

## REPORT OF HEAD OF DEVELOPMENT MANAGEMENT

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**SUBJECT:  
PLANNING ENFORCEMENT POLICY**

### **Purpose of Report**

To bring to members an update on the work to date on the review of the planning enforcement function (as set out in Appendix 1).

To seek the support of members for the proposed enforcement policy (as set out in Appendix 2).

### **Background**

1. Members agreed at the National Park Authority Meeting on the 29<sup>th</sup> September 2010 that a review of the planning enforcement function be undertaken with a number of key actions being proposed. Members also requested that a formal enforcement policy was brought back to Committee for consideration.

### **Update**

2. The actions proposed in the 29<sup>th</sup> September 2010 paper have been implemented as set out in Appendix 1.

### **Enforcement Policy**

3. The policy sets out the visions, aims and objectives for planning enforcement and compliance and aims to provide a policy that will enable the service to be effective and responsive in all enforcement matters. It seeks to ensure that the credibility of the planning service is maintained whilst meeting the NPA's statutory purposes. The policy seeks to prioritise cases on a "traffic light" system. It sets out the basis for decision making and the procedures to be followed and seeks a more proactive approach to enforcement matters.
4. The policy has been written with full regard to the WAG's stage 1 review of the enforcement system in Wales. This review concluded that the system is effective and does not need radical change, and the range of powers to authorities is appropriate and should remain discretionary. Further research is however being carried out in relation to training, changes to time limits in relation to the taking of enforcement action, the use of stop notices, the level of fines imposed and the scope for attaching conditions to control an unauthorised development and the urgent need for increased advice on enforcing wildlife legislation. The outcome of these research areas, should

not however impact on the basic principles set out in the recommended enforcement policy which also follow the advice in Planning Policy Wales, Technical Advice Note 9 and the various research reports that have been published in relation to the delivery of the enforcement service across Wales.

5. The policy will require regular updating as legislation and advice changes, and it is also integral to its success to ensure that regular monitoring and reporting of the service is made available.

### **Financial Considerations**

6. The adoption of the enforcement policy will enable processes to be streamlined and to enable a more efficient and cost effective service to be developed and as such there are no significant financial considerations. There will however be on occasion be the need to consider direct action and costly appeal processes which will need to be evaluated individually as they arise.

### **Compliance**

7. The adoption of an enforcement policy will meet the statutory purposes of the Authority by setting out a basis for an effective planning enforcement service which can respond to unauthorised developments in the public interest and in the interests of conserving and enhancing the National Park's special qualities and resources.
8. It is an important element of enforcement that officers, especially when visiting people at their homes, should always endeavour to discuss matters in a relaxed manner putting people at ease. Fluency in Welsh is a consideration in this respect and every endeavour will be made to have at least one Welsh speaker within the enforcement team.

### **Other considerations**

9. Joint working on enforcement is an issue which is being considered. Initial discussions have taken place with the Head of Planning at Pembrokeshire County Council. There may well be merit in considering such working and a joint enforcement policy in the future could be a benefit to both Planning Authorities as well as the general public's understanding of planning enforcement. A consultation period would allow this option to be further investigated.

### **Recommendation**

- a) That Committee notes the actions to date set out in Appendix 1.
- b) That Committee approves either of the following courses of action:

- **adopts the attached enforcement policy (set out in Appendix 2) for immediate implementation**

**or**

- **uses the attached enforcement policy (set out in Appendix 2) as interim policy with a 12 week public consultation period and reviews public responses prior to formal adoption of a planning enforcement policy in 2011.**

### **Background Documents**

Wales Audit Office Report

PCNPA Corporate Plan

PCNPA Improvement Plan

PCNPA Development Management Improvement Plan

Planning Enforcement Standards for Wales, Planning Officers Society – Wales, 2005

Welsh Local Planning Authorities Enforcement Benchmarking Survey, RTPI, 2009

Planning Policy Wales, Edition 3

Technical Advice Note 9, Enforcement of Planning Control, WAG, 1997

*(For further information, please contact Vicki Hirst)*

**Update as at December 2010 on proposed actions as set out in 29 September 2010 Committee Report on Enforcement**

Action 1 – Professionalism

All enforcement officers are now members of the National Association of Planning Enforcement Officers (NAPE) and will now be able to gain access to the NAPE website and relevant forums and training events

Action 2 – Training

All officers are now identifying training needs and will enrol on relevant courses. This is an ongoing process that will contribute to their continued professional development.

