



Members Planning Training 2019

Introduction

Jane Newman

Head of Development Management



- Objectives for the day are to increase understanding:
 - of the planning system
 - of how decisions are made
 - that have come up through planning committee discussions
 - current topics in planning

With a view to the delivery of robust planning decisions that conserve and enhance the special qualities of the National Park





The National Park Effect

Important to understand where the National Parks fit within the legal framework and as part of a UK spatial framework, in the hierarchy of designations

*Brian Taylor
Head of Policy
and Communities*



A different legal context

- Granted Planning Powers to assist achievement of statutory purposes
- All development should pursue long term aims for national park and use planning tools to secure statutory purposes for the long term.
- Unitary Authorities (spatial policies and development management, plus minerals and waste)
- Not the highway or housing authority
- Cross boundary Authorities
- Authority members with a focus on National Park purposes not growth
- Unique or locally distinctive solutions are often appropriate in National Parks and often outperform strategies aimed at throwing development at the problem.
- Flexible solutions can sit well within a clear strategy that avoids harm to special qualities
- Spatial logic of designation suggests adjoining areas should support the pursuit of NP purposes – Note Glover!



Great weight should be given to conserving and enhancing landscape and scenic beauty in **National Parks**, the Broads and Areas of Outstanding Natural Beauty, **which have the highest status of protection in relation to these issues.** The conservation and enhancement of wildlife and cultural heritage are also important considerations in these areas, and should be given great weight in National Parks

- Plus footnote to National Parks Circular

The scale and extent of development within these designated areas should be limited. Planning permission should be refused for major development other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. Consideration of such applications should include an assessment of:

- a) the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;
- b) the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way; and
- c) any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.

Plus footnote, ***“For the purposes of paragraphs 172, whether a proposal is ‘major development’ is a matter for the decision maker, taking into account its nature, scale and setting, and whether it could have a significant adverse impact on the purposes for which the area has been designated or defined.”***

Comprises:

- Core Strategy – The Spatial Strategy
- Development Management Policies
- Policies Map – fixed and interactive maps

Plus Supplementary Planning Documents

All development should pursue NP purposes. Plus
specific position on major development

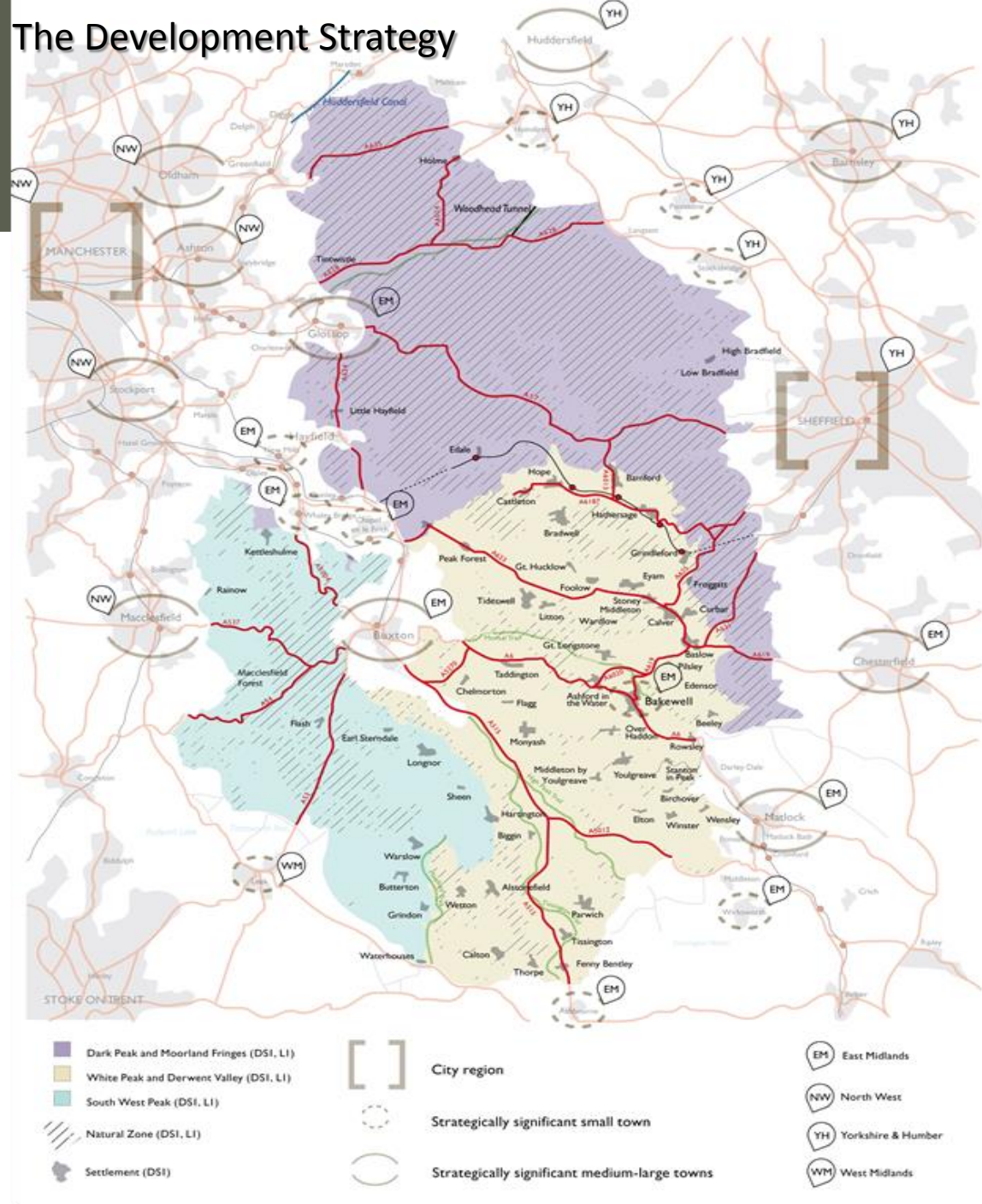
Taking opportunities to enhance the special qualities of
the National Park

