accordance with the scheme of delegated powers.

Following up formal enforcement action

- 5.24 In the majority of cases where it is necessary to take formal enforcement action, the use of an Enforcement Notice will prompt actions on behalf of the landowner 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 The Authority will prosecute where there has been non-compliance with an Enforcement Notice.
- 5.26 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
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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.