



Guide to Monitoring, Enforcement and Compliance

The North York Moors National Park Authority's approach to making sure that planning policy and procedure is properly implemented; and how you can help.

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1. Introduction

- 1.1 The North York Moors was designated a National Park in 1952, due to the high quality of its landscape and cultural heritage, including its buildings. The enforcement of planning control is vital to safeguarding the quality and enjoyment of these nationally important assets. Planning enforcement exists to ensure that where breaches occur, they are acted upon in the public interest.
- 1.2 This guide has been published to provide you with further guidance on the enforcement process and to give a clear statement of the Authority's approach and procedures for enforcing planning control in the National Park. It also outlines what you can do if you are concerned that a development is proceeding without the necessary permission or is not in accordance with a permission already granted.

2. What is enforcement and when is it necessary?

- 2.1 The Authority is very keen, for those carrying out work, for those who enjoy what the National Park has to offer and for its own workload that the need for enforcement action is avoided.
- 2.2 Breaches of planning control ordinarily come in three forms:
 1. Carrying out development without the benefit of formal consent or permission;
 2. Carrying out development that is not in accordance with the terms or conditions of a formal consent or permission.
 3. Carrying out work that is not 'development' but is still unauthorised – for example works affecting a listed building or works to protected trees.
- 2.3 Planning enforcement will only occur where there has been a failure to gain the necessary permissions or consents or where work has not been carried out in accordance with the requirements of a permission or consent, where it is expedient to so and where it is in the public interest. There are four main circumstances under which a permission or consent is required:
 - Permission to carry out 'development'¹ – building, engineering or other operations or material changes to the use of land or buildings;
 - Consent to change or alter the character or appearance of a listed building;
 - Consent to display some advertisements;
 - Works to protected trees;
- 2.4 Not all development requires permission – some operations may not be considered as development at all or are defined as 'permitted development' meaning that an application for planning permission is not required. A full explanation of what might be 'permitted development' is set out on the Government's 'Planning Portal' website². In some cases,

¹ As defined by [Section 55 of the 1990 Town and Country Planning Act](#) – “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”.

² https://www.planningportal.co.uk/info/200187/your_responsibilities/37/planning_permission/2

permitted development rights that exist elsewhere may not apply in the National Park or within a Conservation Area.³

- 2.5 Breaches of planning control are not normally criminal offences and it is not an offence to carry out development without first obtaining planning permission for it. However, if the development relates to a listed building or to display of certain advertisements and signs or protected trees, a breach of the legislative controls in these areas of planning are criminal offences (see Appendix 2). Furthermore, failure to comply with an enforcement notice is a criminal offence.
- 2.6 One of the key messages we would like to stress is, “**if in doubt, ask.**” If you need to know whether a permission or consent is needed, or whether applications are likely to receive consent, for a modest fee, officers will provide advice on a proposal. Details can be found here:

<https://www.northyorkmoors.org.uk/planning/pre-application-advice>

3. The Authority’s approach to enforcement

- 3.1 The Authority views enforcement action as a last resort once other methods to remedy any breaches of planning control have been exhausted. We are keenly aware that formal enforcement action can be stressful, and also uses public resources that we would prefer to use elsewhere in the National Park. National Planning Guidance⁴ is clear that enforcement is a discretionary activity only to be taken when it is expedient to do so. Trivial or technical breaches of control causing no material harm or adverse impacts to the area or cases where development may be acceptable subject to a planning permission being granted are unlikely to result in enforcement action.
- 3.2 However, enforcement action can be necessary when work is carried out and those undertaking that work refuse to comply with any requests to obtain the necessary permission or consent and refuse to undo the action that has led to the breach of planning control. The Authority has to exercise a careful balance between the rights of the developer, user or owner of the land or buildings and the wider public interest. The Authority may also have to prioritise the enforcement work it carries out and may not take action where a breach is minor and does not materially affect the amenities of those nearby or the landscape or buildings of the National Park
- 3.3 When dealing with notifications of potential enforcement matters the Authority will:
- Take action commensurate with the scale and impact of the unauthorised development (for some minor breaches this may be ‘no further action’);
 - Adopt a positive approach in dealing with breaches of planning control and will seek to negotiate a solution wherever appropriate;
 - Invite the submission of a retrospective planning application in cases where development which has already taken place and is considered acceptable, and/or it appears that any actual or potential harm can be mitigated through the imposition of planning conditions;
 - Discourage the submission of retrospective applications to regularise unauthorised development where the development is contrary to the adopted policies of the

³ <https://www.northyorkmoors.org.uk/planning/building-conservation/conservation-areas>

⁴ [National Planning Guidance Para 011, Reference ID: 17b-011-20140306](#)

National Park and causes serious harm to the landscape quality or other planning interests in the Park;

- Take a pro-active approach and seek to pre-empt potential breaches of control through the established monitoring and checking system to ensure that conditions or approved plans have been complied with;
- Work in partnership with other agencies to ensure a 'joined up' approach to identifying and dealing with breaches of planning control.