The Development Strategy

Responds to National Character Areas

Settlements interspersed with areas of high landscape designation

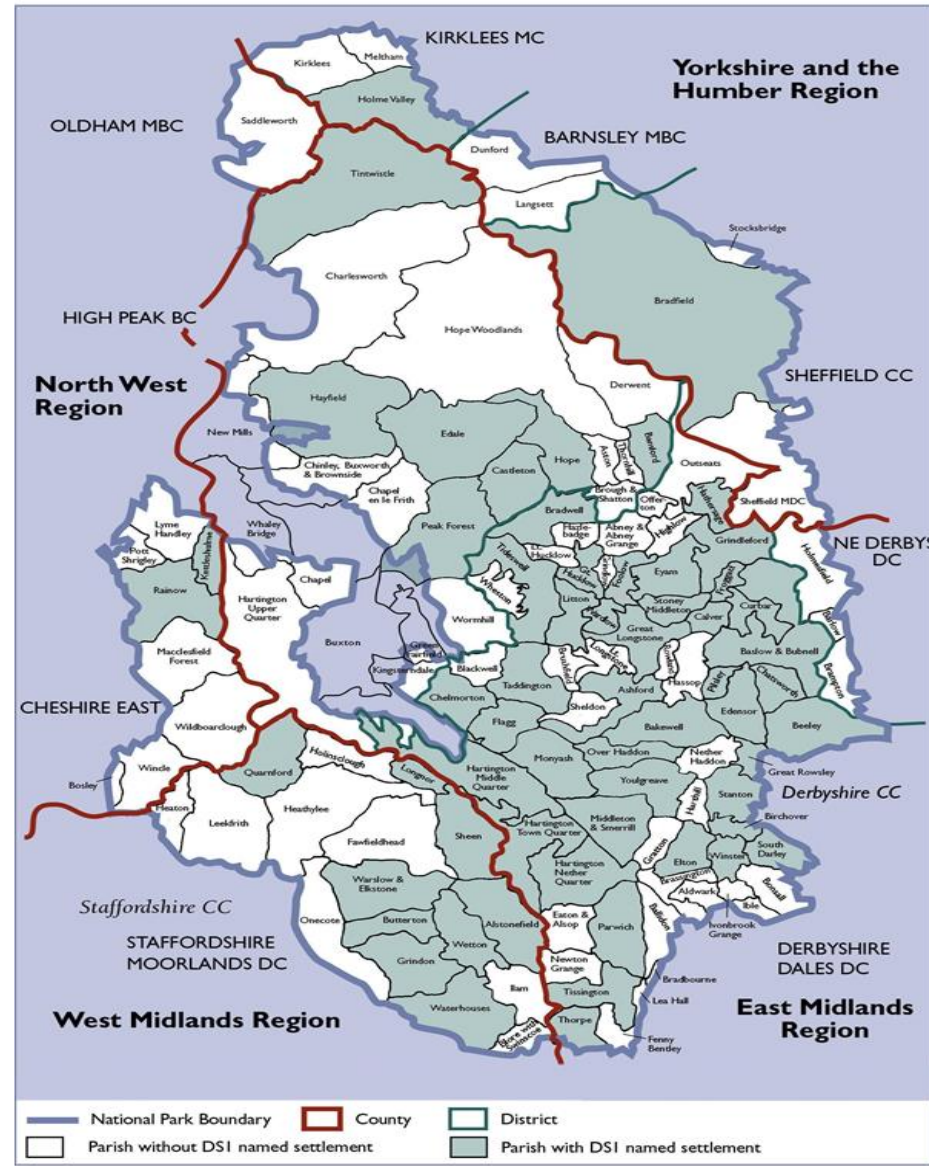
Close relationship to urban populations



DS1

Establishes a distinctive flat settlement strategy in recognition of the rurality.

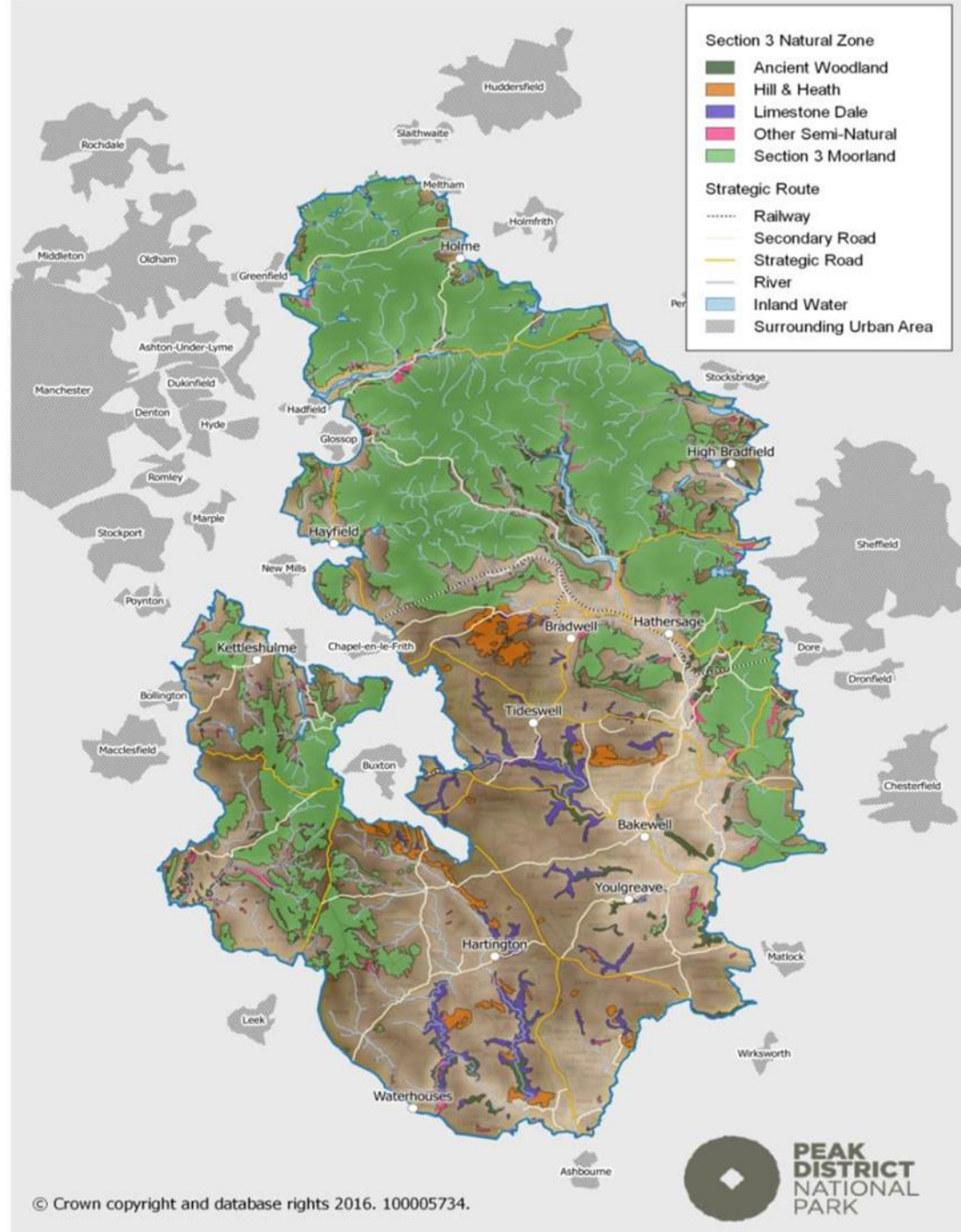
Except Bakewell all villages would exist at the rural exceptions level of normal planning authorities.





