

Enforcement of Planning Control

RTPI Practice Advice Note 6

1. Introduction

This guidance note was first published in 1996. Many of the principles and recommended ways of working outlined in the guide are still valid, as is much of the legislation and accompanying guidance. The RTPI has also published an Enforcement Handbook (2000). This is a good practice guide, covering many of the issues in this note in more detail and is available to members of the National Association of Planning Enforcement from their website <http://nape.rtpi.org.uk/>. A [Scottish Planning Enforcement Handbook](#) (2006) has also been produced.

A section containing hyperlinks to [sources of further information](#) and [key publications](#) is available at the end of this document.

1.1 The purpose of this Practice Advice Note (PAN) is to identify and encourage best practice in the enforcement of planning control for those working in local planning authorities (LPAs). It will also be of interest to those involved with enforcement action.

1.2 The PAN is presented in the sequence in which enforcement cases normally progress, from investigation through enforcement to compliance. The PAN takes account of the new enforcement powers introduced in 1991 as a result of the report on enforcement prepared by Robert Carnwath QC in 1989. The powers were incorporated as amendments to the Town and Country Planning Act 1990 and the Town and Country Planning (Scotland) Act 1972, both referred to in this PAN as "the Act".

2. Quality of service

2.1 The enforcement function has traditionally been carried out in a reactive manner by responding to complaints. The Department of the Environment and Welsh Office Planning Policy Guidance Note (PPG) 18, issued in December 1991 [in Scotland, see Scottish Office Environment Department Circular SO 8/92 issued in March 1992], has emphasised that the primary responsibility for taking the necessary enforcement action in the public interest lies with LPAs with particular importance placed on the need to protect public amenity. The Audit Commission's report "Building in Quality" emphasises the important role which

enforcement should play in relation to the development control function and recommends that more attention is directed to achieving higher quality outcomes. Some LPAs are making more resources available for enforcement and this will enable a more proactive approach to be achieved. For example, this could involve monitoring of developments under construction to ensure compliance with approved plans and conditions, or integrating development control planners into the enforcement process. Close liaison between development control and building control at both application and construction stage will help ensure that schemes are implemented in an acceptable way. Where the building control service is provided by approved inspectors, i.e. other than by the local authority, or the building control staff do not check for compliance with planning permissions, LPAs will need to make arrangements to check compliance with approved plans.

2.2 LPAs should adopt efficient and effective procedures throughout the enforcement process, to improve the quality of service provided. Unnecessary delays in dealing with unauthorised development can result in a finding of maladministration by the Local Government Ombudsman. Appropriate standards of service for provision of the enforcement function are explained to the public in Part Four of the joint Department of the Environment/National Planning Forum publication "Planning: Charter Standards".

3. Preparing an effective enforcement strategy - the corporate approach

3.1 The new enforcement powers introduced in 1991 have raised expectations that enforcement of planning control will be quicker, more certain and more effective. However, the new powers by themselves are unlikely to lead to a more effective enforcement regime. In order to fully exploit the powers available, LPAs should give careful consideration to their approach to enforcement. Authorities might include a policy relating to enforcement in their development plans. This would clarify their approach regarding enforcement and help to prioritise enforcement problems. It would also demonstrate to Inspectors on appeal that enforcement was 'plan led' and would provide a stronger case before the courts when seeking injunctions.

3.2 Effective enforcement requires the harnessing and co-ordination of a variety of skills, including investigative, legal, planning, communication and coordinating skills. In order to develop the appropriate level and mix of skills an Authority must ensure that elected Members, chief officers and all planning officers appreciate the value of effective enforcement. A tactical approach may be required to change the perceptions of those involved; a review of the enforcement function and its effectiveness may assist by drawing attention to strengths and weaknesses. Senior officers and Members can then debate and decide the level of enforcement service the Authority is seeking to provide and bids for adequate resources can be made accordingly.

3.3 Coordination and liaison between people in the planning and legal departments is the key objective to the corporate approach. This should be supplemented by close links with other Council departments which exercise related enforcement activities. Their staff may have experience of the person being dealt with and maybe able to advise on the best approach. Alternatively they may have powers which can assist in remedying the breach or reducing its impact.

3.4 Some examples of beneficial areas of co-operation are as follows:

- environmental health - noise and nuisance problems, caravan site licensing, pollution and drainage issues,
- building control - details of construction, dangerous buildings, monitoring of developments in progress,
- engineering - obstruction of footpaths, access to highways,
- housing - regulation of residential tenancies,
- treasurer - collection of business rates from commercial activities,
- property and estates - control of Council owned land,
- waste regulation - waste disposal and enforcement of the Environmental Protection Act 1990.

3.5 In September 1994, the Department of Trade and Industry and the Department of the Environment published a report on "Local Government Enforcement" by an Interdepartmental Review Team. The recommendations emphasise the importance of:

- ensuring that regulatory requirements are clearly communicated,
- all enforcement policies and procedures being made public and disseminated,
- providing guidance for small businesses,
- co-operation between local authorities,
- encouraging flexibility in undertaking enforcement activities.

4. Procedural steps

4.1 It will be helpful to produce notes and manuals on procedures. These should set out departmental procedures for legal and planning staff in handling each stage of the enforcement process and for dealing with particular circumstances, such as service of notices or taking direct action. The manuals should be regularly updated and amended as experience is gained. They will be invaluable in maintaining the momentum of enforcement work at difficult times, for example, when key staff leave or transfer to other work. Manuals should also include procedures designed to promote health and safety and security for enforcement staff. RTPI's "[GPN3: Personal Safety at Work](#)" will provide a useful starting point.

4.2 The organisation of staff and procedures must be carefully thought out. Ensure that skilled, appropriate people are selected and are given adequate resources. Information technology can help enforcement staff to be more efficient by simplifying and standardising administrative tasks and assisting the recording and retrieval of information. Effort should be directed at achieving and maintaining good morale and a sense of purpose. Both will be helped significantly by effective results and appropriate publicity for successful action by regular reporting of the LPAs enforcement programme.

