



Dartmoor National Park Authority Local Enforcement Plan



Dartmoor National Park Authority
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Preface

The Authority is the sole planning authority for the National Park and is responsible for determining all applications for planning permission and listed building consent, etc., including those relating to mineral working and waste management facilities.



It monitors developments to ensure that they are carried out in accordance with the approved details and to ensure compliance with conditions on permissions and consents. It also investigates allegations that unauthorised developments have been carried out.

The Authority's enforcement powers are contained within the Town and Country Planning Act 1990 (as amended) and the Planning (Listed Buildings and Conservation Areas) Act 1990. Government advice is that all planning authorities should use enforcement powers only where it is considered expedient to do so having regard to the provisions of the development plan and to any other material considerations. Enforcement action is therefore not mandatory but will be for the Authority to use at its discretion.

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Introduction

This plan is intended to clearly define Dartmoor National Park Authority's policy and procedure for enforcing planning control within its borders.

This document should act as a guide to both those who have been affected by breaches of planning control, and those who have carried out/caused a breach to occur and will provide clarification as to the steps that the Authority can take and also the timescales involved in achieving a result or bringing matters to a conclusion.

Both Central Government and the National Park Authority appreciate the need for the existence of an effective enforcement service. For the Authority's part we have dedicated Enforcement Officers who are responsible for investigating reported breaches of planning control, but also for monitoring developments (where this is considered necessary or to be in the public interest).

Guidance from Central Government on the matter can for the most part be found in the National Planning Policy Framework (NPPF) which came into effect in March 2012. Paragraph 207 of the Framework states that;

“Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so”.

In view of this guidance, this Plan aims to explain the way in which the Authority will carry out its business in terms of investigating alleged breaches and also when monitoring developments. It will also clearly set out the process and procedures involved in determining whether it is both necessary and expedient to take enforcement action.

Legislation, Guidance and principles of planning enforcement

The Town and Country Planning Act 1990 (as amended) and the Planning (Listed Buildings and Conservation Areas) 1990 (as amended) define the planning process and provide the Authority with almost all of its enforcement powers.

These Acts also make provision for people who have carried out unauthorised development to apply retrospectively for planning permission, in an attempt to regularise matters. (It should be noted that in dealing with these applications, they must be considered by the Authority, in exactly the same way as any other application, i.e. the fact that the development has already been carried out is not something that can be taken into account in the determination of the application).

Although the legislation formalises the Authority's powers of enforcement, it should be noted that these powers are entirely discretionary. Carrying out development without planning permission is not normally a criminal offence, unless in breach of a pre-existing legal notice or affecting a listed building.

Expediency

The Authority has a suite of documents that form a sound basis for taking planning decisions. In particular there are the adopted Core Strategy 2008 and the Development Management and Delivery Plan Document 2013. In deciding whether it is appropriate to take enforcement action, the degree of harm the unauthorised development is causing or is likely to cause, will be carefully considered by the Authority, and consideration will be given to the policy documents quoted above.

Harm can arise through a range or combination of factors, for example:

- Adverse impact on visual amenity due to poor design or inappropriate materials
- Inappropriate and conspicuous development that is harmful to the landscape or the setting of a heritage asset (e.g. Conservation Area or Listed or historic buildings)
- Failure to comply with a condition of a planning permission leading to an adverse impact
- Danger and disturbance due to significantly increased traffic flows
- Loss of privacy or overshadowing and loss of natural light
- Loss of protected trees or loss or damage to protected buildings (listed buildings) and demolition of buildings in a conservation area

- Development that contravenes the purpose and credibility of adopted national and local planning policies
- Untidy land and run down or derelict buildings that present a very poor quality environment and/or prejudice community safety.

Harm (in planning purposes) however, does not include:

- Competition that is caused to another business
- Loss of an individual's view or trespass onto their land (including ownership disputes)
- Loss of value to a property

Proportionality

Enforcement action should always be proportionate to the seriousness of the harm being caused. It should not be taken just to regularise development which would otherwise be acceptable on its individual planning merits, but for which planning permission has not been sought.

Consistency

We will take a similar/consistent approach to cases in order to achieve similar final outcomes. This approach does not imply uniformity but that all cases must be assessed based upon a full consideration of all the circumstances of a case guided by our adopted Core Strategy and DMDPD policies supplementary planning documents and the Authority's Design Guide to establish what reasonable and adequate requirements there are to remedy the breach.

Negotiation

It is the aim of the Authority that in all but the most serious cases, we will seek to negotiate compliance rather than pursue formal enforcement action, provided that an appropriate resolution can be achieved in a timely manner. Any negotiations will aim to achieve one or more of the following outcomes:

- To undertake work to comply with the planning permission granted
- To apply for planning permission for the works undertaken or a variation to the works that are more likely to secure permission
- To remove an unauthorised development
- To cease an unauthorised use.