- A Landscape Strategy and character led approach, impacting on the spatial strategy
- Long established approach to protecting the wilder areas through **“The Natural Zone”**.
.....**No development permitted, other than very exceptional circumstances.**
- Strong protection for wildlife sites of national and international importance
- The significance of heritage assets to be conserved and enhanced

The Natural Zone





Recreation and Tourism



Promotes tourism development which delivers environmental education and provides recreational facilities subject to landscape capacity and character

RT3 Holiday accommodation focussed on smaller provision either through re-use of traditional buildings or in caravan/camp sites. **Only limited scope for new hotels**



No static or lodge provision permitted in preference to accommodation which brings the visitor closer to experiencing the National Park's special qualities

DM Policies confirm limited scope for pods and shepherd's huts within this approach



Scale and fabric is key. Allowing the landscape to be the dominant factor

- Seeks all development to be of highest possible energy standards
- Encourage for renewable and low carbon development where compatible with National Park landscape. SPD in support.
- Sustainable waste management
- Flood risk prevention



Wind power making the difference for dairy farm

by Garath Butterfield

A PARWICH dairy farmer says harnessing the power of the wind has secured the future of his family's business.

Robert Gosling, who runs one of the largest dairy farms in the Peak District National Park, is among thousands of farmers who have been hit hard by falling milk prices and rising energy costs - but he says installing wind turbines has brought in an extra £20,000 per year to the business.

Mr Gosling, who has been at the 765-acre Hill Top Farm near Parwich since 1968 and has 800 dairy and beef cows, says farm gate milk prices in the last 12 months but harnessing wind energy has helped to lessen the impact.

He said: "Milk prices have become increasingly unstable over recent years due to the global economic downturn, removal of EU milk quotas and the globalisation of the industry."

"This means we've had to work very hard to improve efficiencies and reduce our production costs."

"With a peak electricity requirement during the farm's twice-daily milking regime equivalent to that of a small village, electricity is one of our biggest variable costs."

"Over the last five years our



Robert Gosling says that wind turbines have brought in an extra £20,000 per year.

electricity bill has doubled to an astonishing £20,000 per year. We therefore needed to find a way to not only reduce our energy costs but also generate an income to supplement our falling milk income and return the business to profit."

"After a lengthy planning battle, Mr Gosling successfully applied for two 60kW turbines which were erected in the first half of 2014.

He said: "They were the first farm-scale wind turbines

CREAMERY'S TURBINE PLANS



A GROUP of cheese lovers who set out on an ambitious project to bring Siltton cheese production back to Derbyshire is keen to learn from its neighbour, Robert Gosling, and invest in wind energy.

Hartington Creamery was opened in October 2012 and has set up a base in Pilsbail at a farm owned by Mr Gosling.

The business is looking into installing a wind turbine to help it finance an expansion of the creamery.

The firm says the cost savings on electricity alone would allow the cheese factory to expand its production output from four days a week to six, creating new jobs and supporting the local economy.

contributed about £30,000 per annum to the business.

"That's akin to knocking off penny per litre off our costs of production. For a business our size, which currently receives just 23 pence per litre, it's a significant contribution."

"Without the electrical cost offset and income generated by the turbines, our business would struggle to cope with the volatile market prices, and our overheads would be much larger."





- **No housing target**
- Less emphasis on housing delivery tests but must understand needs of the area
- Particular focus on local housing needs in order to address affordability issues
- Purposes allow for open market provision where this drives conservation and enhancement
- Safeguarding community uses
- Limited approach to new shops in countryside

- Core of best business sites between Bakewell and the Hope Valley
- No strategic need for employment space
- Local business sites safeguarded
- Scope for new space in settlements and on farms in sustainable locations



- **No new roads**
- Design of infrastructure (newly adopted design guide)
- Promotion of sustainable travel modes – trails, cycling PROW
- Limits on car parking
- Balanced position on trail v rail

Planning and influencing role as not all dealt with through planning system:

- Statutory undertakers – Highway Authority signage and maintenance
- National infrastructure projects – Trunk Roads (e.g. A628)



- **Only in exceptional circumstances**
- Long term objective for gradual reduction of land won minerals
- High standards on restoration linked to special qualities
- Aggregates apportionment – related to existing permissions; and this principle continues.....
- Where output decreases in the National Park it must be picked up elsewhere.
- Key role for Duty to Cooperate, particularly with DCC