4.3 Effective team building depends on establishing the correct relationship between the planning and legal departments, agreeing the appropriate distribution of tasks and ensuring that good communication is established and maintained. Effective cooperation will be particularly important when the legal service has been contracted out and is provided by staff employed in private practice. Regular training for all staff involved in enforcement is vital to obtain optimum results. Joint training sessions between planning and legal staff may be particularly valuable in promoting coordination, communication and understanding. The adoption of an agreed enforcement strategy based on these principles will help the authority provide the best enforcement service for the resources it has available.

5. Objectives of the enforcement process

5.1 The main objectives of the planning enforcement process are:

- to remedy undesirable effects of unauthorised development,
- to bring unauthorised activity under control to ensure that the credibility of the planning system is not undermined.

6. Initial investigation

6.1 Authorities should, where possible, monitor developments and be alert to unauthorised activities so that they can be dealt with promptly.

6.2 Information originates from many sources including enforcement officers, planning officers, residents, elected Members, neighbouring traders and other departments of the local authority. The development control caseworker can be a valuable source of information and he/she is generally welcomed onto a site whilst a planning application is being progressed. On the visit information can be collected on activities which are taking place and buildings which are present, which be recorded for future reference.

6.3 When information is received from outside the Planning Department the confidentiality of the informant should always be respected at the outset. However, the informant should be made aware that if the matter proceeds to a hearing, their evidence may be required.

6.4 The enforcement officer's first visit to the site of the alleged breach is crucial. The approach should be carefully considered. Often more information can be obtained during the first visit than on subsequent occasions when attitudes may have hardened. Diligence at this stage is very effective, as experience has shown that over 90% of cases are resolved without recourse to formal action. Careful record keeping is vital, especially of dates, names and site conditions. In some cases it may be advisable that two officers attend an inspection so that they may corroborate each other's evidence. Photographic evidence can be very valuable. Photographs should be dated and signed by the person taking them and, if possible, countersigned by a witness who was present at the time.

6.5 Always write to the owner and occupier(s) of the subject property to inform them of the findings after the first visit. If it is possible at this stage to state what the contravention is believed to be and what steps are required to be undertaken to remedy it this should be done (see paragraph 10.4). Alternatively if no contravention has been found this should be stated. The informant should also be advised of the outcome of this first visit.

6.6 When preparing for and undertaking site visits and meetings, particular regard should be paid to health and safety and security matters. Further advice is given in RTPI's "[GPN3: Personal Safety at Work](#)".

7. Powers of entry

7.1 Additional powers were introduced in 1991 to secure entry to land in relation to enforcement action. The powers include the issue of a warrant by a Justice of the Peace [in Scotland, Sheriff's warrant] in cases where entry is refused to an authorised officer. Wilful obstruction of such an authorised officer is an offence subject to a maximum £1,000 fine (1995). Officers should be provided with appropriate documentation by the Council's chief legal officer to establish their authorisation. A notice period of 24 hours is required before entry can be demanded to a dwellinghouse. Police support should be considered if entry is refused. Annex 5 of Department of the Environment Circular DoE 21/91 (Welsh Office WO 76/91), [in Scotland Part II of Circular SO 8/92] gives advice on the use of the new powers.

8. Establish whether there is a breach of planning control

8.1 A 'breach of planning control' is defined in the Act as the carrying out of development without the required planning permission, or failing to comply with any condition or limitation subject to which planning permission has been granted. However, a breach of planning control becomes immune from enforcement action if no action has been taken within the time limits set out in the Act.

Essentially these are:

- four years from the substantial completion of operational development and from the change of use of any building to a single dwellinghouse, including use as flats and,
- ten years for all other breaches (i.e. change of use or breach of conditions, other than those related to single dwellinghouses).

8.2 Once immune from enforcement action a breach of planning control also becomes lawful. Owners of land and property may consider that a breach of control has become lawful through immunity. In these circumstances, it may be prudent to suggest that they apply for a Certificate of Lawful Development which, if obtained, will assist them when they dispose of their interest. Advice on lawful development certificates is given in DoE Circular 17/92 (WO 38/92) [In Scotland, Circular 36/92].

8.3 Collection of evidence is often difficult and consumes resources. For example, checks may be required outside normal working hours or over a lengthy period. Research the planning history, cross check with rating records and other local authority sources, such as building control. Local knowledge from residents and Members can be useful. Consider the whole site. Is there more than one breach? It will be crucial to identify the planning unit. The whole of the enforcement procedure may depend upon the correct identification of the planning unit and legal advice may be necessary to determine its true extent. Ensure that dates of commencement of operations and uses are established as firmly as possible from reliable sources and are documented in a form which is available for future proceedings. Check there is no immunity following the grant of a lawful use certificate or because of detailed changes in the General Permitted Development Order or Use Classes Order over time.

8.4 Failure to substantiate that there has been a breach of control can lead to an award of costs against an Authority if the result is an appeal against an enforcement notice which could have been avoided had the Authority been more diligent (PPG 18 and Circular DoE 8/93 (WO 23/93) [Scotland, SO 6/90]. Planning authorities are expected to ensure that their decision to issue an enforcement notice takes account of relevant judicial authority, Government advice in PPGs and well publicised appeal decisions. Withdrawal of an enforcement notice can also risk an award of costs against the LPA if it is concluded that it was not expedient to issue it.

9. Should planning permission be granted?

9.1 The decisive issue for the LPA should be whether the breach of control would unacceptably affect public amenity or the unauthorised use of land or buildings merit protection in the public interest. If an enforcement notice is issued solely to remedy the absence of a valid planning permission and it is concluded on appeal that there is no significant objection to the breach of control, authorities

will be at risk of an award against them of the appellant's costs in the enforcement appeal (PPG 18 and Circular DoE 8/93 (WO 23/93) [in Scotland, SO 6/90]).

9.2 There will be a need to consider all the planning issues. For example, neighbouring residents might be informed that action is being contemplated and their views taken into account. Advice from environmental health officers and highway and drainage engineers may be appropriate. The planning officer needs to be in a position to assess the significance of the breach and the likely outcome of a planning application having regard to the provisions of the development plan and to any other material considerations before a decision is made on the best course of action. If an enforcement notice is issued and appealed then there will be a deemed planning application, provided the appellant pays the appropriate fees to both the Secretary of State and the local planning authority.

