

I'M WARNING YOU!

Where are we now?

Enforcement Warning Notice

- Section 43 of the Planning Wales Act 2015, which amended the Town and Country Planning Act 1990, came into force on 16 March 2016 and introduced a new section 173ZA which provides that-
 - (1) This section applies where it appears to the local planning authority that-
 - (a) there has been breach of planning control in respect of any land in Wales, and
 - (b) there is a reasonable prospect that, if an application for planning permission in respect of the development concerned were made, planning permission would be granted.

Enforcement Warning Notice

(2) The authority may issue a notice under this section (an “enforcement warning notice”).

Enforcement Warning Notice

(3) A copy of an enforcement warning notice is to be served –

(a) on the owner and the occupier of the land to which the notice relates, and

(b) on any other person having an interest in the land, being an interest that, in the opinion of the authority, would be materially affected by the taking of any further enforcement action.

Enforcement Warning Notice

(4) The notice must-

(a) state the matters that appear to the authority to constitute the breach of planning control, and

(b) state that, unless an application for planning permission is made within a period specified in the notice, further enforcement action may be taken.

Enforcement Warning Notice

(5) The issue of an enforcement notice does not affect any other power exercisable in respect of any breach of planning control.

Enforcement Warning Notice

- (3) In section 171A, in subsection (2) (steps that constitute taking enforcement action) before “or” insert-
“(aa) the issue of an enforcement warning notice (defined in section 173ZA);”

Enforcement Warning Notice

(4) In section 188 (register of enforcement and stop notices etc)-

(a) in subsection (1) after paragraph (a) insert-

“(aa) to enforcement warning notices,”;

(b) in subsection (2), in paragraph (a), after “enforcement notices” insert “, enforcement warning notice,”.

Enforcement Warning Notice

- Advice on Notices contained in letter 1 February 2016 to Chief Planning Officers from Chief Planner at Planning Directorate, Department for Natural Resources of the Welsh Government.

Enforcement Warning Notice

- An Enforcement Warning Notice (EWN) is intended for use where a LPA considers that an unauthorised development could potentially be made acceptable with control through the imposition of conditions if a planning application were made.
- The serving of an EWN constitutes the taking of enforcement action under s171A of the 1990 Act, therefore further enforcement action can be taken in respect of the breach within four years of the initial notice being issued.

Enforcement Warning Notice

- There is no right of appeal against an EWN, however if a retrospective application is submitted as a result of the EWN, an applicant does have the right to appeal either the refusal of planning permission, or the service of an enforcement notice, as with any other retrospective planning application.
- Use of an EWN can effectively ensure that an acceptable form of development is achieved without the LPA having to over enforce, making for a swift conclusion to breaches of planning control compared to an enforcement notice, which can be subject to an appeal by the recipient of the notice.
- A model EWN is provided at Annex 6 to the letter.

.[Model Enforcement Warning Notice]

**IMPORTANT – THIS COMMUNICATION AFFECTS YOUR PROPERTY
TOWN AND COUNTRY PLANNING ACT 1990**

(as amended by the Planning (Wales) Act 2015)

ENFORCEMENT WARNING NOTICE

SERVED BY [name of Local Planning Authority] (“the Authority”)

TO: [*name of intended recipient of the notice*]

- 1. THIS NOTICE** is issued by the Authority, in exercise of the power conferred by section 173ZA of the above Act. The Authority consider that there has been a breach of planning control on the land described in paragraph 2 below.

The Authority consider it expedient to issue this notice, as having regard to the provisions of the Local Development Plan and to other material considerations, there is a reasonable prospect that, if an application for planning permission in respect of the development stated in paragraph 3 below were made, planning permission would be granted.

Important additional information is given in the Annex to this notice.

2. THE LAND TO WHICH THIS NOTICE RELATES

Land at [address of land or description of relevant part of the land to which the notice relates], shown edged in a distinctive colour on the attached plan.

3. ACTIVITY TO WHICH THIS NOTICE RELATES

The following matters appear to the Authority to constitute a breach of planning control:

[specify the development/use which requires planning permission, and any activity carried out as part of that activity, or associated with it.]