OUR SPECIAL QUALITIES CURRENTLY UNDER CONSULTATION

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1. Beautiful views created by contrasting landscapes and dramatic geology



5. Landscapes that tell a story of people and industry since prehistory



Photo by Paul Gibbs ©

2. Internationally important and locally distinctive habitats and species



Photo by

6. An inspiring space for escape, adventure, exploring and quiet reflection



3. Undeveloped places of tranquillity and dark night skies within reach of millions



7. Historic features offering visible and buried reminders of the past



4. Characteristic settlements with strong communities and traditions



8. Vital benefits for millions of people that flow beyond the landscape



Material Considerations

Andrea Needham – Senior Planner - South



Under Section 70(2) [of the Town and Country Planning Act 1990](#) and Section 38 of the [Planning and Compulsory Purchase Act 2004](#), decisions on planning applications '**must be made in accordance with the development plan unless other material considerations indicate otherwise**'.

What is the Development Plan?

- Core Strategy – adopted October 2011 – strategic principles
- Development Management Policies – adopted May 2019 – detailed operational policies



What is a material consideration?

- No definition in legislation – established by case law.
- In principle...any consideration which relates to **the use and development of land** is capable of being a planning consideration.
- Material considerations must be genuine planning considerations, i.e. they must fairly and reasonably relate to the development and use of land in the public interest.
- Protection of purely private interests such as the impact of a development on the value of a neighbouring property or loss of view could not be material considerations.
- Planning permission goes with the land.

Planning committee decisions

- Applications that are straightforward and in line with the Development Plan - decided under delegated powers.
- Applications that attract more than three objections or where recommendation is contrary to view of statutory consultees – decided by Planning Committee.
- Objectors/supporters/applicants/agents will usually ask for material considerations to be considered.
- If not applied correctly – could face issues at appeal or even legal challenge.

Material or not?

- Planning history
- The application is retrospective
- Character/personal conduct of applicant
- Restrictive covenants
- Noise and disturbance

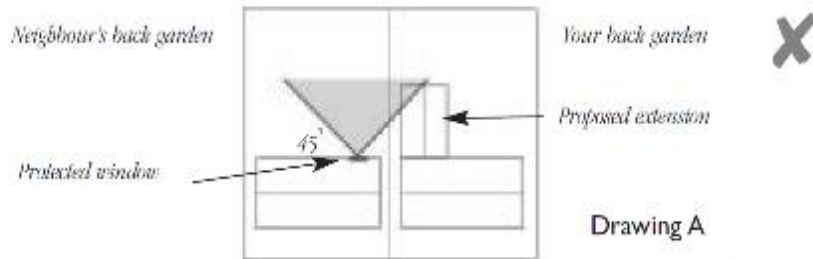
- National Planning Policy Framework is a material consideration – (does not change the statutory status of the Development Plan).
- Other plans and adopted guidance are material, including :
 - National Park Management Plan
 - Landscape Strategy
 - Design Guides
 - Supplementary Planning Guidance – Agricultural Development, Renewables



✓ Privacy/amenity

The 45 degree rule

This rule applies to detached and semi-detached properties.
Firstly consider the plan layout of the proposed extension (see drawing A below). From the mid-point of a neighbour's protected window project two lines at 45 degrees from the centre of the window.



TEST 1 - the proposed extension should not project beyond the '45 degree line' into the neighbour's protected area.

X Loss of View





Aldi Bakewell –

- X would impact on profitability of Co-op Bakewell - not material.
- ✓ Impact on vitality of town centre as a whole is material and was a key consideration in the decision.



Overshadowing of solar panels – High Court Case 2019

- McLennan obtained permission to install solar panels of wall of house.
- Neighbour applied for permission to build an extension. McLennan objected on grounds extension would overshadow his panels.
- LPA granted permission for extension – saying effect on daylight to panels involved purely a private interest.
- High court quashed planning permission – held that climate change is a planning consideration.



Material considerations **can include (but are not limited to):**

- Planning history of the site
- Government policy (NPPF)
- Overshadowing/overbearing nature of proposal
- Overlooking and loss of privacy
- Loss of trees
- Loss of ecological habitats
- Archaeology
- Contamination by a previous use
- Effect on Listed Building(s) and Conservation Areas
- Access and highways safety
- Traffic generation
- Adequate parking and servicing
- Noise and disturbance from the scheme
- Disturbance from smells
- Public visual amenity
- Flood risk

Examples of factors that **cannot** normally be considered as material planning considerations are:-

- Loss of value to an individual property
- Loss of a private individual's view
- Boundary disputes including encroachment of foundations or gutters
- Private covenants or agreements
- The applicant's personal conduct or history
- The applicant's motives or speculation about what an applicant may or may not do next
- Potential profit for the applicant or from the application
- Private rights of way
- Loss of trade to individual competitors
- Moral and religious issues
- Matters covered by other statute e.g Building Regs, Health and Safety
- Problems arising from the construction period of any works (e.g. noise, dust, construction vehicles, hours of working (covered by Control of Pollution Act))

What weight can be given to a material consideration?

The weight attached to material considerations in reaching a decision is a matter of judgement for the decision maker, however the decision maker is required to demonstrate that all relevant matters have been considered. Can give no significant weight or even no weight at all.

Generally greater weight is attached to issues raised which are supported by evidence rather than solely by assertion.