However, negotiations will not be allowed to hamper or delay any formal enforcement action that may be required to make the development acceptable in planning terms, or to compel it to stop.

The enforcement of planning control in Dartmoor National Park

Dartmoor National Park (along with the other National Parks in the United Kingdom) is a protected landscape and a special environment of national importance. We as an Authority will not allow development to detract from the special qualities of Dartmoor. As such, all new cases will be prioritised according to the degree of harm that they cause.

Priority	Examples (not exhaustive)
Urgent: site visit within 24 hours	Development causing serious threat to public health and safety, or permanent, serious damage to the natural or built environment.
High priority: site visit within five working days	Less urgent than above but considered harmful with the potential to get worse.
Standard priority: site visit within fifteen working days	This covers the majority of cases, where there is the possibility of the existence of a breach, but which is unlikely to get worse.
Low priority: site visit when workloads and resources allow (ideally within 20 days)	This category is for less serious cases

We deal with complaints concerning unauthorised development, changes of use and non-compliance with planning conditions and approved drawings. We will investigate anonymous complaints providing they are not considered to be malicious. Matters requiring investigation can include:

- Building works carried out without permission (if permission is needed)

- Planning conditions not being adhered to
- The change of use of a building or site without planning permission (if permission is needed)
- The display of advertisements without consent (where they do not benefit from deemed or express consent)
- The demolition of walls and buildings in conservation areas without consent
- The carrying out of works in contravention of an Article 4 Direction
- The carrying out of works to a listed building that harms or affects its character.

If we receive a complaint that is not a planning matter (such as car sales on highway land or noise and odour abatement issues) we will either pass the details on to the appropriate authority (e.g. local District Council) or advise the complainant whom to contact.

We also provide a monitoring function to ensure that the conditions applied to planning permissions and legal agreements are adhered to. Where a need to monitor a specific site has been identified, site visits will be undertaken to ensure that the development is taking place in accordance with the approved drawings and to discuss any other pertinent issues such as the discharge of planning conditions.

In most cases of unauthorised developments and changes of use, a criminal offence has not been committed until formal enforcement action has been taken and the person concerned has failed to comply with the requirements that have been set. However, in the case of advertisements, trees, conservation areas and listed buildings, unauthorised works can constitute an immediate criminal offence which we could pursue through the magistrates court if we consider it expedient to do so.

Procedures for investigation

Officers of the Authority are, under a number of statutory provisions, given a legal right of entry to land in order to investigate alleged breaches of planning control. The principal legislation being sections 196A, 196B and 196C of the Town & Country Planning Act 1990. It should be noted that it is not always possible or appropriate to make prior appointments before visiting a site.

When on-site the officer will;

- identify themselves by name and organisation, carry identification and explain clearly the purpose of their visit
- act with courtesy, honesty and openness
- exercise their judgement impartially
- respect commercial confidentiality provided that to do so would not conflict with any enforcement proceedings
- if necessary caution an individual under the Police and Criminal Evidence Act (PACE)
- collect evidence, including taking photographs, carrying out surveys etc.

Minerals and Waste Sites

We are also responsible for monitoring minerals and waste sites. Monitoring of permitted sites is an essential tool for controlling development and preventing problems from escalating. It is this proactive approach that enables us to anticipate likely breaches of planning control before they occur. A proactive approach can however only be pursued within a structured monitoring regime.

On 6 April 2006 The Town and Country Planning (Fees for Applications and Deemed Applications) (Amendment) (England) Regulations 2006 came into force. This amendment enables local authorities to charge operators, where sites have planning permissions for mineral extraction and/or waste landfill, for the reimbursement of the average costs of providing the monitoring service. We will therefore charge for our monitoring service in accordance with these regulations.

Common breaches of planning control in Dartmoor National Park

In an average year, the Authority will be asked to investigate between 300 and 400 reported cases alleging a breach of planning control.

There are a particularly high number of incidences concerning the unauthorised residential occupation of mobile homes (and touring caravans). This trend has continued with a high proportion of the Enforcement Officers time and resources being spent on resolving these types of issues. To combat this ongoing problem, we will aim to resolve the issue of unauthorised mobile homes quickly owing to the harm that can arise. In cases where mobile homes and caravans have been stationed on land without planning permission we will proceed to serve an Enforcement Notice unless there is considered to be justification for its retention. If this is considered to be the case, an opportunity will be provided for the submission of a retrospective planning application.

The conversion of incidental or ancillary outbuildings within residential curtilages to independent units of accommodation are also increasingly of concern and warrant a similar approach.