10. Options for action

10.1 Once it has been established that a breach of planning control has occurred, there is a range of options for action:

- inform the contraveners that they are in breach and ask them to stop,
- request submission of a planning application,
- offer to negotiate on relocation or an amendment to the design (of unauthorised building works),
- consider issuing an enforcement notice,
- consider serving a breach of condition notice,
- consider serving a stop notice (provided an enforcement notice has been served),
- consider seeking an injunction [in Scotland, interdict],
- consider whether to issue/serve a combination of notices,
- take no action.

10.2 Careful consideration should be given to the appropriate course of action based on all the circumstances.

10.3 Government advice contained in PPG 18 [Scotland, Circular 8/92] is to:

- invite an application where the development is considered to be acceptable and impose conditions if appropriate on the subsequent planning permission,
- serve an enforcement notice if an application is not submitted and there is continuing injury to amenity which can only be resolved by imposing conditions on a grant of planning permission,

- where development is unacceptable but relocation is feasible, allow a reasonable time for that and issue an enforcement notice if no relocation occurs within the time limit,
- where the development is not acceptable and relocation is not feasible, issue an enforcement notice and set a realistic compliance period for the operation or activity to cease,
- explain and discuss problems with small businesses before taking enforcement action,
- be sympathetic to householders and have regard to their permitted development rights.

10.4 Once the approach has been decided, the contravener should be informed in writing of the precise nature of the breach, explaining how it contravenes planning policies. Invite an application if appropriate and advise of any conditions likely to be imposed. Set a timetable for the submission of an application and ensure enforcement action progresses if it is not met.

10.5 If an application is submitted and refused, it is good practice to obtain Committee authorisation for enforcement action at the same time. Ensure that enforcement staff are made aware of the decision and that enforcement action proceeds. If a retrospective application is approved subject to conditions which require specified works to be completed within a given time period, procedures should ensure that site checks are made to determine whether the conditions have been complied with and that enforcement action is pursued if necessary.

10.6 Give consideration to seeking a legal agreement to carry out action required to remedy the breach; for example, submission of detailed plans and commencement and completion dates for works.

11. Obtaining information

11.1 When the person responsible for the unauthorised development will not discuss the submission of an application or if an application is unlikely to be recommended for approval, it will be necessary to identify all those who have an interest in the land and the nature of that interest.

11.2 The Authority may consider they have sufficient information to take enforcement action. However, it may be considered best practice where it appears there may have been a breach of control to serve a Planning Contravention Notice (PCN) and carry out a Land Registry Search. Any person who is an owner or occupier or has another interest in the land or who is carrying out operations on the land or is using it for any purpose should be served with the PCN. Although not a legal requirement, it may be useful to request individuals to give their date of birth where it is known that members of the same household or partners in a business have the same name, for example, a father and a son. Organisations who are known to have made loans or mortgages

secured on the property should also be served. The PCN may require the provision of a wide range of information relating to activities and uses on the land, and any matters concerning conditions subject to which planning permission has been granted.

11.3 The PCN does not need to state what the Authority regards as the 'planning unit' or whether the activity to which the notice relates is subordinate or ancillary to a main use. Advice on PCNs is contained in Annex 1 of Circular DoE 21/91 (WO 76/91) [In Scotland Part II of SO 8/92].

11.4 The PCN may invite the recipient to meet with the Authority to discuss the matters. This will be particularly useful where the Authority consider that a carefully conditioned permission could be granted but an operator has not been prepared to discuss submission of an application.

11.5 It is an offence to fail to comply with the requirements of a PCN within 21 days or to make false or misleading statements in reply. Penalties, on summary conviction, for these offences are on standard scales up to £1,000 and £5,000 respectively (1995) [In Scotland, level 3 of the standard scale].

11.6 A Land Registry map index search will enable the LPA to ascertain quickly whether the site is registered and the registered number (if it is registered) so that ownership details can be obtained. [In Scotland, there is no Land Registry but the Register of Sasines may give information on land ownership].

11.7 Company searches will reveal information on directors and company officials. Section 331 of the Act allows for prosecution in certain circumstances of company directors for offences committed by the company.

11.8 Where the Authority has adequate information about the activities on and use of the land, but require only land ownership information to enable an enforcement notice to be properly served, there are two information gathering notices that can be served as alternatives to a PCN:

- a notice under section 330 of the Town and Country Planning Act 1990 [In Scotland, section 83C of the Town and Country Planning (Scotland) Act 1972],
- a notice under section 16 of the Local Government Miscellaneous Provisions Act 1972 [In Scotland there is no equivalent].

11.9 There are two particular advantages with the Section 16 notice:

- the period for complying is not more than 14 days, compared to 21 days for the PCN, and
- the fine for non-compliance (1995) is up to Level 5 on the Standard Scale (£2,000) compared to Level 3 (£400) for a PCN.

12. Taking enforcement action

12.1 'Taking enforcement action' is defined in the Act to mean the issue of an enforcement notice or the service of a breach of condition notice. These are separate remedies and normally one notice or the other will be appropriate. The most important difference between an enforcement notice and a breach of condition notice is that the former is subject to an appeal procedure which renders the notice ineffective until the appeal has been dealt with. There is no appeal against a breach of condition notice.

12.2 If there is a clear breach of a condition and the condition itself is not subject to challenge, then a breach of condition notice will be the better remedy. If such a notice is not complied with action can be taken in the Magistrates Court, which will enable swift prosecution. However, if the condition is open to challenge (for example, if the condition does not satisfy the tests set out in the Circular on "The Use of Conditions in Planning Permissions" DoE 11/95 (WO35/95), it may be preferable to issue an enforcement notice and allow the appeal procedure to take its course. Once the enforcement notice becomes effective, a prosecution for failure to comply with the enforcement notice or an injunction to enforce compliance with an enforcement notice will be an efficient remedy.