4. How to report an enforcement matter

4.1 We would encourage everyone who sees what may be a breach of planning control to report it to us. You can report this to the enforcement team in writing, by telephone, email or using our online mapping system and form⁵. The more information you can give us at the outset the better. You should provide:

- Your name, address and telephone number in order that we can let you know what is happening with the investigation. Your details will be treated 'in confidence';
- An accurate address of the site involved, preferably including a postcode. If it is an unusual site and you cannot find out its address, you could try providing photographs and locating it on a map;
- Clear details of what is causing you concern (a description of the buildings works or an overview of the use);
- Any relevant dates and times (commencement and completion, or stage of building works, or times that a use take place);
- If known, details of the landowner/developer's name and address any other persons involved in the breach (such as a relevant company name, building company, contractor).

4.2 If you know the details of any relevant planning permissions or the details of any vehicles involved this would also be useful.

4.3 Notifications will be dealt with in confidence and your name will not be disclosed to anyone, including the person you are making the complaint about. Anonymous notifications will be recorded on file and will be investigated where there is sufficient information to allow investigation- such as accurate site location and details of the breach.

4.4 You should only report what you consider to be breaches of planning control. The Authority cannot investigate matters that are not planning related such as the following:

- Disputes involving high hedges, or statutory nuisances arising from noise, smell or light - these matters should be reported to your local District or Borough Council's Environmental Health Department ([Hambleton Borough](#), [Redcar & Cleveland Borough](#), [Ryedale District](#) and [Scarborough Borough Councils](#));
- Civil or common law matters such as trespass, rights of access, shared drainage/sewers or assault – you should seek independent legal advice in these instances and/or police involvement where necessary;

⁵ <https://www.northyorkmoors.org.uk/planning/planning-applications/application-search-map>

- Land ownership/boundary disputes – you should contact the Land Registry to obtain confirmation of legal title to land/buildings or in cases of dispute seek the independent advice of a solicitor as the Authority won't normally get involved in such civil disputes;
- Issues involving pollution or obstruction of a water course, land contamination or unauthorised waste disposal – these should normally be reported to either the District or Borough Council Environmental Health Department and/or the [Environment Agency](#);
- Dangerous buildings, inappropriate building construction methods or practices - these are normally the responsibility of the District or Borough Council's Building Control section – either the [North Yorkshire Building Control Partnership](#) or [Building Control](#) at Redcar and Cleveland Borough Council;
- Obstruction or works affecting a public highway should be referred to [North Yorkshire County Council](#) or [Redcar and Cleveland Borough Council](#). If it concerns a public footpath or bridleway, please contact the [National Park Ranger](#) responsible for that area.

5. What happens to your enforcement notification?

5.1 We will deal with your notification in accordance with our standards of service and priority system:

Our Standards of Service

5.2 We will:

- Acknowledge letters, telephone calls and emails reporting breaches of planning control within ten working days of receipt where the contact details of the person making the notification are known;
- Verify that there is a case including checking the planning register to make sure that planning permission has not been granted for the development;
- Investigate the planning history of the site, photographs and information from other agencies;
- Carry out site inspections in accordance with the alleged level of harm. Due to a high number of enquiries we will prioritise our visits according to the apparent seriousness of the problem. We will however aim to visit as soon as possible. Our Monitoring & Enforcement Officers have specific powers to enter land to investigate potential breaches of planning control.
- Determine whether or not a breach of control has occurred and decide on an appropriate course of action;
- Pass on any relevant information to other agencies such as the Highway Authority or Environment Agency who may have an interest in the case.
- Inform the person notifying us, of the decision of our initial findings as soon as possible;

5.3 Inform the person notifying us, the owner and third parties involved of any further action required. Although we try to operate within these standards, it is not always possible to

anticipate how a particular case will develop and the timescale for resolving an issue can be difficult to predict. Factors that can delay progress include time taken to collect satisfactory evidence, negotiation to resolve a breach, the submission of a retrospective application; or an appeal against a formal notice.