Decisions Contrary to Strategic Policy

Jane Newman

Head of Development Management





- Policy – Why does it matter?
- What are the policy foundations of the National Park?
- What are we protecting?
- What are our strategic policies?
- What's the problem with decisions contrary to policy?
- How do we report on decisions contrary to policy





- 15 UK national parks covering 10% of the country
- Holding one third of internationally important UK wildlife sites
- 104 million visitors annually, bringing £6.9bn value
- National park purposes set by the 1995 Environment Act:
 - “conserve and enhance the natural beauty, wildlife and cultural heritage”
 - “promote opportunities for the understanding and enjoyment of the special qualities of the area by the public”
- We have an additional duty to
 - Seek to foster the economic and social well-being of local communities within the national parks





**PEAK
DISTRICT
NATIONAL
PARK**

Peak District National Park: facts

- UK's original national park, designated in 1951 after decades of campaigns
- 555 square miles protected for natural beauty, wildlife and cultural heritage
- Over 1,300 miles of rights of way, 12 miles of gritstone edges, 65 miles of off-road cycling trails
- A third is open access and a third is designated for nature conservation
- 3 national nature reserves
- Over 2,900 listed buildings and over 450 scheduled monuments
- More than 12 million visits a year
- 38,000 residents and 18,000 jobs
- Spectacular landscapes, wildlife and cultural heritage: our special qualities



- Beautiful views created by contrasting landscapes and dramatic geology
- Internationally important and locally distinctive wildlife and habitats
- Undeveloped places of tranquillity and dark night skies within reach of millions
- Landscapes that tell a story of thousands of years of people, farming and industry
- Characteristic settlements with strong communities and traditions
- An inspiring space for escape, adventure, discovery and quiet reflection
- Vital benefits for millions of people that flow beyond the landscape boundary






Video: Started by you,
supported by you



<https://www.youtube.com/watch?v=pRh6PR72fy4>

An aerial view of a valley at sunset, showing rolling hills and fields. The sun is low on the horizon, creating a warm, golden glow. The text "555 square miles of pure wonder" is overlaid on the image.

555 square miles of pure wonder

What is policy?

- A course of action (pocket Oxford Dictionary)
- A course of action for delivering national park purposes and duty against a backdrop of national and regional objectives

In the National Park our policy documents are primarily the Core Strategy, The Development Management Policy Document and various Supplementary Policy Documents.



Sandford Principle

"Where irreconcilable conflicts exist between conservation and public enjoyment, then conservation interest should take priority"

This principle was updated in the 1995 Environment Act, to say;

"If it appears that there is a conflict between those purposes, [the National Park Authority] shall attach greater weight to the purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the area"

In other words: If there is a conflict between protecting the environment and people enjoying the environment, that can't be resolved by management, then protecting the environment is more important.



Core Strategy policies

- Core Strategy sets out policy principles to achieve the statutory purposes as defined in the Environment Act 1995
- Designed to be applied sequentially but the plan must be read as a whole

Strategic Policies

General spatial policies (GSPs) provide overarching principles for spatial planning in the National Park and relate closely to the delivery of national park purposes. GSP1 –

Securing national park purposes and sustainable development

GSP2 – Enhancing the National Park

GSP3 – Development management principles

GSP4 – Planning conditions and legal agreements



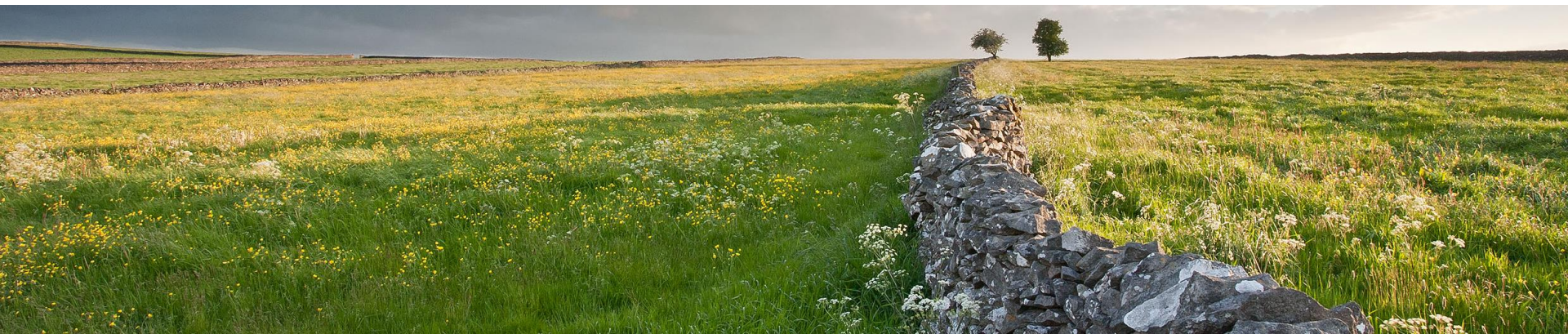
- Other strategic policies which set out broad principles for development
- DS1 – sets out the strategy for development which directs development to settlements
- L1 - Landscape character and valued characteristics
- L2 - Sites of biodiversity or geo-diversity importance
- L3 - Cultural heritage assets of archaeological, architectural, artistic or historic significance
- HC1 – sets out approach to housing in National Park
- MIN1 – Sets out approach to mineral development



- Decisions which are contrary to these policies compromise the quality of the National Park and we fail in our statutory duty to conserve and enhance.
- Where decisions are contrary to strategic policy officers can defer consideration of an item by planning committee to further explain the implications of making a decision contrary to those strategic policies.
- As these decisions undermine the key policy strategies designed to ensure that we carry out our legal duty, the performance indicator requires that no decisions should be made contrary to strategic policies.



- However, in many cases planning decisions do not compromise the fundamental principles of the policy document.
- Planning decisions are a matter of judgement.
- Planning committee may weigh up policies and other material considerations and where the broad strategy of the policy document is not compromised, Members may reach a different conclusion to officers. As long as this is reasonable and based on material reasons that is a legitimate planning decision.

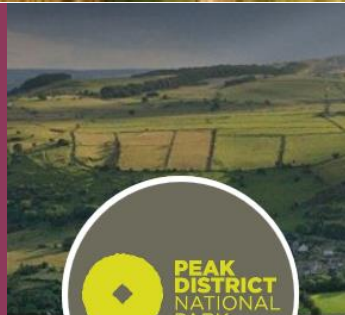




Peak District National Park 
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Peak District 
@peakdistrict



Peak District National Park

20,584 followers - Where beauty, vitality and discovery meet at the heart of the nation.