12.3 Once it has been decided what is the appropriate action to take, report fully to Committee (if necessary). Specify the breach of control, the steps necessary to remedy it, the reasons why it is expedient to take action, the type of action selected and the period for compliance. Include any necessary authority for any other appropriate legal action so as to avoid repeated reports to Committee. The report should contain sufficient information to found subsequent proceedings for an injunction. It is important that there should be a record of the reasons why it is expedient to take enforcement action. If the reasons for the Committee's decision are not the same as the reasons proposed in the report, there should be a record of the actual reasons; for example, set out in the committee minutes and/or entered on the relevant file).

12.4 Where an Authority has delegated power to enforce to an officer, he or she should consider whether it would be more appropriate to report to Committee in contentious cases. Where a decision is taken by an officer under delegated powers, there should be a written record made of the reasons why it is considered expedient to take enforcement action. Ensure that all necessary legal and other appropriate information is available. It is good practice to notify the informant and elected Members, for example the chair of the Planning Committee and ward Councillors, that action is being taken.

13. The requirements of the enforcement notice

13.1 An enforcement notice may require a wide range of steps to be taken to make a development comply with the terms of planning permission or for removing or alleviating any injury to amenity caused by the development. Development permitted by the General Permitted Development Order must be

carried out strictly within the limitations of the various classes. Any development, which does not comply with the limitations of the General Permitted Development Order, must be carried out strictly within the limitations of the various classes. Any development, which does not strictly comply with the limitations of the General Permitted Development Order, will require planning permission and an enforcement notice may be issued in respect of it. However, particularly with householder developments, regard should be had to the development which would have resulted from a proper compliance with the General Permitted Development Order. In other words, a comparison must be made between the development which would have been permitted under the General Development Order and the adverse effects of the development which has actually taken place. The notice must specify whether the breach is regarded as the carrying out of development without planning permission or a failure to comply with a limitation or condition; the legal correctness of this distinction is very important.

13.2 Enforcement notices may require the restoration of land to its condition prior to the unlawful development, the demolition or alteration of any building or works, the discontinuance of the use of any land, or the carrying out of any building or other operations. Authorities may require such lesser measures of alleviation of the situation as they consider reasonable, including the continuance of uses and activities on the land or the retention of buildings and works. In such cases of 'under enforcement' planning permission shall be treated as having been granted for the development or the activity not enforced against once the requirements of the enforcement notice have been complied with.

13.3 The wording of notices should enable compliance to be effective and speedy. For example, for breaches involving changes of use, requirements could involve removal of furniture and fittings associated with the breach which could only be used in connection with the unlawful use, as well as permanent cessation of the use.

13.4 The steps should clearly spell out what needs to be done to remedy the breach. Where there is more than one breach the required steps should not conflict or overlap. It may be better to issue several notices in complex cases.

13.5 Every enforcement notice should contain an explanation of the reasons it is being issued. The reasons should be carefully considered and be specific to the case. If relevant to the case, reference should be made to policies in the operative development plan.

13.6 The minimum period before which the notice can come into effect is 28 days from the date of issue; check that this period is allowed. Where a number of people have to be served, the dates of receipts may differ and an additional week or fortnight should be allowed before the notice takes effect. The notice also needs to stipulate the period for compliance with the requirements of the notice once it takes effect. Give careful thought for the period for compliance. The

period should relate to the practicality of carrying out the required steps and the impact of the breach. Discussing the period of compliance with those who have caused the breach of planning control may avoid an appeal, with a consequent saving in time and cost for all concerned.

13.7 When enforcement action has been taken the details must be entered into the enforcement register, which must be kept by the LPA and made available for public inspection at all reasonable hours.

13.8 Advice on enforcement notices is contained in PPG 18 and Annex 2 of Circular DoE 21/91 (WO 76/91) [In Scotland, Part II of SO 8/92].

14. Breach of condition notice

14.1 The breach of condition notice is mainly intended as an alternative to an enforcement notice for remedying a breach of control arising from failure to comply with any planning condition or limitation. It will be particularly useful where a condition has been breached and prosecution is likely to be necessary to compel the person responsible to comply with the condition. However, if there is any doubt about the enforceability and validity of a condition, use of the breach of condition notice is not advisable since it may result in protracted litigation. In this case an enforcement notice may be more appropriate.

14.2 One breach of condition notice may be directed at the contravention of two or more planning conditions. However, where more than one compliance period is involved (for example, for different conditions) it may be more satisfactory to serve a separate notice for each contravention in order to remove doubt.

14.3 The notice must specify the steps which must be taken, or the activities which must cease, to secure compliance with the condition(s). The steps may be positive (for example, to carry out a landscaping scheme) or a prohibition (for example, to cease opening premises after certain times).

14.4 Normally a breach of condition notice will have only one recipient, the 'person responsible'. This will be the person who is carrying out or has carried out the development or who has control of the land. However, a notice can only be served on the person who controls the land in respect of contravened conditions which regulate the use of land. For example, in the case of a breach of condition relating to the hours of use of premises, the operator should be served with the notice. In the case of a residential scheme having been carried out without compliance with a landscaping condition and now being owned or occupied by householders, a notice can only be served on the original developer because a landscaping condition does not regulate the use of land. Therefore, the LPA should carefully consider and decide in each case who is the 'person responsible'.

14.5 A breach of condition notice must have a minimum compliance period of 28 days from the date of service of the notice. A reasonable period should be set otherwise a subsequent prosecution may fail. If, at the end of the compliance period, the 'person responsible' has not complied with the conditions specified in the notice and has not taken the specified steps or ceased the specified activity, he or she is in breach of the notice and has committed an offence, the maximum penalty for which on conviction is £1,000 (1995). There is no right of appeal against a breach of condition notice and therefore no opportunity to challenge the merits of the condition. However, the LPA's decision to serve it may be challenged by application to the High Court [in Scotland, Court of Session] for judicial review or by defence submissions to the Magistrates Court [in Scotland, Sheriff's Court] in the event of prosecution. Hence, it is important to ensure that the condition meets all the criteria applicable to the imposition of conditions in Circular DoE 11/95 (WO 35/95) [in Scotland SO 18/86] and has been clearly breached. Breach of condition notices must be entered in the enforcement register kept by the LPA. Further advice on the use of breach of condition notices is contained in Annex 2 of Circular DoE 17/92 (WO 38/92) [in Scotland, SO 36/92].

