

The Enforcement of Planning Control & Retrospective Applications



Applying the letter of the law?

or

Shutting the gate after the horse has bolted?



What are we going to cover?

- Why enforce, what are the pitfalls.
- Making the punishment fit the crime-
some guiding principles.

With an emphasis on member relations



Why Enforce?

Because without it, there is little purpose in scrutinising proposals.

- Planning exists in the public interest. It seeks to provide for beneficial development and prevent inappropriate development.
- To remedy the undesirable effects of unauthorised development.
e.g Harm to sensitive areas, harm to neighbours, traffic hazard. (These are the material considerations)
- To bring unauthorised activity under control to ensure that the credibility of the planning system and the Council as L.P.A. is not undermined.
- To ensure quality and to ensure investment in D.C. not wasted.

Why Enforce?

PPW (Edition 4) states:

3.8.1 *An effective development management process requires local planning authorities to be prepared to take **enforcement action** in appropriate circumstances. The decisive issue for the authority is whether the breach of planning control would unacceptably affect public amenity or the existing use of land and buildings meriting protection in the public interest.*

3.8.3 *prompt initiation of action may be necessary to prevent an unacceptable breach of planning control from becoming well established and more difficult to remedy. Any enforcement action should be commensurate with the breach of planning control to which it relates. The intention should be to remedy the effects of the breach of planning control, not to punish the person(s) responsible for the breach.*

Our customers and their reasons



Is it a case of
'Ignorant Iwan'?

or

'Try – On' Terry?



Making the punishment fit the crime

Remembering of course that carrying out development without planning permission is not a crime, irrespective of who transgresses.

There is an exception?



THIS SIGN
IS
ILLEGAL

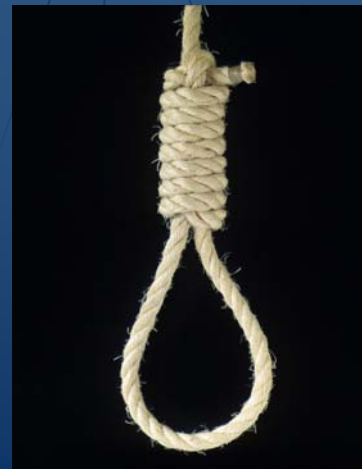
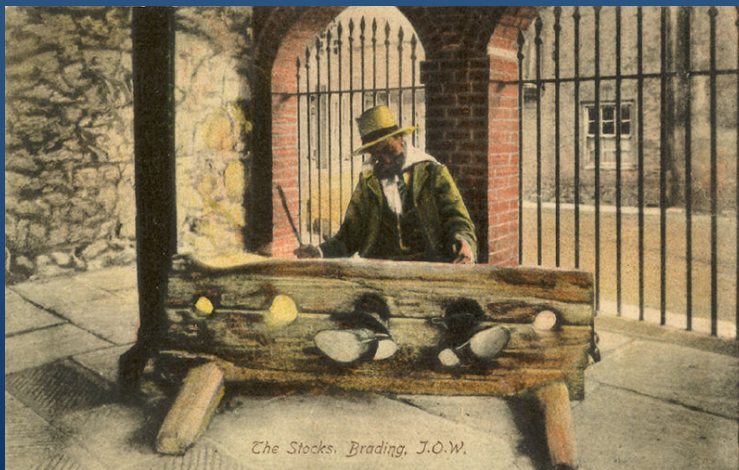
The appropriate response?

Advice contained in WAG TAN 9 - Enforcement of Planning Control

- Not a criminal offence, but rather something to be discouraged!
- Enforcement is discretionary, to be used as a last resort and when expedient,
- Unreasonable to take action solely to remedy the absence of a planning application
- Intention of the system is to remedy the breach and the effects of the breach, not punish the individual.
- Action not normally warranted to remedy slight excesses of P.D. allowances