Action 3 – Processes

Work is ongoing to set up templates and databases as part of the SWIFT planning system which is hoped will be in operation early in the new year. All officers are now using electronic calendars and training on Word and Excel is ongoing.

Action 4 – Integration

Site notices are now being carried out by all members of the Development Management team to avoid duplication of journeys. In addition, the frontloading of the planning system has helped to reduce the numbers of conditions imposed on planning permissions, reducing the monitoring workload in this respect. Further work is in progress with regard to the review of conditions.

It is also intended to request that enforcement officers present enforcement matters to the committee meeting and this will commence in 2011.

Action 5 – Targets

Targets for dealing with enforcement matters are being developed and are an integral part of the enforcement policy and implementation of the SWIFT planning system. The enforcement policy reported to members at a workshop in 2009 has now been reviewed and is attached as Appendix 2.

Action 6 – Long Term Structure

The Director of Conservation and Planning has now met with all members of the enforcement team with regard to their long term options but at present no immediate changes to the team structure are envisaged. However, there is scope in the longer term to assimilate the enforcement process with the mainstream planning function and consider partnership options with Pembrokeshire County Council; members will be kept apprised of these opportunities as they arise.

### Action 7 – The Transition Period

The temporary appointment of an enforcement planner has now been extended until the end of March 2011 to assist with the transition period whilst the new processes and training are implemented.

**PLANNING ENFORCEMENT AND COMPLIANCE POLICY**

**PEMBROKESHIRE COAST NATIONAL PARK AUTHORITY  
DEVELOPMENT MANAGEMENT SERVICE**

**This document was approved by .... on .....for the purposes of.....**

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### **Part 1: Vision, aims and objectives**

1. An effective planning enforcement and compliance service is vital to the overall success of the planning system, and thus to meeting the community's development needs while conserving and enhancing the National Park's special landscape qualities and natural and cultural resources and fostering its economic and social well-being.
2. This document sets out the Authority's policies and procedures towards dealing with planning enforcement and compliance issues with priorities in place for serious and time-sensitive breaches.
3. The service aims to:
  - be timely, effective and responsive in the prevention, control and remedying of unauthorised development, ensuring the credibility of the planning service in the interests of the protection of public amenity, remedying any harmful effects arising from development and in meeting the National Park's statutory purposes.
  - maintain effective monitoring procedures to ensure that authorised development is carried out in accordance with planning approvals and conditions
4. In providing its enforcement and compliance service the NPA will meet the key objectives of the Welsh Assembly Government's "Planning: Delivering for Wales" programme as they relate to the enforcement process, i.e. to be open, fair and transparent in any dealings with both the complainant and the alleged transgressor.
5. All parties involved in planning enforcement must remember that a breach of planning control is not a criminal offence, except for unauthorised works to Listed Buildings and illegal advertisements. Action to regularise breaches is discretionary and it is Welsh Assembly Government guidance that enforcement action should only be taken when it is appropriate to do so and any such action should be commensurate with the breach of planning control to which it relates and not to punish the person(s) responsible. (See WAG Planning Policy Wales para 3.8 and TAN 9 Enforcement of Planning Control).

## **Part 2: Priorities**

**Policy 1: Allegations about breaches of planning control will be investigated appropriately in accordance with the following principles underlying an order of priority and subject to a “traffic light” system.**

### **High Priority - Red**

1. Unauthorised development which causes serious immediate and irreparable harm to the environment or public amenity, particularly any works judged to harm the special qualities of the National Park, for example, unauthorised listed building works, demolition of important unlisted buildings in a Conservation Area, significant unauthorised works to an Ancient Monument, a major archaeological site, protected species or a Site of Special Scientific Interest.
2. Unauthorised development that is causing severe disturbance to neighbours or poses a threat to public safety.
3. Unauthorised works to trees covered by a Tree Preservation Order (TPO) or in a Conservation Area.