15. Stop notices

15.1 The effect of the enforcement notice is suspended if an appeal is lodged. When the effects of unauthorised activity are seriously detrimental, a stop notice is useful to ensure activity does not continue if an appeal is lodged against the enforcement notice. Where an Authority consider it expedient that any unauthorised use or activity should cease before the end of the compliance period of an enforcement notice, they may serve a stop notice. The notice can relate to any or all of the uses or activities which comprised the breach of planning control on all or part of the land specified in the enforcement notice. Stop notices may not prohibit the use of any building as a dwelling house nor any activity which has been carried out for more than four years (except for mining and the deposit of waste, for which there is no time limit). There is no right of appeal against a stop notice. Section 186(5) of the Act [in Scotland, section 166(6)] makes it clear that no compensation is payable in respect of the prohibition in a stop notice of any activity which at any time when the notice is in force constitutes or contributes to a breach of planning control. The same provisions ensure that where a planning contravention notice has required information to be given to the Authority, no compensation is payable for any loss or damage suffered by the claimant which could have been avoided if he had provided that information or co-operated with the Authority. An advantage of a stop notice in relation to building operations is that it has the effect of 'freezing' the development so that if an appeal is lodged against the enforcement notice the Inspector [in Scotland, Reporter] can consider it in an unfinished state.

15.2 Before deciding to serve a stop notice the costs to the operator and the benefits to the community must be assessed and considered by the officer or Committee who will take the decision. The requirements of the notice should

prohibit only what is essential to safeguard amenity or public safety or to prevent serious harm to the environment. The costs of complying with a stop notice may fall on a firm or business and the effect on their production and costs should be considered. The benefits to the local community should be assessed having regard to the severity of impact on amenity and the extent to which continuation of that breach would prevent or limit restoration of environmental damage (bearing in mind that the enforcement notice will take effect at the end of the compliance period unless an appeal is lodged).

15.3 Advice on stop notices is contained in Annex 3 of Circular DoE 21/91 (WO76/91) [in Scotland, SO 8/92].

15.4 Once a decision has been taken to serve a stop notice it should be served quickly and effectively. A stop notice should be served on the owner and occupier of the land, anyone carrying out an activity prohibited by the notice and anyone else who appears to have an interest in the land, including a builder working on the site. It is good practice to display a site notice indicating that a stop notice has been served and that contravention could result in prosecution. The site notice should state the requirements of the stop notice and the date it takes effect.

15.5 A stop notice may be served at any time before a related enforcement notice takes effect, even when an appeal has been lodged. A stop notice would normally not take effect until 3 days after being served. However, when there are special reasons for specifying an earlier date, it can take effect within 3 days or immediately, provided a statement of the reasons is served with it.

15.6 It is an offence to contravene a stop notice once it takes effect and is subject to a fine on summary conviction of up to £20,000 (1995). Details about any proceeds from an offence should be prepared so that the Court can take them into account in sentencing the offender.

16. Injunctions

16.1 Legal powers are now available to enable the LPA to apply to the High Court or County Court for an injunction to restrain an actual or apprehended breach of planning control [in Scotland, similar powers are available to seek an interdict through the Court of Session or the Sheriff's Court]. An injunction can be sought whether or not enforcement action has been taken. An injunction is directed at named persons and does not become a charge on the land. This may be a factor in determining whether to apply for an injunction and whether other enforcement action should be taken instead or in addition.

16.2 An injunction is an order of a Court requiring the defendant either to refrain from doing a specific act (prohibitory injunction) or requiring the defendant to carry out a specific act (a mandatory injunction). Injunctions are classified by the period of time for which the order remains in force. A first injunction might take

the form of an interlocutory injunction which is a provisional measure taken at an early stage in the proceedings as a matter of urgency before the Court has had an opportunity to hear all the evidence. Such an injunction would normally be sought when an immediate remedy is considered necessary. A substantive or final injunction is one granted by the Court following a full trial and following full disclosure in pleadings of the defence and all relevant documents. It is necessary to proceed in that way when, for example, no urgency can be claimed and the application is being made as a last resort when other measures have not brought about compliance.

16.3 Injunctions are a discretionary remedy and LPA should assess the likely outcome before commencing injunction proceedings. The Court is the sole arbiter and will only grant an interlocutory injunction when it is satisfied that it is justified on 'the balance of convenience'. The Court will need to be satisfied in the case of every injunction application that:

- the LPA has taken account of all relevant considerations,
- there is clear evidence of a breach of control,
- an injunction is an appropriate measure in that case,
- where an injunction is sought against persons unknown that the Court, order can be served on the persons concerned.

16.4 Usually, in interlocutory injunction proceedings, undertakings in damages are required by the Court (i.e. agreement to pay compensation for any loss incurred by the defendant if the injunction were not eventually granted at the full trial). However, in the case of law enforcement actions by local authorities brought in the public interest, the Court has a clear discretion not to require such an undertaking (see *Kirklees Borough Council v Wickes* [1992] 3 All ER 717). This discretion clearly applies in the case of injunction proceedings by local planning authorities under the Planning Acts. The discretion will be exercised according to the particular circumstances of the case, although it is unlikely that an undertaking will be required in clear cases of breach, or anticipated breach, where it is plain that an injunction is needed to effectively restrain the defendant.

16.5 It is imperative however that legal advice is sought early on in each case as to the likelihood of an undertaking in damages being required since this may influence whether or not interlocutory proceedings are taken.

16.6 In cases where there is no great urgency, an application for a substantive or final injunction (without first seeking an interlocutory injunction) might be more appropriate. The question of whether an injunction should be granted will then be dealt with at the trial of the action and no question of an undertaking in damages will arise. Unfortunately, it may take many months before the case comes to trial.