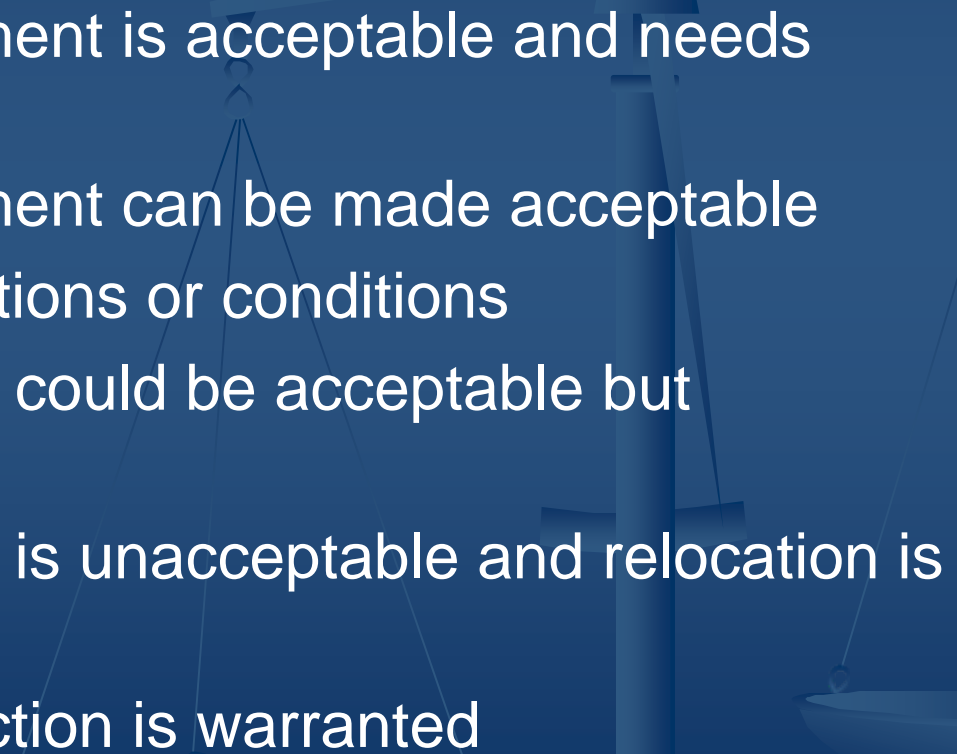
Making the punishment fit the crime

What is the correct approach to breaches of control?



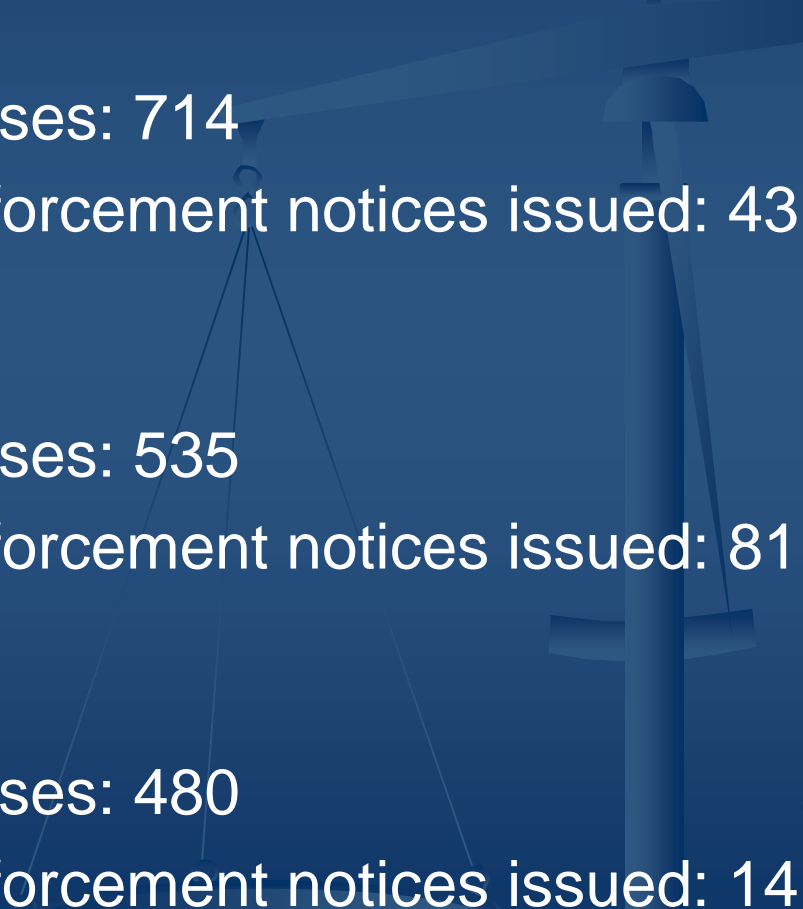
The appropriate response?

Advice contained in WAG TAN 9 - Enforcement of Planning Control

- Where the development is acceptable and needs regularising
 - Where the development can be made acceptable e.g. through negotiations or conditions
 - Where development could be acceptable but elsewhere
 - Where development is unacceptable and relocation is not feasible
 - Where immediate action is warranted
- 

The appropriate response?

Case Study - Vale of Glamorgan:

- **2008/09**
 - No. of cases: 714
 - No of enforcement notices issued: 43
 - **2009/10**
 - No. of cases: 535
 - No of enforcement notices issued: 81
 - **2010**
 - No. of cases: 480
 - No of enforcement notices issued: 14
- 

The retrospective application

Becoming increasingly common, but not well received for the obvious reasons.

Example: The Vale of Glamorgan

2008/09

- No. of retrospective applications determined : 101
- No. approved : 83 (82%)
- No refused : 18 (18%)
- Total fee income : £25K

2009/10

- No. of cases : 93
- No. approved : 73 (78%)
- No refused : 20 (22%)
- Total fee income : £50K

2010 (up to 31/12)

- No. of cases : 95
- No. approved : 81 (85%)
- No refused : 15 (15%)
- Total fee income : £32K

Making the punishment fit the crime



In summary:

- Assessment and reasons for action/non-action will be scrutinised by all-so ensure accuracy and correctness
- The determination involves making balanced judgements
- Decisions made on the basis of 'weight' given to various, often conflicting material considerations
- The Quasi-judicial nature of planning and enforcement
- As an officer or Planning Committee Member you will always upset someone (and often!!!)