### **Medium Priority - Amber**

1. Breaches of planning control contrary to the policies of the Local Development Plan.
2. Complaints where the time limit for taking formal action is about to expire.
3. Complaints of significant harm being caused to amenity, for example, extensions to residential property that result in serious overlooking or other amenity problems, unauthorised uses of land which cause amenity problems to neighbouring properties.
4. Commencement of development in non-compliance with the conditions of a planning permission.
5. The erection of unauthorised advertisements that have a significant detrimental effect on highway safety or visual amenities.

### **Third priority - Green**

1. Minor breaches of planning conditions, unless covered above.
2. Minor domestic matters regarding fences/sheds/satellite dishes, boundary and ownership disputes, unauthorised changes of use not immediately giving rise to significant amenity concerns.
3. Other unauthorised developments that are not the source of significant public complaint.
4. Unauthorised advertisements not covered above.

Depending on the seriousness of the alleged breach and available resources the target time for an initial response will be as follows: -

- **High Priority** cases: A site visit and initial investigation will be made within one working day of receipt.



- **Medium Priority** cases: A site visit and initial investigation will be made within seven working days of receipt.
- **Third Priority** cases: A site visit and initial investigation will be made within fifteen working days of receipt.

Each case will be given an initial priority rating. In programming site visits in higher priority cases the enforcement officers will be mindful of taking opportunities where convenient to visit other, lower priority cases on the same trip. A case priority may change following the initial site visit or on receipt of additional information.

An acknowledgment will be provided to the complainant within five working days. As the investigation progresses the complainant will be advised of progress and the outcome in writing. The Enforcement team will aim to complete the first phase of the enforcement investigation within twelve weeks of the date the complaint was first received. The team's performance in meeting these targets will be monitored and reported regularly to the Authority's Performance Review committee

The first phase of investigation is complete when one of the following points has been reached:

- a. The case is closed because the investigation identifies that no breach of planning control has occurred or that the breach is of so minor a nature that further action is not warranted.
- b. The case is closed because an identified breach of planning has been
- c. resolved by negotiation.
- d. Following the investigation a planning application or other form of application has been submitted in respect of the unauthorised development.
- e. A breach in planning control has been identified and an application requested, but has not been submitted. An assessment has been made determining that it is not expedient to take formal enforcement action in the case at this time.
- f. A breach in planning control has been identified and an assessment has been made determining that it is expedient to take formal enforcement action: appropriate action has been authorised by the Development Management Committee or under the Authority's scheme of delegation.

**Policy 2: Complaints about alleged breaches of control will be accepted by letter, e-mail, telephone or by personal caller, provided the complainant provides their name, address and telephone number.**

Every effort will be made to reassure anybody wishing to make a complaint that their details will be kept confidential. Anonymous allegations of breaches of planning control will not normally be investigated unless they allege serious breaches of planning control. Complainants will be encouraged to use a standard form in framing their complaints, and all complaints should clearly identify the location of the site or property concerned, should clearly specify the exact nature of the problem and give an indication of any harm being caused. It would be helpful if any additional information about the identity of the person or organisation thought responsible and the date or the time that the breach commenced is included.

The complaint will be acknowledged in writing within five working days and the complainant will be advised of the officer dealing with the case and his/her contact details; and will be advised of progress at the following stages:

- the initial assessment of the problem,
- when any formal notice is served
- the lodging of any appeal or other court action
- any prosecution to be undertaken
- final closure of the investigation including those closed as not expedient/no breach identified

If the matter is outside the powers of the NPA the complainant will be informed in writing as soon as practicable with the reasons why no action can be taken, and advised, if appropriate and known, of any other body they should contact.

While a complainant's identity will be protected the success of any subsequent enforcement action may be dependent on their willingness to co-operate and possibly give evidence at an appeal or court hearing.