Less than
substantial harm



What we'll cover

- Where has the terminology come from?
- Distinction between substantial and less than substantial harm
- Weighing public benefits against less than substantial harm
- Examples

Where have 'substantial harm' and 'less than substantial harm' come from?

- Paragraph 193 of the NPPF states that “When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation....
- ...irrespective of whether any potential harm amounts to **substantial harm**, total loss or **less than substantial harm** to its significance.

Important side note

- When considering development proposals affecting listed buildings, listed building consent is also required (unless only a change of use is proposed).
- The Planning and Listed Building Act requires that:

“ the local planning authority...shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. ”

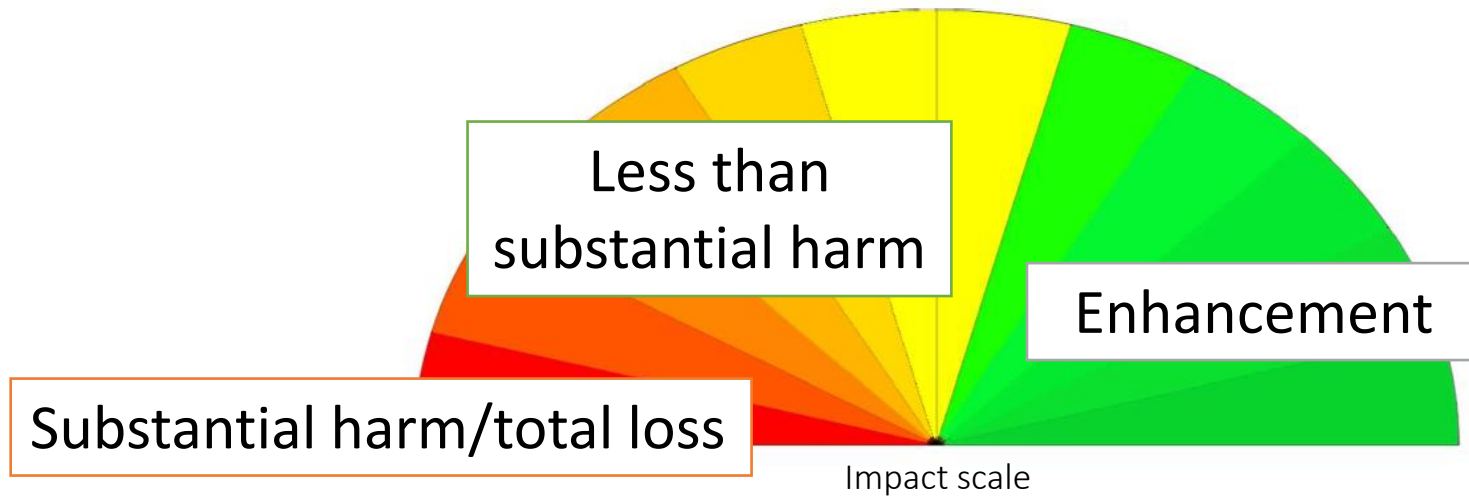
‘Substantial’ or less than?

- The NPPF states that **substantial harm** should be exceptional or wholly exceptional.

and

- Where development would cause a lower level of harm to a designated heritage asset the NPPF states that this would be **less than substantial harm**, and requires it be balanced against public benefits.

What is 'less than substantial harm'?



Any harm to the significance of a designated heritage asset requires clear and convincing justification.

Public benefits

“ Where a proposal would lead to less than substantial harm, the harm should be weighed against the **public benefits** of the proposal including, where appropriate, securing its optimum viable use.

”

- Public benefits could be anything that delivers economic, social or environmental objectives
- Look for alternatives before weighing harm against public benefits.

Optimum viable use

“ Where a proposal would lead to less than substantial harm, the harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.

”

- The optimum viable use is the one likely to cause the least harm to the significance of the asset

Weighing things up

How important is the heritage asset?

What contributes to the significance of the asset?

Would the proposed works enhance, harm or be neutral?

If harmful, try to avoid through amendment

If still harmful, would the harm be substantial?

Yes

Nearly always
refusal

No

Would there be any public benefits?

No

Refuse

Yes

Weigh benefits against harm

Example

**PUBLIC
BENEFIT**



HARM

Installation of solar panels

Example

**PUBLIC
BENEFIT**



HARM

Conversion of [redacted] to a dwelling

Summary

- Less than substantial harm is still harm.
- There remains a presumption in favour of refusing such development.
- Development resulting in such harm should only be approved where the public benefits clearly outweigh it.