16.7 An interlocutory injunction can provide an urgent remedy. The courts will readily assist a local authority which is able to put before it sufficient evidence

that there is a proper case for the Court's intervention. An Authority could make an application for an injunction requiring the defendant to demolish what has already been built without permission. The effect could be to put the defendant to substantial expense which could subsequently turn out to have been unnecessary (e.g. if planning permission is granted). The Courts will not normally compel a defendant to undo what he has done except after a full hearing and so such an interlocutory application for an injunction is unlikely to succeed. The best way forward for an Authority seeking demolition would be to issue an enforcement notice requiring demolition and a stop notice to stop any more being built.

16.8 An injunction can be sought against a person whose identity is unknown but such action can be difficult and further legal advice should be taken. In any event, the LPA should take all reasonable steps in the time available to identify the person and affidavit evidence will be required to place before the Court to this effect.

16.9 Advice on the use of injunctions to restrain a breach of planning control is contained in Annex 4 of Circular DoE 21/91 (WO 76/91) [in Scotland, Part II of SO 8/92].

17. Proper issue and service of enforcement and other notices

17.1 Authorities might consider the adoption of a corporate strategy on the service of notices. There is a need to demonstrate that notices are delivered to the correct addresses. Recorded delivery is technically sufficient but in the case of non-delivery it can be some time before the document is returned to the Planning Authority. Addition of the Post Office 'AD' service may reduce this delay. Recorded delivery is adequate to issue notices to banks and building societies. Personal service is preferable for the principal in the breach. Keep a record of date, time, place and manner of service and formally identify yourself. Offer to explain the notice and its requirements. For service on a company, there is a legal requirement to send the notice to the Company Secretary at the registered office, and clearly state the name of the company. However, where the authority has reason to believe that the registered office is not the actual headquarters of the company (the registered office itself may, for example, be located at an accountant's office), it is advisable to serve a copy of the notice in addition at the headquarters or local base of the company.

17.2 If a Planning Contravention Notice is being served, the receiver may be prepared to complete it immediately. Offer assistance to avoid delay.

17.3 It is essential to send certain information to the recipient of an enforcement notice and a useful way of English and Welsh local planning authorities providing this is to enclose a copy of the explanatory booklet "Enforcement Notice Appeals – A Guide to Procedure" (published by the Department of the Environment and the Welsh Office) and three copies of the

official appeal form with each copy of an enforcement notice. A duplicate copy should also be sent with each enforcement notice to enable the intending appellant to submit it with any appeal. Regulation 13 of the Town and Country Planning General Regulations 1992 required that enforcement notices and the envelope used to send them contain the words 'Important – this communication affects your property'.

17.4 Details of the enforcement notice must be entered into the enforcement and stop notice register which LPAs are required to keep. It is a defence for a person charged with an offence to show that the notice was not contained in the register, a copy was not served on him and he was not aware of its existence.

18. Communication with the public and elected members

18.1 It is important to keep concerned residents and elected members of the Council informed about progress on enforcement matters. They may be able to give personal accounts of problems on site to help determine the nature and extent of the breach. Their support should be enlisted early in the enforcement process so that an effective and coordinated response can be made at any appeal.

18.2 In the early stages of an enforcement case, anonymity of sources is essential. Informants should be told however that, if an appeal arises, their co-operation and involvement as witnesses may be important in securing a successful outcome. Complainants should be encouraged to keep diaries noting the occasions when they are affected.

18.3 The mechanics of enforcement may need explanations to the public, for example: the need to serve notices, periods to take effect and compliance, the right to continue uses and operations during any appeal procedures, the outcome of appeals, extended period for compliance and prosecution provisions. The public should be told about the procedures, exactly what may happen and the likely timescale. Where a member of the public has requested enforcement action but this is not to be taken, they should be given a reasonable explanation: for example that there has not been a breach of planning control, or that the local planning authority consider there is a breach but that it is not considered to be expedient to take enforcement action.

19. Enforcement appeals

19.1 Appeals create uncertainty and delay for all parties; they also cost substantial time, staff and other resources for appellants and local planning authorities. Appeals are therefore to be avoided if at all possible, and the steps set out in the early stages of the enforcement process seek to achieve this. It is important that appellants and LPAs continue to communicate during the appeal process.

19.2 The Government has issued guidance and regulations to LPAs with regard to enforcement appeals. Annex 2 of Circular DoE 21/91 (WO 76/91) [in Scotland, SO 8/92] contains advice on enforcement notices and appeals whilst Annex 3 of Circular DoE 17/92 (WO 38/92) explains the main changes introduced in the Town and Country Planning (Enforcement) (Inquiry Procedures) Rules 1992 [in Scotland, advice is given in SO Circulars 7/90 and 26/84 with regard to written representations appeals and SO Circulars 47/80 and 14/75 regarding appeals determined following a local inquiry].

19.3 Any appeal must be made before an enforcement notice takes effect. Care should be taken to check and understand the grounds of any appeal, that it is made and that the fee required for any deemed planning application has been paid and by whom. If no fee has been paid, the deemed planning application cannot be determined by the Secretary of State.

19.4 During the course of preparation of the appeal the LPA may become aware of defects in the enforcement notice. Previously unknown occupiers may emerge or further information may become available which will enable the enforcement notice to be drafted more clearly or any plan improved. Consideration should be given as to whether the notice should be varied or whether a new notice should be served and the original notice withdrawn.

19.5 In enforcement cases, costs awards may be made after all types of appeal proceedings, including written representations. Costs are awarded only in cases of unreasonable behaviour by any party. Unreasonable behaviour by the appellant may be caused by the special nature of enforcement appeals: late withdrawal of appeal, failure to substantiate grounds for appeal, failure to appear at the appeal hearing, failure to co-operate with the Council in dealing with correspondence and providing information may all be matters which expose the appellant to an application for costs by the LPA. The LPA should also ensure that it is scrupulously fair and prompt in dealing with the appeal.

19.6 Authorities should consider the most appropriate method of determining the appeal (i.e. written representations or public local inquiry) and ensure that their statements of submissions are served by the specified date. The LPA must send to the Secretary of State a copy of the notice and a list of the names and addresses of the persons served with a copy of it within 14 days of the notification of the appeal. If the LPA fail to do so the Secretary of State has power to quash the notice.