### **Part 3: Decision-making**

**Policy 3: The NPA will take enforcement action only when it is considered expedient to do so. Formal enforcement action will not be instigated solely to regularise breaches in planning control where there is no resulting demonstrable harm. In taking formal enforcement action the NPA will be prepared to use all the enforcement powers available commensurate with the seriousness of the breach.**

In deciding whether to take enforcement action the NPA will have regard to the development plan and to any other material considerations, including national policies and guidance in Planning Policy Wales, Technical Advice Notes and Supplementary Planning Guidance.

In considering whether it is expedient to take enforcement action the decisive issue will be whether the breach of planning control unacceptably affects public amenity, existing land uses and buildings which merit protection in the public interest or the natural environment. Any action taken will be proportionate with the breach of planning control to which it relates. All decisions as to whether to take enforcement action or not will be recorded on the file/database with reasons why that decision has been taken.

This reflects the approach to enforcement set out in Planning Policy Wales and Technical Advice Note 9 Enforcement of Planning Control. Where it is assessed that it is likely that planning permission would be granted for the development, the person responsible would normally be invited to submit a retrospective planning application. It will generally be inappropriate to take formal enforcement action against a trivial or technical breach of control, which causes no harm to amenity or the environment.

In defending enforcement action on appeal and in the courts, it will be necessary to show that the relevant procedures have been followed and that national policy on planning and enforcement has been taken into account.

**Policy 4: Decisions on taking formal planning enforcement action will be made by Members through the Development Management Committee (or under the Authority's Scheme of Delegation should this be extended in the future). Any decision to take such action shall be based on a written report, and have regard to any advice from the Solicitor, and be agreed by the Committee (or be authorised by the Head of Development Management, the Director of Conservation and Planning, or the Chief Executive (National Park Officer) should the Scheme of Delegation be extended**

The frequency of Development Management Committee meetings should minimise the need to take emergency action, but occasionally this may be necessary. Emergency enforcement action shall only be authorised by the Chief Executive (National Park Officer) or the Director of Conservation and Planning - in either case in consultation with the Chairman, or Vice Chairman of the Development Management Committee. In giving such authorisation due consideration shall be given to any advice from the Head of Development Management and the Solicitor. Any such emergency action shall be reported to the next meeting of the Development Management Committee to seek ratification of the action taken.

**Policy 5: It is the policy of the National Park Authority that Members of the Development Management Committee who are serving Magistrates or have partners or close family members that are serving Magistrates shall not take part in any decision in respect of enforcement issues which may result in formal legal action.**

This policy has been put in place to prevent any perception of conflict of interest on the part of Members of the Authority who are serving Magistrates

**Policy 6: In considering whether to take enforcement action the Authority will not give weight to the fact that development has already commenced.**

Other than in very specific situations, for example, works to listed buildings, it is not a criminal offence to carry out development without planning permission, and it is therefore important that unauthorised developments are treated on their individual merits in the same way as proposed developments. The test to be applied will be "would planning permission have been granted for this development had it been the subject of a planning application?"

**Policy 7: Decisions not to take enforcement action will normally be made by the Head of Development Management in accordance with officer delegation arrangements. Reasons for not taking action will be recorded in writing/on the database.**

**Policy 8: The National Park Authority will not allow unnecessarily prolonged negotiation to delay essential enforcement action.**

While the National Park Authority will endeavour to overcome any harm caused by unauthorised development by negotiation wherever possible, the enforcement system rapidly loses credibility if unacceptable developments are perpetuated by prolonged or protracted enforcement discussions and can result in more costly and

complex cases where work continues. As such a time limit for concluding negotiations will therefore normally be set in accordance with the priority accorded to the case but will aim to close the initial complaint within twelve weeks of the date of receipt.

