



A Guide to Planning Enforcement in Exmoor National Park



Enhancing
the qualities that make **Exmoor**
special

www.exmoor-nationalpark.gov.uk

Reporting a Suspected Breach of Planning Control

A suspected breach of planning control can be reported either by:

- Completing the Enforcement Form on the website at www.exmoor-nationalpark.gov.uk/planning/enforcement
- E-mailing the National Park Authority at plan@exmoor-nationalpark.gov.uk
- Writing to the Exmoor National Park Authority at Exmoor House, Dulverton, TA24 9HL or
- Phoning the National Park Authority on 01398 323665

We will need:

- Your name, address and contact details
- The address where the suspected breach is taking place
- What your planning concerns are about
- How it affects you
- Any other information to assist us with looking into the matters such as sizes/heights of structures, dates and times of activities, and when the matters began.

Planning Enforcement in Exmoor National Park

Introduction: This document sets out priorities for investigation, explains what will be investigated and what will not, and outlines the National Park Authority's general discretionary powers with regard to planning enforcement. The plan sets out priorities for responses to complaints and clarifies the timescales for response by the Officers. This document also sets out the Authority's approach to handling planning related enforcement matters.

Enforcement of Planning Control

Background: The Exmoor National Park Authority is the Local Planning Authority (LPA) for Exmoor and is responsible for determining all applications for planning permission, listed building consent, works to protected trees and advertisement consent. It may monitor 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 LPA's enforcement powers are contained within the Town and Country Planning Act 1990 (as amended). 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.

When Enforcement Action is not possible

We will not be able to take enforcement action in the following cases:

- If the work does not need permission. This could include extensions built under a householder's national rights to undertake various home improvements without having to seek permission from the LPA (also called 'permitted development'), or the use of part of a house for the owner's hobby or in connection with their business, as long as the property is still mainly used as a home. It also includes many garden outbuildings.
- If the development already has the necessary permission. We normally allow up to three years after we have granted planning permission to start the building work, as long as any relevant conditions are complied with. However, we cannot normally require the development to be finished in a particular timeframe.
- If the work has become legal because of the passage of time, even if it did not have permission in the first place. The timescale for this is four years for building work, and changing the use of a building to a dwelling house; and 10 years for other changes of use or for breaches of planning conditions. If the owner can prove these dates, we cannot take enforcement action.
- Civil matters such as neighbour disputes relating to boundary issues.

How we do it

- **Consistency** - Each individual matter will be considered on its merits; there will be a consistent approach to enforcement action in similar circumstances.
- **Proportionality** - As far as the law allows, the LPA will take account of the circumstances of the case and the degree of harm or potential harm when considering appropriate action.
- **Openness** – As far as the law allows the LPA will:
 - Provide information and advice to individuals and organisations;
 - Share information with complainants, owners/developers and Park Authority Members about significant progress with an investigation;
 - Make it clear as to why the Local Planning Authority has decided to take formal enforcement action or why the case has been closed.

Within the terms of the Planning Acts the Local Planning Authority may issue an Enforcement Notice only where it appears to them that there is a breach of planning control and that it is **expedient** (in the public interest) to issue the notice, having regard to the provisions of the Development Plan and to any other material considerations.

The Planning Investigations Officer will therefore **only** investigate allegations that may **constitute a breach of planning control** within the terms of the Town Country Planning Act, 1990 (as amended). For example:

- Unauthorised buildings, uses, works to listed buildings, advertisements;
- Non compliance with permissions, conditions and planning agreements; and
- Unauthorised works to protected trees and hedgerows.

The emphasis will be firmly on negotiating compliance or regularising breaches of planning control before considering formal enforcement action. The Authority will take formal enforcement action where it considers it **expedient to do so**.

The Process

Enforcement action is a discretionary power to be taken when it is appropriate to do so, and any action taken should be proportionate to the breach.

It should be noted that it is not a criminal offence to carry out development without first obtaining planning permission, and the Planning Acts allow for the submission and consideration of a retrospective application.

Enforcement action should not be taken simply to correct the absence of planning permission provided the development is in all other respects acceptable.

When a minor breach of planning control occurs, and the party responsible has given confirmation of their intention to comply with the required remedial action within a reasonable, prescribed timescale, no immediate enforcement action will be initiated.

Only if the matter is not satisfactorily resolved within the prescribed timescale will the Authority consider the use of its enforcement powers.

In cases where it is essential to protect the area, or for reasons of public/highway safety, or to protect the integrity of the development management process, enforcement action will be taken.

When a serious breach of control occurs, the LPA will serve the most appropriate Notice in order to remedy the breach or effect necessary improvements.

The handling of an Enforcement Investigation

When you make a report, we will need:

- The precise location of the site or property you want investigated.
- The exact nature of your concern and how the breach impacts on you.
- If possible, the identity of the person or organisation responsible and the date when the alleged breach began.