Our Priority System

- 5.4 Investigating breaches of planning control is often complex and time consuming and priority is given to those cases where the greatest harm is being caused to residential or public amenity, heritage assets, landscape character and interests of acknowledged importance. Officers will determine whether a breach of control is duly harmful before proceeding further. The harm being caused is assessed during the first site inspection where a score is given against certain criterion. Should the assessment score meet our minimum threshold then the matter will be pursued. In cases that are below the threshold for taking further action will be closed and the enquirer updated.
- 5.5 Any action taken will need to be proportionate with the breach of planning control to which it relates and action will only be taken where negotiations with the operator or landowner have failed to resolve the matter and it is considered to be in the public interest to pursue the matter. As such, some minor matters may not be pursued further. Sometimes, exceptionally the personal circumstances of the person in breach of planning control may be taken into account, for an example where the Authority is considering whether a prosecution is in the public interest.

Matters that can be taken into account

- 5.6 It will often be 'expedient' to take action if the breach of planning control unacceptably affects the following:
- the landscape
 - conservation interests
 - public amenity
 - public safety
 - highway safety
- 5.7 In addition to the above, the Authority also has to be clear, that resolving the breach would be in the 'public interest'.

Matters that cannot be taken into account

- 5.8 There are some issues that will not be taken into account when making decisions on expediency, these include:
- Change in the value of a neighbouring property
 - Competition between businesses
 - The loss of a private view
 - Trespass onto someone else's land

- Boundary disputes
- Private rights or obligations contained in property 'title deeds'
- Any matter covered by other legislation such as nuisance lighting, noise and smell
- Other civil matters.

6. Type of action

- 6.1 There are then several courses of action available to the Authority where a clear breach of control is established:
1. Take no further action, for instance where the breach is minor in nature and does not harm the amenities of adjoining occupiers or the landscape or buildings in the National Park. We will write to you explaining the reason why no further action is being taken;
 2. Negotiate a solution to mitigate the impact of the development or secure its removal;
 3. Request a retrospective application to regularise the development where the breach can be made acceptable by amendment or the imposition of conditions;
 4. Formal action to stop and/or remove the development which involves serving a notice on the relevant parties which specifies what action they are required to take to correct the breach and by when.
 5. Prosecution. Where formal action has failed to resolve the issue, the Authority may pursue the matter through the courts. Advice on the Authority's approach to prosecution is set out at Appendix 2.

Voluntary Compliance

- 6.2 The Authority will normally encourage those responsible for a breach of planning control to resolve the issue(s) voluntarily rather than through formal enforcement action.
- 6.3 The person responsible for the breach will normally receive written confirmation and an explanation of the breach. The Authority may impose a date by which to:
- Remedy the breach; and/or
 - Provide the Authority with a written proposal and/or timetable by which the breach will be remedied;
 - Submit a retrospective planning application.
- 6.4 Where the unauthorised development appears to be acceptable we will normally ask for a retrospective planning application to be submitted. It is usually in the interests of the landowner to submit such an application as it will help to avoid problems when and if the property changes ownership.
- 6.5 The Authority is obliged to deal with any application submitted, however where the development is clearly contrary to Authority policies and guidance it is unlikely to be

approved. Powers are also available to decline to consider a retrospective application where an enforcement notice is in place⁶.

- 6.6 The Authority will not allow protracted negotiations to prevent the taking of prompt and effective formal enforcement action where this is necessary. There are four and ten year rules whereby developments cannot be pursued after these periods. It reserves the right to serve any notice during the course of negotiations, or in the event of a retrospective planning application being made, in order to avoid undue delay. This may also be necessary where there is a possibility that a development may become immune from enforcement action through the passage of time⁷. Additional powers exist for planning authorities to take enforcement action after the expiry of the time limits set out above where deliberate concealment has taken place⁸.
- 6.7 If land owners or occupiers consider that a breach of planning control has become immune from enforcement action they may apply for a Lawful Development Certificate (LDC)⁹. If granted, this established the lawfulness of the existing development.

Use of formal powers

- 6.8 If a breach of planning control is found and it has been unable to resolve the matter without resorting to formal action the type of formal action will depend on the nature of the breach. Appendix 1 sets out the types of action that may be taken.
- 6.9 The Authority has delegated its powers to take enforcement action to the Director of Planning. Enforcement matters will only be considered by the Planning Committee where there are conflicting views about the impact of an unauthorised development or activity or where there are significant implications for the landscape and/or built environment of the National Park or the residential amenities of adjoining occupiers.