We also investigate a large number of cases relating to unauthorised signage, as the display of such items can have a detrimental visual impact upon the Park and the landscape that the advert is displayed within. All local planning authorities have powers to remove or obliterate unauthorised signage and prosecute those who display signs without the benefit of deemed or express consent as Dartmoor National Park is an Area of Special Control of Advertisements. We will rely on these powers to control unauthorised signage in the interests of public amenity and highway safety.

In cases where an Enforcement Notice has not been complied with, we will proceed to seek either a prosecution in the magistrates court or, if the breach is considered to require it, an application for an Injunction. It is necessary to adopt such an approach in the interest of protecting the special qualities of Dartmoor and the amenities of local residents. The Authority has had some notable success in pursuing matters through the courts and we consider such action can be both appropriate and in the public interest. We may proceed with such action even if further planning applications or appeals are lodged.

How to report a breach of planning control

All suspected breaches of planning control should be reported to the Enforcement Team. Due to the large area that the Park covers and the remote location of some sites we are somewhat reliant upon the help of the public to bring breaches to our attention and provide us with evidence as to when the breach started. The details of the complainant will remain strictly confidential and we will not divulge the name of the complainant to the person who it is alleged has breached planning control.

Suspected breaches of planning control can be reported via the following:

The Enforcement Team

Dartmoor National Park Authority

Parke

Bovey Tracey

Newton Abbot

Devon

TQ13 9JQ

Phone: (01626) 832093

Fax: (01626) 834684

Web: www.dartmoor.gov.uk/planning/pl-devcontrol/plenforcement_of_planning_control/planning-breach-form

Communication

The Authority can only use its enforcement powers effectively if there is sufficient information and evidence available to demonstrate clearly that a breach of planning control has occurred. In reporting a suspected breach, it is therefore very important to provide as much detail as possible including the exact nature of the alleged breach, its location, when it first started (or was first observed), any contact details available and the harmful impact the development or use is having. Furthermore, the complainant should consider whether they are prepared to provide evidence at a public inquiry or in court to help support and sustain any action that we may take although this will not always be necessary.

We will keep complainants and landowners informed as to the progress of an investigation at key stages, i.e. once a case has been investigated to advise of the Authority's proposed actions, to inform when a case is to be reported to the Development Management Committee for consideration or when legal action has been taken, if an appeal is lodged and when the case has been closed. Complainants will also be notified should an application be submitted seeking to regularise a development. Complainants, landowners and any other interested parties are invited to seek an update from officers at any time.

Time taken to resolve or close enforcement investigations

It is acknowledged by the Authority that it can be frustrating when despite contacting us the activity which is causing concern still persists. Some of the factors which can result in perceived slow progress include:

- The gathering of satisfactory and robust evidence in order to take action
- Determination as to whether or not there has been a breach of planning control
- Continuing negotiation to try to resolve the matter
- Consideration of a retrospective planning application seeking to remedy the breach; and
- Awaiting the determination of an appeal against formal Notices.

In the case where a planning application(s) has been received this “delay” is due to the time needed for such an application to be determined (which should be within an eight week period).

In cases where an appeal has been lodged, it can be many weeks or months for the Planning Inspectorate (an independent body with no association to the National Park Authority) to determine the appeal.

When planning permission has been granted for a revised development (i.e. because an alternative has been negotiated), we will encourage the land owner/applicant to implement the permission within an appropriate and timely fashion and to finish the works in order to bring about the final cessation of the breach of planning control.

Procedures

Appendix 1 shows a flow-diagram that represents our standard approach to handling and investigating a typical alleged breach of planning control. However, each investigation will evolve depending upon the severity of the breach, its scale and the degree of harm and so the timescales shown may vary (see also the table in “Enforcement of planning controls” section). We will therefore make specific requests for information or the submission of a planning application within a certain timeframe. When requests are made, we will not enter into protracted or cyclical correspondence in the interests of focusing our resources on resolving the matter. It should be noted that the following flow-diagram is therefore based on a generic case and is intended to give an indication as opposed to a steadfast approach in every instance.

How a decision is made over a confirmed breach of planning control depends on the nature of the breach. For the majority of cases, officers are able to determine expediency and the appropriate course of action without recourse to Members, however, if it is proposed to take legal action which would prevent a person residing in or on premises or significantly affect their ability to do so, or would prevent or significantly affect the operation of a business, employment site or community use, the case will be reported to the Authority's Development Management Committee for determination.

The following links will take you to the Authority's 'Scheme of Delegation' and advice on 'Public Participation at Meetings of the Authority' where further information can be found on how enforcement cases are determined and the procedure for attending and speaking at Committee meetings:

Dartmoor National Park Authority's Scheme of Delegation:

www.dartmoor.gov.uk/data/assets/pdf_file/0015/40380/DNPA-Scheme-of-Delegation-05-July-2013.pdf

Public Participation at Meetings of the Authority: www.dartmoor.gov.uk/aboutus/au-report/au-public_participation#publicspeaking

Parish Councils will be consulted on enforcement cases in their respective areas prior to those cases being reported to the Development Management Committee. Parish Councils will also be consulted on other cases where it is considered appropriate or necessary.