19.7 An enforcement appeal may typically involve consideration of two issues, the validity of the notice and the merits of the deemed planning application for the development, the subject of the notice. Clear evidence will be needed that the breach of planning control constitutes development requiring planning permission which has not been granted and that there are sound and clear cut reasons why

such permission should not be granted, or alternatively that planning permission could be granted, but only if appropriate conditions were to be imposed.

19.8 LPAs should consider whether specialist evidence should be called to substantiate allegations of a breach.

19.9 Before the inquiry a check should be made on any new developments in the vicinity of the appeal site. Appellants often use the opportunity to draw attention to other breaches of control in an effort to minimise the impact of their own development and to point to inconsistency of approach. Any other unauthorised development should be noted, a visit to the site made and a letter sent drawing the attention of the person responsible to the breach.

19.10 Evidence is often taken on oath at an enforcement hearing. Witnesses should ensure that if the evidence they give is not derived from their own experiences it can be substantiated. Inspectors will give little weight to hearsay evidence, particularly if it is contested. Evidence can include letters and photographs prepared by the witness and his or her own statement. The enforcement officer may have a more detailed knowledge of the site and the circumstances than colleagues because of his or her closer involvement. He or she may become aware of statements that are at variance with the Council's evidence, in which case the Council's solicitor should be informed.

19.11 The Council's witnesses and solicitor should have previously agreed a list of appropriate planning conditions for suggestion to the Inspector should he allow the appeal and grant planning permission. The conditions should meet the tests set out in Circular DoE 11/95 (WO 35/95) [in Scotland, SO 18/86].

20. Post decision procedures

20.1 If the enforcement notice is quashed and planning permission is granted by the Inspector or Secretary of State, discuss with your legal adviser whether an appeal to the High Court [in Scotland, Court of Session] on a point of law is appropriate. If a notice is quashed on a point of law only, consider whether to serve a corrected notice. Even when the normal time limits for enforcement action have expired, the Act enables further enforcement action to be taken within 4 years of the initial action. Further advice on time limits is given in Annex 1 of Circular DoE 17/92 (WO 38/92) [in Scotland, Part II SO 8/92 and 36/92].

20.2 If no challenge is to be made to the decision (which is normal), write to the appellant pointing out that the authority has received a copy of the decision and that any conditions on the permission must be complied with and that checks will be made on the site to ensure compliance.

20.3 If the notice is upheld write to the appellant noting the time limit within which the specified steps in the notice are to be complied with and stating that non-compliance is a criminal offence.

21. Securing compliance with the notice

21.1 If it is clear that the enforcement notice is not going to be complied with, the LPA should consider the most appropriate action available to it for securing compliance in the particular circumstances of the case. The options available are:

- prosecution in a Magistrates or Crown Court,
- an injunction (see section 16 above),
- direct action,
- by negotiating a section 106 obligation, or similar.

21.2 When the LPA has considered the most appropriate action, it should inform the owner/occupier accordingly and then set in train that action as expeditiously as possible. Close liaison will be required with the Legal Department at this stage.

22. Prosecution

22.1 When prosecuting for planning offences the different roles of the lawyer and the planner need to be clearly understood. The lawyer should ensure the case is well founded and advise on the evidence to be collected. The planner should provide the evidence and instruct the lawyer on the Authority's case. They should discuss and agree on objectives and review the options for action, of which prosecution will be one. A strategy for securing the objectives should be formulated.

22.2 Evidence of an offence will be gathered from a site inspection and interviewing the person responsible. During site inspections careful notes should be taken, important features marked on a plan and photographs taken. When questioning the person responsible, if there are grounds to suspect that a criminal offence has been committed it is essential that a caution is issued. If negotiations take place with the person responsible these will not normally be subject to a caution but this should be made clear.

22.3 A witness statement should be prepared by the planner covering:

- a site description (including a marked up plan if appropriate),
- the date of inspection,
- the facts showing that the steps required by the enforcement notice have not been complied with,
- details of the owner and persons involved on site.

22.4 The decision whether or not to prosecute should be made by the lawyer on the basis of the evidence, photographs and the witness statements. It is important that evidence is kept secure because the defence has a right to

request information concerning the case against him and the prosecution has a duty to disclose all evidence to the defence.

22.5 Prosecution for non-compliance with an enforcement notice is usually at the Magistrates Court [in Scotland, Sheriff's Court]. Consideration should be given to proceeding in the Crown Court [in Scotland, Court of Session] if the offence is serious enough to warrant a more severe penalty. The Court will need to be shown evidence of the enforcement notice, the result of the appeal, if any, and evidence from the enforcement officer that the notice has not been complied with [in Scotland, no person may be convicted unless there is evidence of at least two witnesses implicating the person accused with the commission of the offence charged]. Always produce documentation of the enforcement notice, appeal decision, correspondence, photographs, negatives and a witness who took the photographs. The Legal Department of the Council will be able to advise on the kind of evidence required and the preparation of witnesses' statements.

22.6 Inform the Court of the background to the case including the number of complainants, the type and scope of the problems created, the length of time they have continued and an estimate of the likely profit being obtained by the offender. This information will help the Court reach a balanced view of the offence.

22.7 Documentary evidence of the costs of solicitors and planning personnel should be collated so that a detailed application for recovery of costs can be made to the court. If the LPA achieves a successful prosecution and a substantial fine is imposed, consideration should be given to issuing a press release to act as a deterrent and to raise the profile of planning enforcement in the community.

23. Direct action

23.1 The amended section 178 of the 1990 Act [in Scotland, section 88 of the 1972 Act], brought in significantly stronger powers for LPAs to enter land and carry out any of the requirements of a notice themselves. Furthermore, it is now an offence to wilfully obstruct anyone exercising those powers the maximum fine for which on summary conviction is £1,000 (1995) (level 3 on standard scale). However, it may be more effective and quicker in a difficult case to seek an injunction restraining a person from obstructing the Council and its contractors rather than to bring a prosecution before the Magistrates. For example in the case of an unauthorised storage use, the LPA can remove stored items as a step towards removing the use. They may continue to remove any more items stored thereafter. In the case of an unauthorised building, the LPA may carry out works required by the enforcement notice to alter the building or to make it comply with the terms of a planning permission. Any monies expended in carrying out such works can be recovered from the owner of the land or in default of payment can be imposed as a charge on the land. Direct action provides a powerful means of tackling particular enforcement problems. It can ensure a relatively quick

compliance with the enforcement notice and will normally be cheaper than bringing a prosecution before the Courts. The attendant publicity will give a clear indication that the Authority take a serious view on planning enforcement. Even the threat of direct action can be a potent stimulant to action.