7. Formal Complaint Procedure

- 7.1 We aim to provide an efficient and effective enforcement service. However, if you feel that we have not acted in accordance with the policy, priorities or standards of service outlined in this guide then you should initially contact the member of staff to see if the matter can be resolved. If you are still not happy with the response you should write to the Director of Planning. The matter will be dealt with in accordance with the procedure outlined in our 'Complaints Procedure which is available on the Authority's website'¹⁰.
- 7.2 If, having gone through the Authority's complaints procedure, you remain dissatisfied; you may refer your complaint, sending full details, to the Local Government Ombudsman¹¹.

8. Contact details

- 8.1 If you would like report a complaint or need any further information please contact the Enforcement and Compliance Team on 01439 772700 or if they are not available, the Planning Administration team can help you. You can also contact us by email on

planning@northyorkmoors.org.uk. Our postal address is The Old Vicarage, Bondgate, Helmsley, York YO62 5BP.

⁶ <http://www.legislation.gov.uk/ukpga/2011/20/section/123/enacted>

⁷ <http://www.legislation.gov.uk/ukpga/1991/34/section/4>

⁸ <http://www.legislation.gov.uk/ukpga/2011/20/section/124/enacted>

⁹ <https://www.gov.uk/guidance/lawful-development-certificates>

¹⁰ <https://www.northyorkmoors.org.uk/about-us/our-service-to-you/complaints,-compliments-and-feedback/complaints-procedure>

¹¹ <https://www.lgo.org.uk/make-a-complainthttps://www.lgo.org.uk/make-a-complaint>

Appendix 1 - How might the Authority take enforcement action?

1. Government guidance on enforcement and post-permission matters is available¹².
2. The Authority may use the following formal methods to remedy any breach of planning control once it has exhausted other methods.

Planning Contravention Notices

3. Where it appears that a breach of planning control may have occurred and the Authority needs to find out more information before deciding what if any enforcement action to take, the Authority may serve a Planning Contravention Notice (PCN). This can be served on any owner or occupier of the land, anyone who has an interest in the land or anyone who is using the land for any purpose. The PCN requires the owner, occupier, etc. to provide certain information about ownership and occupation of the land, and the activities taking place on the land or within any buildings on the land.
4. The PCN may invite the recipient to meet with the Authority to discuss the matter. There is no right of appeal against a PCN and failure to respond is an offence which is prosecutable in the Courts.

Section 330 Notices

5. Where it is important to obtain clarification about the ownership and occupation of land, a Notice under Section 330 of the Town and Country Planning Act 1990 (Section 330 Notice) may be served on the apparent owner or occupier requiring them to confirm details of those persons who have a legal interest. There is no right of appeal against a Section 330 Notice and failure to respond is an offence which is prosecutable in the Courts.

Enforcement Notices

6. An Enforcement Notice is the most common form of notice used to deal with unauthorised development (including works to Listed Buildings). An Enforcement Notice will specify what the alleged breach is, the steps that must be taken to remedy the breach, and a time period in which to carry out those steps. The Enforcement Notice will come into effect after a minimum period of 28 days has elapsed after it is served.
7. Prior to the date that the notice comes into effect (the effective date) the recipient of the notice has a right of appeal to the Secretary of State for Communities and Local Government through the Planning Inspectorate¹³. If a valid appeal is made, the Enforcement Notice is suspended until the appeal has been determined or is withdrawn. If the Inspector decides in favour of the Authority's case, the Enforcement Notice will take immediate effect and the steps will need to be complied with in the time period given.
8. A breach of planning control is not a criminal offence. However, non-compliance with the requirements of an Enforcement Notice to remedy a breach is a criminal offence. On successful conviction the person served with the notice may be subject to a fine. The guilty party will also be liable for the Authority's costs in taking this action.
9. Where a contravener has failed to comply with an Enforcement Notice the Authority will normally instigate prosecution proceedings if there is a realistic prospect of conviction and it is considered to be in the public interest to do so.

¹² <https://www.gov.uk/guidance/ensuring-effective-enforcement#Breach-of-Condition-Notice>

¹³ <https://www.gov.uk/appeal-enforcement-notice>

10. Failure to comply with the requirements of an Enforcement Notice may also result in the Authority carrying out the works required by that notice. All costs and expenditure incurred in carrying out such works will be recovered from the landowner or occupier. Where costs and expenditure are not recovered, a debt is registered as a charge on the land. The Authority may then pursue the debt through the civil courts.
11. Copies of all formal notices served are kept on the Enforcement Register which is available for inspection at the Authority's offices or online¹⁴.