Concealment

The Localism Act (2011) brought into effect concealment provisions on 6 April 2012. These provisions allow the Authority to apply to the magistrates court for a 'Planning Enforcement Order' in cases where it is considered the breach has been concealed and would otherwise have become immune from enforcement action. In cases where we consider that a breach of planning control has been concealed, and it is considered expedient to do so in light of the policies of the Core Strategy and the Development Plan Document, we will apply for a Planning Enforcement Order, so that an Enforcement Notice may be served.

Enforcement Powers

Listed below is a brief description of the various enforcement powers available to the Authority. This is not intended to set out in full all the detailed legal considerations, but simply to try to explain the general nature of the available enforcement powers. In all cases, the Authority will seek to use the most effective power available to remedy a breach of planning control.

- **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** are served where unauthorised alterations to listed buildings have taken place and action is needed 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** 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** 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** 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 and consideration. (There is no right of appeal for these Notices).
- **Section 215 Notices** can be served on any owner or occupier where land or buildings have become untidy and are considered by us to adversely affect the amenity of the area. (There is a right of appeal to the magistrates court for this Notice).
- **Planning Contravention Notices** can be served on any owner, occupier or person carrying out works on the land 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. Similarly, it is also an offence to knowingly falsify information or answer a PCN with incorrect statements/information.

- **Section 330 Notices** require information from any occupier of land asking what his/her 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** enable the Authority to serve notice on any person appearing to be responsible for an unauthorized advertisement requiring its removal. 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.

What happens after a Notice is served?

The recipient of a Notice will either:

- Comply with the Notice (in which case the relevant enforcement investigation will then be closed); or
- Contest the Notice by way of an Appeal to the Planning Inspectorate or challenge in a Court of Law - where this is appropriate.

As has previously been mentioned, hearing a case on appeal will take time and can often delay proceedings, particularly if a Public Inquiry has to be arranged. If the appeal against the Notice does not succeed the formal Notice comes into effect. If the appeal is successful and/or planning permission is granted, then this is normally the end of the matter. If the Notice is upheld or there is no appeal and it is still not complied with, the Authority will then take steps to secure compliance through court action.

Court Action

Prosecution will be considered in addition to the service of an enforcement notice in cases of unauthorised works to listed buildings, demolition works carried out within conservation areas, the display of advertisements where formal requests to remove the adverts have failed and where there has been a failure to comply with a legal notice or court order.

Injunctive Action can and will be used where a breach of planning control is particularly harmful, or there is a threat of it becoming so, and which can be halted by the successful application to the High Court (or County Court) for an Injunction. Its use will also be considered in longstanding cases where the offender has failed to comply with an Enforcement Notice and the harm is ongoing. We will always look to recover our costs from the person responsible 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 may be used to 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 person responsible when placed in the position of taking such action even if this results in placing a charge on the land to aid future recovery.

Complaints about our service

Issues regarding planning and particularly enforcement can be highly contentious. As such; on occasion individuals can be dissatisfied with the service that they have received from the Authority. In these cases we would encourage these individuals to direct their concerns to the Authority's Director of Planning so that he may properly assess the issues that they raise and (if necessary) take further action.

Complaints relating to the service will be acknowledged within three working days. The complaint will be investigated and the complainant will receive a written response within 20 working days of receipt of the complaint. In the first instance, all complaints should be addressed to:

Stephen Belli

Director of Planning

Dartmoor National Park Authority

Parke

Bovey Tracey

Newton Abbot

Devon

TQ13 9JQ

Email: sbelli@dartmoor.gov.uk

If a complainant remains dissatisfied with the written response then details will be supplied for pursuing the complaint further through our Monitoring/Complaints Officer in accordance with the Authority's formal corporate complaints procedure. We will always strive to resolve a

complaint locally but if this is not possible, the complainant will be advised on how to pursue the matter further with the Commissioner for Local Administration (the Ombudsman).

Other Useful Documents

Dartmoor National Park Authority website: www.dartmoor.gov.uk

Dartmoor National Park Authority Local Development Framework Core Strategy Development Plan Document 2006-2026 (Adopted 2008)

Dartmoor National Park Authority Development Management and Delivery Development Plan Document (Adopted 2013)

Dartmoor National Park Authority's Design Guide (Adopted 2011)

Planning Portal website: www.planningportal.gov.uk

Enforcement Register: www.dartmoor.gov.uk/planning/pl-devcontrol/pl-enforcement_of_planning_control/search-the-enforcmnt-register

PROCEDURES FLOW DIAGRAM