23.2 Advice to LPAs on the use of these 'default' powers is contained in Annex 2 of Circular DoE 21/91 (WO 76/91) [in Scotland, Part II of SO 8/92].

23.3 Successful direct action needs careful planning and coordination, particularly with regard to safeguarding of staff. Ensure good communication between staff at all stages of an operation, for example by mobile telephones. Be aware that staff may be subject to threats and intimidation and plan contingency arrangements, including reporting abusive telephone calls and letters to the Authority's legal department and the police. In extreme cases it may be necessary to seek injunctions [in Scotland, interdicts] to protect staff from being approached by individuals, not only on the site of the breach but anywhere.

23.4 To achieve this, where an officer's private rights are being infringed (e.g. private nuisance or threats at their home), it will be necessary to obtain the formal approval of the Council to meet any legal costs incurred by the staff concerned in this injunctive action in their own name. The Law Society's rules prohibit a local authority solicitor from acting on behalf of a member of staff where there could be a conflict of interest arising from that person's employment with the Council. Authorities should also check that there is adequate insurance cover to compensate officers involved from either personal injury or damage to property sustained in attending on site or as a result of isolated violence elsewhere occasioned by their involvement in the case, for example an attack at an officer's home. Policies which merely indemnify the Council against any liability which it may be under are not sufficient because, in the absence of negligence by the Council, the Council would not normally be liable to the individual officer in the first place.

23.5 Secure compounds may be required for the storage of vehicles or plant. Estimates can be obtained for demolition or carrying out of works and the offender can be supplied with them. Police presence may be a prudent precaution at the time the action is taken. Police cooperation may be more certain if an injunction has been served and not complied with. Once items of value (e.g. vehicles, plant and equipment) have been removed from site, they can be sold after expiry of the statutory period. Direct action will proceed more quickly and smoothly if appropriate financial provision is made in the form of a standing contingency fund to meet incidental costs arising from the implementation of a strategy involving direct action.

24. Agreements

24.1 Legal agreements can be used to ensure that the notice is complied with without a prosecution. For example, agreements could be prepared under the

terms of Section 106 of the Town and Country Planning Act. The advantage is that the agreement would be binding on successors in title.

25. Recurrence procedures

25.1 An enforcement notice will continue in effect despite a change in ownership. If a new owner either fails to comply with an enforcement notice or recommences a prohibited activity, an immediate check should be made that the enforcement notice has been registered in the local land charges section. If it has been properly registered, the purchaser will be taken to have knowledge of the enforcement notice whether he has made a search or not. It is normal practice for a purchaser's solicitor to make a search and the local land charges department should be asked to produce evidence of the search.

25.2 If there is a recurrence of the breach, serve a copy of the original notice on the owner/occupier, together with an explanatory letter.

25.3 If there is no compliance within a reasonable time prosecution will be required at the Magistrates Court [in Scotland, Sheriff's Court]. A formal letter should be sent to the contravener, delivered by hand if practicable, enclosing another copy of the original notice and a warning that if the prohibited activity does not cease before a certain date a prosecution will follow. A reminder of the penalties for non-compliance will also be appropriate. Even if the owner/occupier remains the same it is good practice to check that there has been no recurrence from time to time.

26. Sources of further information

For more information please visit:

National Association for Planning Enforcement (NAPE) <http://nape.rtpi.org.uk/>

Department of Communities and Local Government www.dclg.gov.uk

Scottish Executive www.scottishexecutive.gov.uk

Key publications

RTPI Enforcement Handbook available to NAPE members via their website

<http://nape.rtpi.org.uk/>

Circular 02/2005 (ODPM) Temporary Stop Notices

www.communities.gov.uk/pub/322/Circular0205TemporaryStopNotice_id1144322.pdf

Circular 02/02 (ODPM): Enforcement Appeals Procedures

www.dclg.gov.uk/index.asp?id=1144349

Enforcement Appeals (PINS)

www.planning-inspectorate.gov.uk/pins/appeals/enforcement_appeals/

Circular 10/97 (DOE) Enforcing Planning Control: Legislative Provisions and Procedural Requirements

www.dclg.gov.uk/index.asp?id=1144429

Department of the Environment (1991) Planning Policy Guidance: Enforcing Planning Control (PPG18)

www.dclg.gov.uk/pub/90/PlanningPolicyGuidance18EnforcingplanningcontrolPDF23Kb_id1144090.pdf

Scottish Planning Enforcement Handbook

www.scotland.rtpi.org.uk/pp/003117422611300106.pdf#search=%22enforcement%20handbook%22

Planning Advice Note 54: Planning Enforcement

www.scottishexecutive.gov.uk/Publications/1999/03/pan54

The Town and Country Planning (Enforcement of Control) (No. 2) (Scotland) Regulations 1992

www.opsi.gov.uk/si/si1992/Uksi_19922086_en_1.htm

SPICe Briefing: Planning etc (Scotland) Bill: Enforcement - Summary of current system and changes contained in the Bill

www.scottish.parliament.uk/business/research/briefings-06/SB06-01.pdf#search=%22planning%20enforcement%20scotland%22

Personal Safety at Work: Risk Assessment, Avoiding Conflict and Carrying Out Safer Site Visits and Meetings - RTPi GPN3

www.rtpi.org.uk/resources/publications/GPN3.pdf

This guidance is written for chartered town planners working within the English and Scottish systems, however much of the advice is relevant to all parts of the UK.

National Association for Planning Enforcement (NAPE) aims to enhance and promote the role of planning enforcement within the planning profession by encouraging the dissemination of good practice and information sharing. For further information please visit <http://nape.rtpi.org.uk/> or email nape@rtpi.org.uk



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