Stop Notice and Temporary Stop Notice

12. The Authority has the power to issue a Stop Notice¹⁵ to require the immediate cessation of unauthorised works or the unauthorised use of land or buildings. A Stop Notice is issued at the same time as an Enforcement Notice or before an Enforcement Notice comes into effect.
13. Stop Notices and Temporary Stop Notices are most commonly used to deal with breaches of planning control that are seriously affecting the amenity of nearby residents or to prevent serious or irreversible harm to the environment.
14. Alternatively, a Temporary Stop Notice¹⁶ may be served. This is similar to a Stop Notice but can be issued without an accompanying Enforcement Notice. Temporary Stop Notices are effective immediately after they are served but are only effective for up to 28 days. Within that period the Authority must consider whether to take any further enforcement action
15. There are limitations on the service of these types of notice and in some circumstances compensation may be payable by the Authority if a recipient makes a successful challenge. Stop Notices and Temporary Stop Notices are therefore used selectively and only in the most serious cases.

Injunctions

16. Legal powers, contained in s.187B of the 1990 Act, are available for the Authority to apply to the court for an injunction¹⁷ to stop an actual or alleged breach of planning control or to seek compliance with an "enforcement notice". Injunctions are a discretionary order. They can be used to require someone to stop doing something or to require them to carry out something. They are usually only used where there is urgency, where the breach is serious or where other legal processes have not led to the breach being rectified. Failure to comply with an injunction may lead to an unlimited fine and/or imprisonment.

Breach of Condition Notice

17. This type of notice is used where planning permission has been granted subject to conditions and one or more of the conditions has been breached. The Authority can issue a Breach of Condition Notice¹⁸ (BCN) to ensure full or part compliance with the planning conditions.
18. A BCN would state the breach and the steps required to remedy the breach. The Notice will allow a minimum of 28 days in which to comply with the requirements. There are no rights of appeal to the Secretary of State against a breach of condition notice, the validity of the notice, or the validity of the Authority's decision to serve it, may be challenged by

¹⁴ <http://planning.northyorkmoors.org.uk/northgate/complaintsenforcements/EnfSearch.aspx>

¹⁵ <https://www.gov.uk/guidance/ensuring-effective-enforcement#Stop-Notice>

¹⁶ <https://www.gov.uk/guidance/ensuring-effective-enforcement#Temporary-Stop-Notice>

¹⁷ <https://www.gov.uk/guidance/ensuring-effective-enforcement#Injunction-on-planning-control>

¹⁸ <https://www.gov.uk/guidance/ensuring-effective-enforcement#Breach-of-Condition-Notice>

application to the High Court for judicial review. Failure to comply with a BCN is an offence for which the Authority may prosecute in the courts.

Section 215 (Untidy Land) Notice

19. Where the condition of land or buildings causes serious harm to the amenity of an area, the Authority may serve on the owner and occupier a Notice under Section 215 of the 1990 Act (Section 215 Notice)¹⁹. Such a notice would impose the minimum steps required to remedy the condition of the land or buildings. A time frame is set within the notice in which the remedial steps must be completed.
20. The Section 215 Notice can be appealed by way of the magistrates' courts. Failure to comply with a Section 215 Notice is an offence for which the Authority may prosecute in the Courts.

Issuing of a Notice of Warning.

21. The Authority may issue a Notice of Warning as an alternative to prosecution for some less serious offences, where a person admits an offence and consents to the Warning. Where a Warning is offered and declined, the Authority will give consideration to prosecution.
22. A Warning is likely to influence how the Authority and others deal with any similar breaches in the future, and may be cited in court if the offender is subsequently prosecuted for a similar offence.
23. Currently the Warning details are held by the Authority and are not recorded on a central criminal database.

¹⁹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/11491/319798.pdf

Appendix 2 - Prosecution Policy

1. In making a decision on prosecution the authorised officer will apply two tests to make sure all relevant factors are considered and that fair consistent decisions are made about each potential prosecution.
2. The first test is consideration of the evidence. If the case does not pass the evidential test a prosecution must not go ahead no matter how serious the case is. If the evidential test is satisfied the authorised officer will consider if it is in the public interest to prosecute. A prosecution will only be taken if both tests are satisfied.

The Evidential Test

3. Authorised officers must be satisfied that there is sufficient admissible reliable evidence to provide a realistic prospect of conviction. Officers will formally 'caution' people in appropriate circumstances where evidence they give is likely to be relied on later in court. In exceptional cases involving covert surveillance, appropriate Regulatory Investigative Powers Act (RIPA) notices will be served. There are three strands to the evidential test:

Sufficient

4. There is only sufficient evidence to provide a realistic prospect of conviction if, when presented with that evidence, a jury or bench of Magistrates properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is an objective test and when applying it to the case the authorised officer will aim to be completely impartial. They will also have regard to any statutory defence that is available

Admissible

5. There are legal rules which might not allow evidence that appears relevant to be given at a trial. If the authorised officer believes that some of the evidence falls within this category, he/she will satisfy him/herself that there is enough other evidence for a realistic prospect of conviction.

