



Mr S Jones
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Dear Mr Jones,

Planning Enforcement System Review: Stage 2

Thank you for the opportunity to respond to the above consultation paper (found at <http://new.wales.gov.uk/topics/planning/Planprocdec/589831/?lang=en>). The paper has been considered by the National Association for Planning Enforcement (NAPE), which is supported by the Royal Town Planning Institute. The Association was launched on the 6th July this year and currently has 106 members. The views expressed at Appendix 1 are that of the National Association for Planning Enforcements Management Committee. The Management Committee comprises the following members.

Anthony Russell (Chair), Exmoor National Park
Ray Steer-Kemp, East Devon District Council
Michael Cowley, Sandwell Metropolitan Borough Council
Zoe Fuller, Newark & Sherwood District Council
Sue Taylor, Bolsover District Council
Mike Huges, Denbighshire County Council
Mike Hyde, Loch Lomond & The Trossachs National Park
Leslie Smith, Chester City Council
Jane Wilson, Flintshire County Council

As you can see the committee has 2 members from Wales.

It should be noted that due to changes occurring, the RTPI Welsh Policy Panel has not contributed to this response and it may well have a different view on the questions raised. I understand that members of the Panel will be meeting with Rosemary Thomas shortly and enforcement may be one area which they wish to discuss, particularly in terms of the use of new legislative powers.

Thank you for the opportunity to respond to this consultation.

Yours sincerely

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Appendix 1

IR1 It would be inappropriate for the Assembly Government to provide a direct income stream for enforcement.

All respondents believed that a separate funding stream would be inappropriate and that each individual Authority should determine the priorities and the allocation of resources. It was questioned whether the Planning Development Grant could take better enforcement funding into account.

IR2 The entire fee for the planning application deemed to have been made in appeals against enforcement notices should be retained by the local planning authority.

This has not been greeted with any enthusiasm. It was felt that administering the system would be onerous, and that it would only benefit the Authority if such fees were ring fenced to provide an income stream for enforcement, with the Assembly still having to fund their costs of administering the appeal.

IR3 A training regime and a forum for exchanges of views should be established.

It is felt amongst NAPE members that this is a function that can and will be provided by NAPE in future anyway.

IR4 There should be no change in the law to make a breach of planning control a criminal offence.

It is felt that most breaches of control are unintentional and are caused by oversight or ignorance of the planning system. Criminalizing such behaviour would not be viewed as a proportionate response.

IR5 Enforcement action should remain discretionary.

It is felt that each individual authority must decide what is expedient and whether enforcement action is in the public interest.

IR6 The principle of retrospective planning applications/consent should continue.

Retrospective applications were viewed as a useful tool in remedying breaches of control.

IR7 There should be no higher fee for retrospective planning applications.

Recently in Scotland it was discussed whether there should be the imposition of higher fees should a requested application not be received within a set period of time. In the Planning (Scotland) Bill however the sanction is that a new enforcement notice, requiring a retrospective application to be submitted, will be introduced. Failure to comply with such a notice would constitute an offence.

There are cases where people do not submit applications knowing that they can simply submit a retrospective application form later if their unauthorized development comes to the attention of the planning department.

Perhaps if higher retrospective fees were charged, the public would make more efforts to enquire with Planning Departments about whether permission was required.

There was mixed opinion within the NAPE Committee regarding higher fees for retrospective planning applications. Some feel that retrospective applications could justify higher charges because they take up more resources than planning applications, whilst others feel the resource implications are similar whether the application is retrospective or not.

IR8 Views sought on whether there is a need for action to stop an application for planning permission delaying enforcement proceedings in the Court.

The offence of failing to comply with an enforcement notice is clear and it can be made equally clear to magistrates that they are there to decide the strict compliance with an enforcement notice not with the planning merits of the matter.

IR9 Should local planning authorities be able to decline to determine applications that have been the subject of appeal on ground (a)?

It was felt that LPA's should not be able to do this. There might be a new material consideration come into play that could dictate that a permission might be forthcoming, even though a previous ground (a) appeal had been dismissed. Where repeat applications keep getting turned down they add force to a prosecution and show a degree of reasonableness on behalf of the local authority that is appreciated by the courts.

IR10 Welcome views on whether there is a more appropriate time limit(s) for dwellings and operational development; and whether research should be carried out about the likely effect of removing the ten-year and four-year rules.

It is considered that the 4 and 10 year rules are reasonable. Whilst they may lead to unscrupulous developers deliberately trying to evade detection, if the works have not been complained about, and have gone unchallenged, then immunity should be able to be accrued on the basis that little or no harm is being caused. To remove the 4 year limit would cause even more problems for householders with small extensions. Some officers are experiencing an increase in LDC applications for such extensions when properties are put up for sale. Further research would be useful.

IR11 Lawful Development Certificates should be retained.

LDC Certificates are a useful method of resolving issues and should be retained.

IR12 Views sought on instances where local planning authorities have had to pay compensation in respect of stop notices.

Compensation should only be payable where a Stop Notice is wrongly served and a loss of income has resulted. Provided that a breach is correctly identified, and the Stop Notice is a proportionate response to the harm, then Authority's should not use the threat of compensation as an excuse for not taking appropriate action. The fear of compensation is often used by Authority Legal Departments as the motivation behind deliberating and procrastinating on decisions.

IR13 Caravans should be protected in the same way as dwellings (subject to a serious harm test) when temporary stop notices are issued.

It was felt by all that caravans should not be dealt with in the same way as residential dwellings as their mobility makes them different.

IR14 Views sought on whether temporary stop notices could be renewed after 28 days.

Local Planning Authorities ought to be in a position after 28 days to pursue the conventional route and the 28 day restriction should act as encouragement to resolve issues quickly

IR15 No change should be made in the arrangements for issuing Breach of Condition Notices.

Breach of Condition Notice are viewed as a useful low impact tool for straight forward cases.

IR16 Consideration should be given to repealing the legislative provisions for completion notices.

It was felt that completion notice legislation should be retained and if anything expanded rather than curtailed.

IR17 If completion notices kept, should there continue to be a requirement for Assembly involvement in their confirmation?

The view is that approval by the Assembly means that Completion Notices are not used as often as they possibly could be. If a check in the process were needed an appeal process could be introduced?

IR18 Views sought on how the Completion Notice system- if retained - can be made more effective.

If something is only partially built there could be an argument that what has been built is not what was given permission for (See R v Sage) and therefore has no permission. If completion notices were more widely used then what was given permission will be built within a reasonable time. At the present it is a bit of a nonsense to give someone three years to start but no time to finish.

IR19 The current grounds for appeal against an enforcement notice should remain unchanged.

There were no problems with the existing grounds being retained.

IR20 Should Section 217 appeals be to Magistrates' Courts or to the National Assembly?

In Wales appeals should be to the Assembly. This approach already exists in Scotland and works well. Interestingly though in Scotland non-compliance is not an offence – but the door to direct action is opened. An Inspector would probably be more sympathetic to the harm to the amenity of the area than a magistrate.

IR21 Should new powers – in addition to Section 102 – be introduced to allow local authorities to attach conditions to unauthorised developments in certain circumstances?

If a development is acceptable without conditions then it should not be enforced against. If it requires conditions it should have an application with the conditions attached. If they do not apply then can have an enforcement notice. What could possibly be useful is the power to require an application in such circumstances.