We will also need your contact details so we can ask for further information or report back on our findings. We promise to keep your identity confidential, and will not reveal it to the people we are investigating without first obtaining your permission. In return we aim to:

- Provide a written acknowledgement of an allegation within 7 working days of registration of a valid complaint;
- Treat your request in confidence. However, complainants may be asked to assist the Authority if the matter results in a public inquiry or court proceedings. This may mean that the complainant is asked to sign a written statement and to attend formal proceedings;
- Carry out a site visit in accordance with the Priority Level;
- Provide you with an explanation of the course of action to be taken within 42 days;
- Keep you advised on key progress with the enforcement investigation, including notification of receipt of any retrospective application to remedy any breach;
- Advise you of the final outcome.

Please note that we do not normally investigate anonymous complaints, or very general issues. If there is a reason why you are unable to report a breach yourself then it is open for you to approach the Parish Council, Local Councillor or National Park Authority Member who may be able to report the suspected breach and the related details on your behalf. In these circumstances they will be logged as the complainant and informed of the progress of the investigation.

Priority Levels: We prioritise the workload to make best use of limited public resources. Complaints will be categorised according to the following criteria:

Priority 1: Target Visit within 1 working day

- Works currently taking place involving substantial earth works.
- Works currently taking place involving substantial alterations to a listed building or scheduled ancient monument.
- Activities where illegal entry/occupation onto land is in progress.
- Works where significant and rapidly ongoing building works are taking place.

Priority 2: Target Visit within 10 working days.

- All other enforcement cases not covered by Priority 1 and 3 categories.

Priority 3: Target Visit within 20 working days

- Works which have either been completed or there are no works presently taking place.
- Use of land and/or buildings where the use appears to have been taking place for more than 4 weeks.

Site Visits: The initial inspection is carried out by the Planning Investigations Officer who will:

- Carry Identification;
- Explain the purpose of the visit;
- Try to find out what has taken place or is currently taking place;
- Secure and preserve evidence recording details of development/activity and where necessary, measurements and/or photographs;
- Where appropriate make enquiries nearby when no one is available on the site;
- Try to find out the contact details of anyone who has a material interest in the site;
- Also visit a complainant if it is deemed necessary.

Following a site visit: A report will be discussed with a Planning Officer to establish whether a breach has occurred and the expediency of taking action. If it is considered that a breach of planning control has taken place, the Planning Investigations Officer may contact the responsible person and advise them to stop work until the matter is resolved. Any further work carried out by or on behalf of the responsible person would be entirely at his or her own risk, and may be subject to enforcement action.

Decision Making and Resolution

When enforcement action is not taken: We will not take enforcement action when the breach is deemed minor with no significant effects.

Taking Informal Action: If the work needs planning permission but an initial analysis appears to meet the objectives of our development plan policies, we will normally ask interested parties to make a planning application to seek to retain the development. This allows the matter to be considered formally, and the Town/Parish Council and neighbours can be asked what they think before a decision is made. This is called a 'Retrospective' planning application. With a retrospective application it is possible to discuss amendments and/or attach conditions to any approval to help ensure that the works are acceptable now and in the future.

While it is open for any owner to submit an application for consideration if permission is unlikely to be granted, the LPA will ask for the unauthorised development to be removed or the use to cease. A suitable period of time will be allowed depending on what needs to be done. For example, a business operation may need to find a new site or premises.

In this way, the vast majority of breaches in planning control are resolved informally and by negotiation with the owners and occupiers of the land.

Determining Retrospective Applications: In considering any retrospective application the LPA will not normally give weight, either way, to the fact that the development may have commenced. 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?" However, on 31 August 2015 the Department for Communities and Local Government Minister for Housing and Planning introduced "a planning policy to make intentional unauthorised development a material consideration that would be weighed in the determination of planning applications and appeals".

This only applies where the works were intentionally undertaken in the knowledge that permission was required. It will be necessary to understand the situation in each case and also this is only one of a number of planning considerations that will have to be taken into account with an application. Nevertheless, this is an important marker to those contemplating undertaking works without permission because in those cases where the planning issues are balanced, the fact that unauthorised works were intentional may tip the balance towards a refusal rather than an approval.

Taking Formal Action: National advice is that formal action should only take place when it is expedient to do so and all other means of resolving the issue have failed. Where negotiations have been unsuccessful, the matter is discussed with the Planning Officer and Legal Services to consider the next step. The decision to take further action is decided on a case by case basis. The main options for action are summarised as follows:

- a) **Breach of Condition Notice**: Can be used where conditions imposed on a planning permission have not been complied with.
- b) **Enforcement Notice**: This is the usual method of remedying unauthorised development and there is a right of appeal against the Notice. The recipient must take the specified steps set out in the Notice within a set time period. Failure to comply with the notice is a criminal offence.
- c) **Section 215 Notice**: Can be used in relation to untidy land or buildings when the condition of the land or buildings adversely affects the amenity of an area.
- d) **Stop Notice**: Can be used in conjunction with an Enforcement Notice where the breach of planning control is causing irreparable and immediate significant harm. Where Stop Notices are issued, the LPA may be liable to pay compensation if it is later decided that such a notice was not appropriate.
- e) **Temporary Stop Notice**: These take effect immediately from the moment they are issued, and last for up to 28 days. A Temporary Stop Notice would only be issued where it is necessary that the activity or development should cease immediately to safeguard the amenity of the area.
- f) **Injunction**: This involves seeking an order from the court preventing an activity or operation taking place.
- g) **Direct Action**: Exmoor National Park Authority may enter land and take the necessary action to secure compliance when enforcement notices have not been complied with. The Authority will seek to recover all cost associated with carrying out works. This is only used in extreme cases.