Reliable

6. Evidence may be regarded as unreliable for a number of reasons. It may be affected by factors such as age or level of understanding, by a motive that may affect his or her attitude to the case, a relevant previous conviction, or a general concern over the accuracy or credibility of the evidence. Where there are such concerns, authorised officers will not ignore the evidence, but will look at it closely in conjunction with the other evidence to decide whether there is a realistic prospect of conviction.

The Public Interest Test

7. The general principle of this test is that, a prosecution will usually take place unless the public interest factors against prosecution clearly outweigh those in favour of prosecution, or it appears more appropriate in the circumstances to divert the defendant from prosecution.
8. The public interest factors will vary from case to case. Not all factors will apply to each case and there is no obligation to restrict consideration just to the factors listed.

Public Interest Factors in Favour of Prosecution

9. The more serious the offence, the more likely it is that a prosecution will be needed in the public interest. A prosecution is likely to be needed if:
- a) a conviction is likely to result in a significant sentence;
 - b) a conviction is likely to result in a confiscation or any other order;
 - c) a weapon was used or violence was threatened during the commission of the offence;
 - d) the offence was committed against a person serving the public;
 - e) the risk presented to the public, trade or environment by the commission of the offence was serious or widespread;
 - f) the defendant has failed to comply, in part or in full, with a statutory notice;
 - g) the defendant acted fraudulently, willfully or negligently;
 - h) harm was caused to human health, animal health or the environment;
 - i) the defendant was in a position of authority or trust;
 - j) the evidence shows that the defendant was a ringleader or an organiser of the offence;
 - k) there is evidence that the offence was premeditated;
 - l) there are grounds to believe that the defendant was motivated solely by personal gain;
 - m) there is evidence that the offence was carried out by a group;
 - n) the victim of the offence was vulnerable, has been put in considerable fear, or suffered personal attack, damage or disturbance;
 - o) the offence was motivated by any form of discrimination against the victim's ethnic or national origin, disability, sex, religious beliefs, political views or sexual orientation, or the suspect demonstrated hostility towards the victim based on any of those characteristics;
 - p) there is a marked difference between the actual or mental age of the defendant and the victim, or if there is any element of corruption;
 - q) the defendant is alleged to have committed the offence whilst under an order of the court;
 - r) the offence was committed in the presence of or in close proximity to a child;
 - s) the defendant's previous convictions or cautions are relevant to the present offence;
 - t) there are grounds for believing that the alleged offence is likely to be continued or repeated;

- u) the offence, although not serious in itself, is widespread in the area where it was committed;
- v) a prosecution would have a significant positive impact on maintaining community confidence;
- w) the outcome of the prosecution might establish an important precedent or draw public attention to national or local campaigns or issues.

Public Interest Factors against Prosecution

10. A prosecution is less likely to be warranted if:
- a) the alleged offence was committed as a result of a genuine mistake or misunderstanding of the circumstances or of the law;
 - b) the loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgment;
 - c) the defendant has put right the loss or harm that was caused (but defendants must not avoid prosecution simply because they have offered compensation);
 - d) there has been a long delay between the alleged offence taking place and the decision made to prosecute, unless:
 - i) the alleged offence has only recently come to light;
 - ii) the offence is serious;
 - iii) the complexity of the offence has meant that there has been a long investigation;
 - iv) the delay has been caused in part by the defendant;
 - e) the Court is likely to impose a very small or nominal penalty;
 - f) a prosecution is likely to have a bad effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence;
 - g) the defendant is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill health;
 - h) details may be made public that could harm sources of information, international relations or national security.
11. Deciding on the public interest is not simply a matter of adding up the number of factors on each side as some factors will be more important than others. As such authorised officers will 'weight' factors in making an overall assessment.

Diversion from Prosecution

12. When deciding whether a case should be prosecuted authorised officers will consider the alternatives to prosecution in pursuit of the aim to change inappropriate behaviour and to deter future non-compliance.
13. A conviction can have wide ranging and long-lasting effects, and particular care will be taken when deciding whether it is in the public interest to prosecute in cases involving a

young person. For the purposes of this policy a young person is someone under the age of 18 years.