**Policy 9: In situations where an unauthorised development may only be made acceptable by the imposition of appropriate planning conditions, a planning application will be sought to regularise the development. Where such an application is not forthcoming within an agreed time scale, an enforcement notice will be served requiring compliance steps to be taken which are proportionate to the breach together with a statement that the National Park Authority would be minded to grant planning permission subject to specified conditions.**

The National Park Authority will aim to ensure that where a development is considered to be acceptable, but remains unauthorised, then the service of a notice along with a statement will protect the interests of future owners/developers.

**Policy 10: In considering whether to take enforcement action, the National Park Authority will not give weight to non-planning considerations.**

It is not the purpose of the planning system to protect the private interests of one person against the activities of another. Action must be placed on sound planning grounds. Local opposition or support for an unauthorised development will not be given weight unless that opposition or support is founded upon valid planning reasons.

**Policy 11: In considering appropriate enforcement action the National Park Authority will liaise closely with Pembrokeshire County Council over its powers under other legislation.**

From time to time more effective and efficient outcomes can be achieved by use of powers outside the Town and Country Planning legislation. It is also important that the National Park Authority's enforcement action is coordinated where relevant with action being considered or taken by the County Council under other legislation.

## **Annex: An outline of enforcement measures**

### **Planning Contravention Notice**

In some circumstances it is not possible from the site visit or details of the complaint to establish the full facts of the case. Furthermore any formal notice must be served on all parties with an interest in the land. In such instances a Planning Contravention Notice will be served. This requires the recipient to provide information requested relating to any alleged breach within 21 days. Failure to return that document completed is itself an offence which is answerable in the Magistrates Court.

### **Breach of Condition Notice**

This notice is an alternative to an Enforcement Notice for remedying a breach arising from the failure to comply with any condition or limitation subject to which planning permission has been granted. It is not a legal charge on the land and can only be served on the person responsible for the breach. It can be mandatory (requiring something to be done) or prohibitory (requiring something to stop). It will specify a period of compliance which cannot be less than 28 days. There is no appeal against such a notice which is answerable in the Magistrates court.

### **Enforcement Notice**

This notice, when issued, must specify the alleged breach and specify the steps to be taken to remedy the breach within a specified timetable, has to be served on all parties who have an interest in the land. This may mean serving on the mortgagee ie the Bank or Building Society which lent the money to purchase the property or other family members who similarly have an interest in the property. The Notice can either refer to a Change of Use of the land or to an operational development. There is a right of appeal, within 28 days of the service of the notice, and there are six grounds on which that appeal can be based. If the requirements of the notice are not met, and no appeal has been lodged or any appeal has been dismissed then the responsible person may be prosecuted.

### **Stop Notice**

Having served an enforcement notice the Authority may consider that any ongoing breach is so serious that it should cease immediately. In such cases a Stop Notice will be served. There is no appeal against such a notice. However its service may give rise to the obligation to pay compensation.

### **Advertisement Discontinuance Notices**

Where an unauthorised advertisement causes substantial injury to the amenity of a locality or a danger to members of the public Local Planning Authorities can serve a Discontinuance Notice to require the removal of the notice.

## **Injunctions**

If warranted Local Planning Authorities can apply to the High Court or the County Court for an injunction at any stage of the enforcement process. Again it can be mandatory or prohibitory and normally the “test” for taking such a step is that nothing short of that action would be effective.

## **Section 215 Notice**

If it appears to the Authority that the condition of a property or land adversely affects the amenity of the area then the above can be served identifying the reasons as to why it is considered that the condition is detrimental and the steps necessary to remedy the situation. The only right of appeal is to the Magistrates Court and failure to comply can result in prosecution in the same court. Alternatively the authority can consider carrying out necessary remedial works itself and seek to recover its costs from the owner.

**Urgent Repairs Notice** to require necessary works to a listed building, which should only relate to the overall integrity of the building, can be served on all interested parties in respect of an unoccupied building.

**Repairs Notice** can be served in respect of an occupied listed building which in the opinion of the Local Planning Authority is not being properly maintained. This can lead to compulsory acquisition by the Authority of the subject building to ensure that it is properly maintained. Similarly there is legislation which empowers the Planning Authority to take action on mineral sites or where Tree Preservation Orders have been ignored.