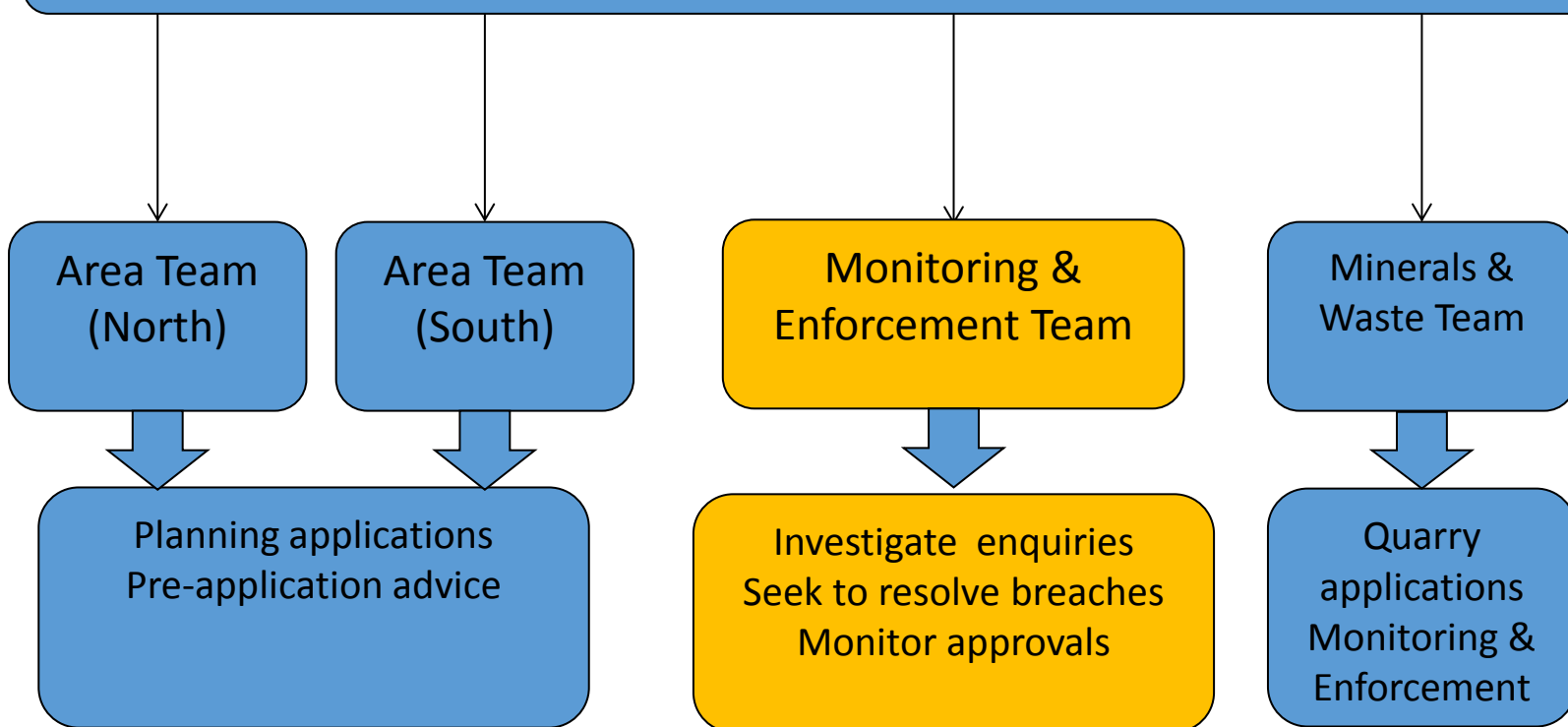


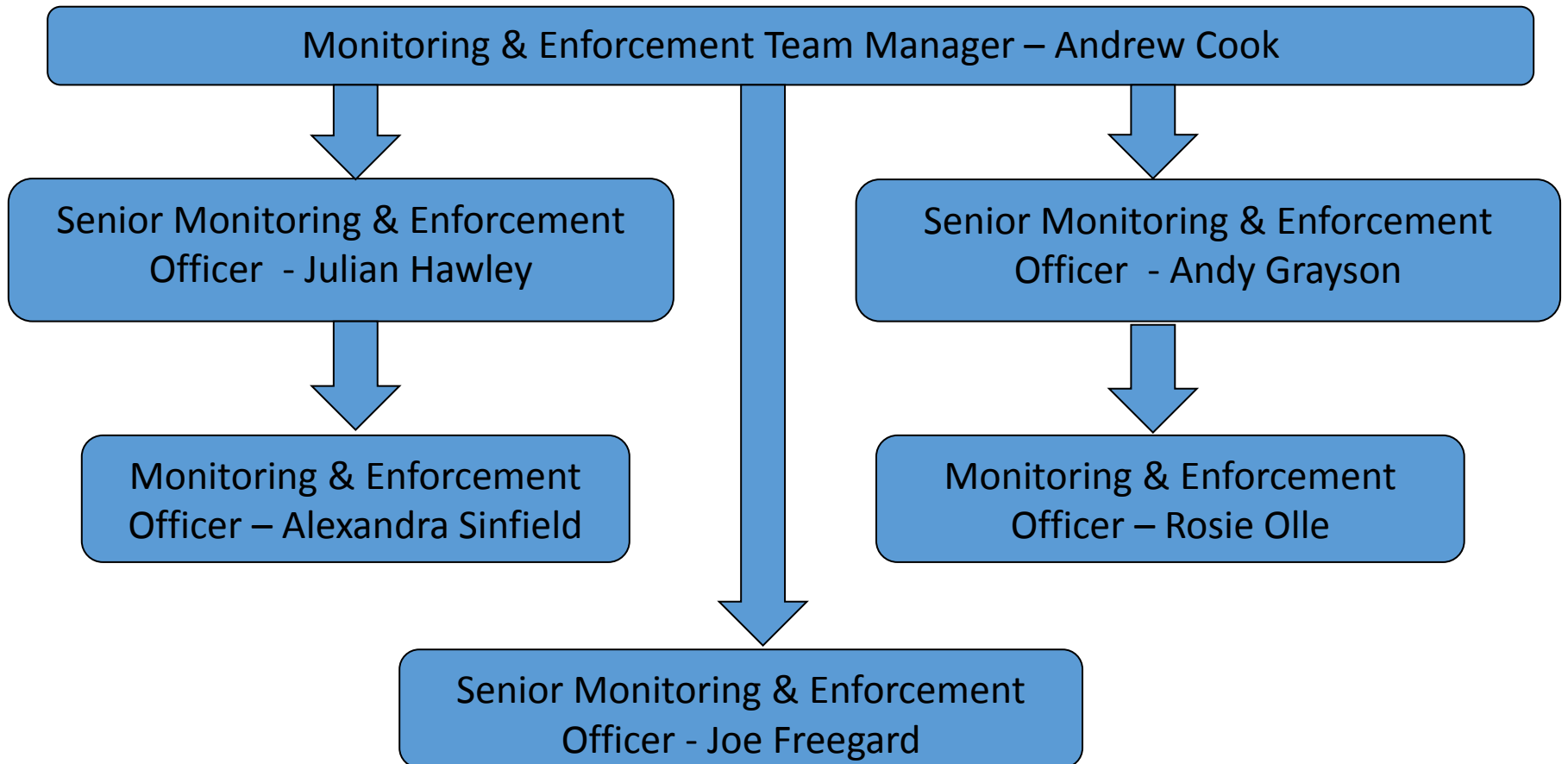
Members' Planning Training 2019

How to Issue an Enforcement Notice

Andrew Cook
Monitoring & Enforcement Manager

Development Management Service





- Investigate enquiries about possible breaches of planning control (approx. 480 per year) and where breaches are found, seek a resolution
- Approx. 150 Enforcement Cases resolved each year
- 10-12 Formal Notices issued each year
- Vast majority of cases resolved without formal action being taken