Publicity

14. In order to deter others, the Authority will aim to publish any prosecution or other enforcement action.

Appendix 3 - Monitoring development compliance

1. Ensuring effective planning enforcement involves checking a percentage of developments for compliance with plans and conditions attached to planning permission. This work is two-fold:
 - It ensures that the development is undertaken in accordance with the planning permission.
 - It provides a platform on which officers can advise developers on aspects of planning control during the course of the build or use.
2. Usually, the majority of issues that arise during the course of this process can be resolved through discussion of the issues and/or through the submission of further planning applications to regularise developments. However, on occasions some unauthorised development cannot be resolved and the Authority may have to revert to its enforcement powers.
3. The Authority also monitors certain restrictive conditions on completed developments. This currently includes all agricultural occupancy and local occupancy restrictions. The Authority is looking to expand these to include holiday occupancy, caravan site occupancy and use, and other restrictive conditions.
4. The monitoring process commences at the issue of the permission and/or consent. All applications that include specific conditions will likely require the discharge of those conditions through the Condition Verification Check (the “CVC”) procedure. The Authority has the opportunity at the issue stage to include a Notification of Commencement of Development (the “NCD”) form for completion by the developer to inform the Authority of the commencement of development. Due to the nature of the decision and resource restrictions, the Authority does not include this form with all decisions. The Authority will decide which applications it considers to require monitoring.
5. When the Authority receives a completed NCD the application is checked for conditions and a letter will be sent to the developer reminding them of any conditions that need to be discharged prior to the commencement of development; or during the course of the construction; or if the development ceases for some reason.
6. Once the development commences, the developer can expect an initial introductory site inspection by the Compliance Officer who will check that the plans they are working to match those approved and then either continue with the inspection where there is something on site or agree/confirm a further inspection date.
7. During the course of the inspection, if it is found that the development does not comply in some way the Compliance Officer will return to the office to obtain advice. Advice will then be provided to the developer in writing. In some situations, the Compliance Officer may request the assistance of enforcement officer(s) on site to deal with serious breaches of planning control.
8. Where a breach of planning control in respect of monitoring compliance with an approved development cannot be resolved mutually then, the Authority may decide to use its enforcement powers.

Restrictive Condition Compliance Process

9. The Authority also monitors permanent restrictive conditions imposed on planning permissions. All residential occupancy conditions are monitored. However, this section applies to the monitoring of all restrictive conditions.
10. In the first instance the Authority undertakes a survey of the property or properties affected by occupancy restrictions. The survey is in paper form and includes a series of questions. Where a response is received, the answers are assessed against the content of the condition and the results recorded. However, the Authority may request evidence to corroborate any statements made by the person(s) completing the form. Where a response is not received a further survey form is sent. If a response is not received from the second survey form then a Planning Contravention Notice (PCN) is likely to be issued (see below at Section 11). Failure to complete a PCN could well lead to a prosecution in itself.
11. If the person(s) comply they are notified and the responses are recorded. Where a person(s) do not comply, the Authority may informally request that the person(s) to leave the property within a specified period; or may decide to issue a notice formally requiring the cessation of occupation.

Appendix 4 - Advice on other consent regimes

Advertisements

1. Local policy on assessing applications for advertisement consent is set out in Policy BL9 of the Local Plan. Government guidance on the advertisement consent regime is available²⁰.
2. The legislation concerned with advertisements²¹ is separate from that dealing with general planning matters. The North York Moors National Park is designated as an Area of Special Control under Section 221(1) of the 1990 Act. Consequently, some specific restrictions apply to advertisements, over and above those that apply generally.
3. The display of an advertisement without deemed or express consent is an offence, for which the Authority may prosecute the person(s) displaying it and/or the person(s) who knowingly permits someone to display an advert. There is no need for an enforcement notice to be served.
4. Prosecutions are more likely to be brought if the person who has displayed the advert is a prolific offender and/or the adverts are harmful to amenity or public safety.
5. There are three possible notices that may be served where a breach of control is identified:

Discontinuance Notice

6. Where an advert does not require consent the Authority can serve a Discontinuance Notice should it consider that the advert causes a substantial injury to the amenity of the locality or is a danger to members of the public. Recipients of a Discontinuance Notice have a right of appeal to the Secretary of State. Non-compliance with a removal notice is an offence for which the Authority may prosecute in the Courts.

Removal Notice

7. Section 225A of the 1990 Act gives the Authority the power to remove structures (such as hoardings) which are being used for unauthorised advertisement displays. The Authority may serve a removal notice and should it not be complied with remove the structure and recover all expenses incurred from the land owner, or occupier, or advertiser. There is a right to compensation where any damage is caused to land or property. There is a right of appeal to a magistrates' court against a notice. Non-compliance with a removal notice is an offence for which the Authority may prosecute in the Courts.