4. WHAT YOU ARE REQUIRED TO DO

You are required to regularise the breach of planning control by:

- i. Submitting a planning application for the development stated in paragraph 3 above; or*
- ii. [specify development to be removed/activity to cease]*

Failure to comply with this notice within the period stated in paragraph 5 below may result in further enforcement action being taken.

5. TIME FOR COMPLIANCE

[insert deadline in days after the date of this notice].

Dated: [date of notice]

Signed: *[Authority authorised officer]*

On behalf of *[Authority name and address]*

Nominated Officer: *[Name of contact officer]*

Telephone Number: *[of Nominated Officer]*

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ANNEX

WARNING

THIS NOTICE TAKES EFFECT IMMEDIATELY

**THERE IS NO RIGHT OF APPEAL TO THE WELSH MINISTERS
AGAINST THIS NOTICE**

If you are in any doubt about what this notice requires you to do, you should get in touch **immediately** with [*Authority nominated officer to deal with enquiries, address and telephone number*].

If you need independent advice about this notice, you are advised to contact urgently a lawyer, planning consultant or other professional adviser specialising in planning matters.

Informative [optional]

[Provide links to relevant local and national validation requirements]

Appeal against enforcement notice: deemed application for planning permission

- Section 44 amends the process where an appeal is made under Section 174 of the 1990 Act. The appellant must now identify that they wish to make an appeal under ground (a) and pay a fee for the Planning Inspectorate to consider if planning permission should be granted. If they comply with these steps they will be deemed to have made a planning application.

Restrictions on right of appeal against planning decisions

- Section 45 provides that an appeal cannot be brought if planning permission was not granted under Section 174 of the 1990 Act against an enforcement notice if it would involve the granting of planning permission [*in respect*] of matters stated in that notice. This restriction also applies where an enforcement notice is served in respect of a condition that ought to be discharged and it is not discharged under Section 174 at appeal.

Restrictions on right of appeal against planning decisions

- Working alongside section 32 of the 2015 Act regarding retrospective applications, this restriction ensures that an enforcement appeal made under ground (a) provides the only route for the landowner/occupier to secure planning permission once an enforcement notice has been served.

Section 45

- This would not apply to an appeal made under section 78 of the 1990 Act before 16 March 2015.

Section 46 – Restrictions on right of appeal against enforcement notice

- Section 46 of 2015 Act places a restriction on the right to appeal against an enforcement notice. Where an enforcement notice is issued after a decision to refuse planning permission has been upheld at an appeal for a related development, section 46 prevents an appeal being brought on the ground that planning permission should be granted for the breach identified by the enforcement notice, i.e. Section 174(2)(a) of the 1990 Act. Furthermore, an appeal cannot be brought under section 174(2)(a) that a condition should be discharged if the enforcement notice was issued after a decision to grant planning permission subject to the condition or limitation was upheld under section 78.

Section 46

- This would not apply in cases where, before 16 March 2015, an enforcement notice is issued under section 172 of the 1990 Act and was not withdrawn under section 173A of that Act.

Planning Contravention Notices

- S 171C Town and Country Planning Act 1990
- Local planning authority may serve notice if there appears to have been a breach of planning control
- May serve notice on:
 - Owner, occupier or person with an interest in the land
 - Person carrying out operations on or using the land

Planning Contravention Notices

- Notice may require information on:
 - Operations and activities carried out on the land
 - Matters relating to conditions or limitations applying to planning permission granted for the land
- Failure to comply and knowingly or recklessly making false or misleading statements are offences

Power to require information as to interests in land

- S 330 Town and Country Planning Act 1990
- Local authority may serve notice requiring occupier or person receiving rent to provide information on interests in and use of land
- Failure to comply and knowingly or recklessly making false or misleading statements are offences

Power to obtain particulars of persons interested in land

- S 16 Local Government (Miscellaneous Provisions) Act 1976
- Local authority may serve notice on occupier, freeholder, mortgagee, lessee, person receiving rent, person authorised to manage or arrange for letting of land
- May require details of nature of interest in land and of occupier and others with interests
- Failure to comply and knowingly or recklessly making false or misleading statements are offences

Any Questions?

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