

# North York Moors National Park Authority

14 December 2015

## Recovery of Certain Costs incurred in Formal Enforcement Action

### 1. Purpose of the Report

- 1.1 To update Members on progress with the implementation of the scheme since its introduction in December last year and to reconfirm its continuation under the appropriate legislative framework

### 2. Background

- 2.1 Members may recall that the Authority resolved to extend its planning charges for pre-application advice at the NPA meeting in December last year. At the same time it was also resolved to introduce a scheme for the recovery of costs incurred in carrying out formal enforcement action to deal with unauthorised harmful developments. There was strong support for adopting this approach both as a necessary way of helping to fund an important part of the Authority's planning role in the face of continuing financial cuts and to act as an incentive to follow planning regulations. In a way this reflects the long accepted approach of the 'polluter pays' principle. It also puts some of the responsibility of funding the Authority's planning services on those who incur most cost and are reluctant to follow the rules that others do follow, helping to keep charges on the complying majority at a reasonable level.
- 2.2 Following the decision of Members in December 2014, officers have implemented the enforcement cost recovery process and progress to date has resulted in invoices being served in five separate cases, covering a range of unauthorised developments including harmful works to a listed building, an unauthorised agricultural building and costs involved in serving a section 215 Notice. These cases apart, the effect of this approach has also been reflected in the successful outcomes of cases without the need to follow a legal remedy. There is very clearly a positive impact which has resulted in a greater proportion of either unauthorised development being removed without the need for any legal action or the submission of applications to regularise the development.
- 2.3 This process has also received national attention from planning authorities and interest being expressed by other National Park Authorities and it has been reported in the press both locally and nationally.

### 3 The Need to Re-confirm the Process

- 3.1 During the implementation of the scheme the ability of the Authority to recover enforcement costs has been questioned by an appellant. This is in respect of the legal framework referred to in the officer's report to the Authority in December 2014. It is contended that the legal framework referred to in the 2014 paper (S93 of the 2003 Local Government Act) is not an appropriate framework under which to operate such a system. This is because this provides for an Authority to charge for its discretionary services, but only if the recipient is willing to accept such a charge. Clearly, this is a correct basis for the introduction of charging for pre-application advice, as there is a clear choice to pay a fee and receive the service.

This however is not the case in terms of being subject to enforcement action where the recipient has no choice (except of course to remove the unauthorised development or submit a retrospective application). As a result of this challenge it was agreed by officers to temporarily suspend the cost recovery scheme until Members re-confirm their wish to continue with it without reference to this specific legislation.

#### **4. The Legal Framework**

4.1 Specific legal advice was sought prior to the introduction of the scheme and its conclusions were that there is no clear legislation in force on the issue of local planning authorities being able to recover enforcement costs and there appears to be no case law on the point either. However, the advice also finds that there is nothing set down in statute or case law that suggests that a Planning Authority cannot seek to recover the costs of enforcement proceedings. It advises that, as in all cases, the principle of reasonableness should be applied and that a fee recovery regime should be as accurately as possible a reflection of the costs to the authority of the particular enforcement action. The costs should be open, justifiable and not seek to make a net profit. It further advises that a costs regime be agreed that sets out all costs that will be chargeable from the very outset of enforcement issues, so that the person against whom enforcement action is taken will be on notice at the very beginning of the procedures about the financial risk they expose themselves to as a result of non-compliance.

4.2 There are already mechanisms involved in recovery of costs arising from enforcement appeals (in the event of unreasonable behaviour) and prosecutions where the court considers they are just and reasonable. It is the costs involved in cases which do not progress through to prosecution or the pre-action costs of those that do, together with cases that are not covered by appeal costs that this scheme seeks to recover. If persons do not pay the invoices which are sent out during the enforcement proceedings, the Authority would seek payment through the civil recovery route via a Money Claim Online. It should be emphasised that the proposal is not to charge for enforcement action at the very outset of the process or in cases where it is judged not expedient to enforce, nor of course in situations where an allegation of a breach was made and was shown to be unfounded. All those concerned would be notified of the existence of the regime and would have an initial opportunity to remedy the breach without charge through this specific process (planning application fees and pre-application advice might be payable via separate processes). Officers believe that this helps meet the 'reasonableness' test.

4.3 It is proposed that the costs sought should be based on 90% of the total staff hourly rate current at the relevant time to ensure that at no time can a net profit be made. It is further proposed that the regime is applied to all enforcement work carried out under the Town and Country Planning Acts and in relation to Listed Building enforcement and associated matters.

#### **5. Financial and Legal Implications**

5.1 The enforcement costs recovery scheme represents an innovative approach which does not appear to have been tried or tested by any other Planning Authority. With the caveats set out in the legal advice provided, if Members approve this and it is set into a policy, the principle of recovery of enforcement costs should only be challengeable by way of judicial review proceedings.

5.2 It is worth remembering that these costs are incurred as a result of actions or inactions by the person against whom they are levied and in light of that should be viewed as a cost reasonably and legitimately incurred as a result of the authority exercising its functions. All matters however, carry some level of risk and it is a possibility that in the event of a successful challenge, some refunds may have to be made, but whether this would apply generally is not possible to speculate as it would depend on the content and circumstances of the particular finding. In any case the usual statutory time bar protections would exist.

## 6. **Staffing Implications**

6.1 Some additional administration and financial workload will be generated by the cost recovery scheme but can be incorporated into existing staff work programmes. As with all areas where a charge has been introduced, there is a need for some behavioural changes in staff approach in dealing with enforcement customers which needs to be reflected in appraisal/training.

## 7. **Recommendation**

7.1 That Members agree to adopt a scheme of enforcement cost recovery based on the principles set out in section 4 of this report and ask officers to draw up and implement a scale of charges consistent with it.

Contact Officer  
Chris France  
Director of Planning  
Tel No 01439 772700

## **Background papers to this Report**

## **File ref**

1. NYMNPA Committee Report 15 December 2014