Action Notice

8. Section 225B of the 1990 Act gives the Authority powers to serve an Action Notice. This requires the owner or occupier of the land to carry out measures to prevent or reduce the frequency of the display of unauthorised advertisements. There is a right of appeal to a magistrates' court against a notice. Non-compliance with a removal notice is an offence for which the Authority may prosecute in the Courts.

Listed Buildings

9. Many buildings in the National Park are 'listed' to protect their historical and architectural

²⁰ <https://www.gov.uk/guidance/advertisements>

²¹ <http://www.legislation.gov.uk/ukxi/2007/783/contents/made>

significance. Alterations – both inside and outside the building cannot be made without first obtaining listed building consent from the Authority, and are counted as potential criminal offences if unauthorised. The listed building enforcement provisions are set out in Sections 38 to 46 of the Planning (Listed Buildings and Conservation Areas) Act 1990²².

10. Advice is also available from Historic England,²³ or from the Authority's Building Conservation team. If you wish to check whether a building or structure is listed Historic England hold a list,²⁴ or if you are still unsure please contact our Building Conservation team. Forms for apply for consent to listed buildings [are here](#).
11. The main difference between general planning enforcement and listed building enforcement provisions is that there are no time-limits for issuing listed building enforcement notices. Furthermore, the carrying out of works, including demolition, in full or in part, of a listed building, without the necessary listed building consent or failing to comply with a condition attached to that consent is likely to constitute an offence (under Section 7 and 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990) whether or not an enforcement notice has first been issued.
12. The maximum penalty for this offence is an unlimited fine and/or up to 2 years imprisonment.
13. It is important to know that if you buy a listed building that has been subject to unauthorised works, you become liable for any listed building enforcement action in connection with the unauthorised works. Before buying a listed building you should ensure that all works that have been carried out to the building have received the necessary consents.

Works to Protected Trees

14. Anyone who cuts down, uproots or wilfully destroys a protected tree, or who lops, tops or wilfully damages it in a way that is likely to destroy it, is liable, if convicted to an unlimited fine. The Courts have held that it is not necessary for a tree to be obliterated for it to be "destroyed" for the purposes of the legislation. It is sufficient for the tree to have been rendered useless as an amenity. Furthermore, this is extended to those persons who cause or permit such unauthorised works.
15. The primary legislation relating to tree enforcement provisions is set out in sections 197 to 214 of the 1990 Act²⁵ whereas the tree preservation order system is governed by the Town and Country Planning (Tree Preservation) (England) Regulations 2012²⁶. Tree enforcement issues fall into the following two principal categories:
 - Unauthorised works to, damage to or removal of trees that are protected by Tree Preservation Orders or those which are situated within Conservation Areas and;
 - Breach of planning conditions relating to tree retention and protection.

Tree Replacement Notice

16. Whenever a protected tree has been removed in contravention of the legislation, or because it is dead, dying or dangerous, there is a duty on the landowner to plant a

²² <http://www.legislation.gov.uk/ukpga/1990/9/part/I/chapter/IV>

²³ <https://historicengland.org.uk/advice/>

²⁴ <https://historicengland.org.uk/listing/the-list/>

²⁵ <http://www.legislation.gov.uk/ukpga/1990/8/part/VIII/chapter/I>

²⁶ <http://www.legislation.gov.uk/uksi/2012/605/contents/made>

replacement tree of a suitable size and species in the same location as soon as is reasonably possible. The replacement tree is then subject to the same protection as the tree that was lost.

17. If the landowner fails to comply with this requirement, the Authority may serve a Tree Replacement Notice, within a period of four years, to ensure compliance. There is a right of appeal to the Secretary of State against a notice. Non-compliance with Tree Replacement Notices is likely to result in the Authority undertaking the works and recharging the full costs to the land owner/occupier/developer.
18. If you would like to establish if a tree is protected, either because of a Tree Preservation Order or because it is located in a conservation area, you can either contact our Native Woodland Officer on 01439 772700.
19. Further information on trees including their protection during building operations can be found in our Design Guide: Trees and Landscape²⁷.

²⁷ <https://www.northyorkmoors.org.uk/planning/framework/spds/dgpt3.pdf>

If you would like further information, please contact us:

Planning Policy – policy@northyorkmoors.org.uk

Development Management – planning@northyorkmoors.org.uk



01439 772700

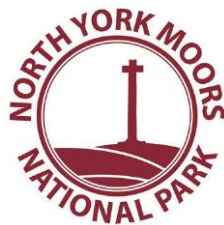


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The text of this document can be made in large print. Please contact the Planning Policy team using the contact information above.



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