We will make sure that the steps required by an Enforcement Notice do not exceed what is necessary to correct any breach of control or damage caused.

There is a right of appeal against an Enforcement Notice available through the Planning Inspectorate. If an appeal is lodged, we cannot take further enforcement action until the appeal has been decided. If the Appeal is allowed, the enforcement case will be closed.

The Planning Investigations Officer will make an inspection following the end of the compliance period. If further steps are required, then the person responsible will be given reasonably necessary time to correct the matter. Compliance with the Enforcement Notice will not discharge the Notice. It will remain as a charge on the land to prevent the breach re-occurring.

If the requirements of an Enforcement Notice or Breach of Condition Notice have not been complied with by the due date, the Authority may decide to undertake prosecution action via the courts. They may also seek to obtain an injunction or take direct action to remove the unauthorised development in the most persistent and harmful cases.

Exmoor National Park Authority as the Local Planning Authority has other powers regarding listed buildings, conservation areas, trees, hedges, advertisements and untidy sites.

Unwillingness of Owner to Submit a Retrospective Application:

On occasion, where unauthorised development could potentially be acceptable with conditions and/or amendments via a retrospective application, the owner has declined to make a submission. We are then left with unauthorised works without the ability to, say, require landscaping, control the use in the future, or agree and control external lighting in the interests of the amenities of the area and the adjoining neighbours. In these circumstances, it will not normally be appropriate simply to take no further action and we may therefore serve a Notice requiring the removal of the unauthorised works or use. We may indicate in the Notice that enforcement action was necessary only because of the need to control important planning interests through conditions or amendments but without an application this was not possible. It will be open for the owner to appeal the Notice to the Inspector (paying double the normal planning fee) and seek to convince the Inspector that permission should be granted. The Inspector, if satisfied with the principle of the development, will have the ability to attach conditions and therefore address the interests that we could have addressed had a retrospective application been submitted at the outset. This approach protects the amenities of the area and resolves outstanding cases in a public way.

Concealment: Where an owner deliberately conceals unauthorised development the deception may only come to our attention after the time limits for taking action have elapsed. In such cases, where we consider there is sufficient evidence of the planning breach, and the use or works are harmful, we will seek a Planning Enforcement Order which, if granted, would give a further 12 month period in which to take action. With all unauthorised development that is out of time we will make a judgement whether there has been deliberate concealment and whether a Planning Enforcement Order is an option that should be pursued.

Listed Buildings

Listed Buildings make a significant contribution to the cultural heritage of Exmoor. We will investigate substantial works to a listed building as a priority and in all cases take specialist advice on the harm that may be caused to the fabric or setting. Unlike planning breaches, unauthorised work to a listed building is on conviction a criminal offence so we will need to deal with the investigations in a more formal way.

Although unauthorised works cannot be agreed retrospectively we will discuss whether works can be resolved informally or with the submission of an application. It may be necessary, if harm has been caused and is not being resolved voluntarily, to serve a Listed Building Enforcement Notice and/or prosecute if fabric has been lost and cannot be replaced.

Advertisements

It is understood that businesses need to advertise and sometimes there is an allowance to erect a sign without the need for consent. However, especially away from the premises, the erection of a sign will usually require approval. It may be possible to work with the Highway Authority to erect an official sign on the verge as they will not usually allow other unofficial signs which may cause danger. In other cases the scattering of signs can detract from the appearance of the area and cumulatively affect the character of the National Park.

The legislation says that anyone who displays an advert, or uses an advertisement site, without the required consent is acting illegally.

There are powers to remove signs and bring prosecutions. If a sign may be acceptable we will invite an application. If an unauthorised sign is causing harm we will normally ask for it to be removed giving a short time period for action. If the sign is not removed we will consider whether to remove the sign ourselves and/or bring a prosecution.

Where the unauthorised sign is placed on the highway we will work with the Highway Authority to seek the removal of any sign that is considered harmful.

Proceeds of Crime Act

The Proceeds of Crime Act is increasingly being used in planning cases to help ensure that an owner does not profit from unauthorised development. With cases where there is a successful prosecution for non-compliance with an Enforcement Notice, or with successful advertisement and listed building prosecutions, we will decide whether it is in the public interest to pursue a case under the Proceeds of Crime Act.