- Two-storey outbuilding situated within the curtilage of High Peak House
- Small hamlet of around a dozen properties – close neighbours
- Nov 2015 – enquiry received alleging first floor was being lived in
- Dec 2015 - LDC refused. Appeal submitted but later withdrawn
- June 2016 – LDC refused
- May 2017 – LDC refused

Delegated authority for enforcement action

1. Is there a breach of planning control and, if so, what is it?

- Is it 'development' (sec 55) – operational development/change of use?
- Is it 'permitted development' (GPDO)?
- Which use class does it fall within (UCO)?

2. Is the breach immune due to passage of time?

- 4 year and 10 year periods for immunity
- When was the development substantially completed?
- When did the change of use commence and has the use changed subsequently?
- Has the use been continuous?

3. Is it expedient to pursue enforcement action?

- Is the unauthorised development in conflict with policies?
- What harm is being caused – eg. landscape harm, residents' amenity, highway safety?

- Human rights issues?
- Environmental Impact Assessment - does the unauthorised development have a significant effect on the environment and are the factors of such complexity and magnitude to warrant an assessment?
- Delegated report signed off by Head of Law and Head of Development Management

Draft and Issue the Enforcement Notice

1. Accurately identify the land subject of the notice

- Refer to an attached plan
- Over what area is use taking place?

2. Define the alleged breach of planning control

- Uses can be particularly problematic (primary uses, ancillary & incidental uses, mixed uses)
- The consequences of under-enforcement

3. Set out the reasons for issuing the notice

- Why is development in conflict with relevant policies
- Similar to reasons for refusal of planning permission

4. Set out steps required to remedy the breach & time periods

- Can stop short of complete removal or cessation

5. State when the notice comes into effect

- Not less than 28 days from service of notice

PLANNING ENFORCEMENT NOTICE



Ref: ENF: 15/0141

IMPORTANT - THIS COMMUNICATION AFFECTS YOUR PROPERTY

TOWN & COUNTRY PLANNING ACT 1990 (as amended by the PLANNING & COMPENSATION ACT 1991)

**ENFORCEMENT NOTICE
ISSUED BY: PEAK DISTRICT NATIONAL PARK AUTHORITY**

- 1. THIS IS A FORMAL NOTICE** which is issued by the Authority because it appears to it that there has been a breach of planning control under Section 171 A (1) (a) of the above Act, at the land described below. It considers that it is expedient to issue this notice having regard to the provisions of the development plan and to other material planning considerations. The Annex at the end of the Notice and the enclosures to which it refers contain important additional information.
- 2. THE LAND TO WHICH THE NOTICE RELATES**

Premises at High Peak House, Blackbrook, Chapel-en-le-Frith in the County of Derbyshire as shown edged red on the attached plan (the Land)
- 3. THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL**

Without planning permission, the material change of use of the outbuilding known as "The Coach House" to an unlawful use as a dwellinghouse

4. **REASONS FOR ISSUING THIS NOTICE**

- a) The breach of planning control has occurred within the last four years.
- b) The unauthorised development is in conflict with the Authority's Core Strategy, notably policy HC1, which places emphasis on affordable housing to meet eligible local need and for key rural workers and HC1 C which seeks to achieve conservation and/or enhancement of valued vernacular or listed buildings. The dwelling is not required for key workers as set out in Policy HC2 nor is it an affordable house which meets local need.
- c) Consequently, the Authority considers that the use of the Land as a residential dwelling should cease and the associated fixtures and fittings removed as specified in section 5 of this notice.

5. **WHAT YOU ARE REQUIRED TO DO**

- (a) Cease the use of The Coach House as a dwellinghouse.

TIME FOR COMPLIANCE

Six months after this Notice takes effect

- (b) Remove from The Coach House all kitchen and bathroom fixtures and fittings which directly support its use as a dwellinghouse, including the bath, shower, oven range, kitchen units and kitchen sink.

TIME FOR COMPLIANCE

Six months after this Notice takes effect

6. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on 16 June 2017 unless an appeal is made against it beforehand.

Dated the 4 May 2017

Signed

Joanna Bunting
Assistant Solicitor (Planning and Minerals)
On behalf of Peak District National Park Authority
Aldern House, Baslow Road, Bakewell, Derbyshire, DE45 1AE.

Serve the Enforcement Notice

1. Who needs to be served?

- Owner & occupier and anyone else with an interest in the land
- May include a mortgage company
- If owner/occupier etc is company then serve on company secretary

2. How is service to be achieved?

- Serve by hand if possible/practical
- Postal service – sign on delivery
- Serving on the land

Enforcement Notice Case Example: High Peak House, Blackbrook, Chapel-en-le-Frith

- May 2017 – Obtained delegated authority to take enforcement action
- May 2017 – Enforcement notice issued and served
- June 2017 – Appeals submitted against enforcement notice (grounds (d) and (g)) and refusal of LDC
- Dec 2017 – Three day public inquiry held
- Jan 2018 – Appeals dismissed. Enforcement notice upheld but compliance period extended from 6 months to 12 months
- Dec 2018 – Site inspection confirmed use ceased and kitchen and bathroom fittings removed – case closed

- Paragraph 207 of the National Planning Policy Framework (March 2012) stated: *Local Planning Authorities should consider publishing a Local Enforcement Plan to manage enforcement proactively, in a way that is appropriate to their area.*
- Authority's LEP adopted in June 2013
- Published on website – see <http://www.peakdistrict.gov.uk/planning/planning-enforcement>