



NAPE Planning Enforcement Handbook for England

Online Launch Event 18 May 2020
Your Questions Answered

The following is a list of questions that were put to our panel of speakers during and immediately following the launch event, but were unable to be answered during the event due to time constraints. The speakers have reviewed all of these questions and have set out their responses below:

Q: Notice taking effect. Can this be extended to allow more time to appeal?

A: If it hasn't taken effect then *Maistry* suggests that the power to amend pursuant to s173A includes the power to extend the effective date per s173(8) but if it has taken effect then the effective date cannot be amended (but compliance periods could be).

(response by Scott Stemp, No5 Barrister's Chambers)

Q: PINS tell me the problem with EN appeals is the availability of suitably qualified inspectors

A: PINS have recently trained a batch of new Inspectors to deal with enforcement appeals which will assist in the number of appeals being processed.

(response by Neill Whittaker, NAPE Chair)

Q: We have recently had our resource cut from 3 members of staff to 2 which has led to obvious delays in our ability to progress complaints/action etc. but given the pandemic our authority has made the decision to put all non-urgent enforcement action on hold for the foreseeable and we have been redeployed onto helping the planning team with checking/validating applications and working as planning officers making applications. As such, all enforcement work has stopped. This will mean that when we are actually put back onto enforcement work there will be significant pressures from all parties. Are other authorities experiencing the same? How are they dealing with continuing with investigations during the pandemic, particularly given that government are recommending flexibility etc.

A: Local authority responses to the pandemic are likely to vary across the country. In terms of enforcement work a survey will be included in this months NAPE newsletter to ascertain how authorities are reacting to the situation. The results will be published in a future NAPE newsletter.

(response by Neill Whittaker, NAPE Chair)



Q: What are your views on the Ministerial Statement re extension of working hours for developers and non-enforcement?

A: As with many working practices, changes are going to be required to respond to the pandemic. The statement encourages developers and local authorities to work together on the issue and is time limited for the next year. At this early stage I don't have a particular view one way or the other on this issue, though it is something that NAPE will keep a close eye on and I would encourage members to notify us of any positive or negative experiences they have in relation to this.

(response by Neill Whittaker, NAPE Chair)

Q: We amended our cautions to invite a written reply only in the standard format.

A: A prudent step to stay ahead of otherwise inevitable arguments about non-attendance at IUCs.

(response by Scott Stemp, No5 Barristers' Chambers)

Q: A question about site visits at the current time. We normally use a buddy system when officers are out on site. How do you see this working at the moment with officers generally working from home?

A: At the current time it is difficult to do site visits with a buddy system as unable to main social distancing. Therefore, it may have to be in the short term until appropriate PPE can be provided that site visits are only done from a public road or footpath and see if the breach can be noted from there. If not then the use of PCN's may have to be used to try and establish any facts surrounding the site.

(response by Craig Allison, NAPE Vice Chair)

Q: How do you anticipate dealing with the announcements last week over longer working hours on site? The statement says changes need to be dealt with in the "usual way" (I presume a re-discharge of the condition, if a change to hours would harm amenity and be rejected but the site continues...would it be reasonable to enforce given the Government advice and balancing harm against economic recovery?

A: I believe a further in detail statement was released on this which states that if the developer wants to extend their hours to be extremely wide then they need to submit via discharge of conditions and this should be determined within 10 working days. LPA's should only refuse if serious harm to neighbouring amenity would be caused. If the developer is only extending hours by an hour over the permitted times then enforcement officers should be flexible and it may not be considered expedient to take enforcement action. Also these temporary powers are only applicable for a year until the 23 May 2021.

(response by Craig Allison, NAPE Vice Chair)



Q: Are interviews by way of correspondence ever admissible? As part of the caution in writing we wouldn't be able to check the suspect understands the caution, so would have a reason on that alone to get any interview thrown out.

A: IUC in writing are routinely admitted; ordinarily the letter bearing the questions contains a warning to seek legal advice if they're unsure about anything in the letter. Lack of understanding would be a point defence would have to raise and evidence.

(response by Scott Stemp, No5 Barristers' Chambers)

Q: I wanted to raise a point about Planning enforcement orders and the issue of delays in the courts. Even before lockdown the PEO we have in process has been delayed over a long period. Courts kept listing too many cases and because it was not a high priority the case kept being relisted, bounced around from court to court and once the case started it took longer than the magistrates listed it. It's not finished yet and is likely to have to start the process again. I would not pursue this procedure again over a ground (d) appeal if positive deception can be demonstrated.

A: I don't see the point in pursuing PEOs. I've only ever defended in them and I've never had an LPA awarded a PEO in a case I acted in. Post-Jackson I don't see the point, why not just argue the disapplication of time limits in the ensuing ground (D) appeal?

(response by Scott Stemp, No5 Barristers' Chambers)

Q: With regards to 2nd bite provision - noting the handbook guidance - an EN if even a nullity is not evidence of 'purported'. Is there anything other than a sound EN that would suffice?

A: No. An invalid EN suffices, as does a valid EN. But one which is a nullity was never an EN in the first place.

(response by Scott Stemp, No5 Barristers' Chambers)

Q: Members of the public I assume wouldn't want an officer to come to their home if they had been to other sites previously. How do you think this can be combatted?

A: I think in the time being it is difficult for us as officers to enter residential properties due to the concern with social distancing and potential entering a home that maybe self isolating. Therefore at the time of writing I would not enter residential properties and if need to gather the appropriate evidence serve a PCN. As set out above the use of PPE is likely to be a way forward for visits in the future, also sending a letter before the visit setting out how the visit will be conducted with PPE and social distancing etc. NAPE hope to share best practice on this once the current lockdown measures are eased.

(response by Neill Whittaker and Craig Allison, NAPE Chair and Vice Chair)



Q: How would you recommend proceeding with a case; development was permitted for alterations & extensions to a listed building & for an associated outbuilding to be moved by hand. The building has not been rebuilt. The decision didn't include a time limited condition to complete the work?

A: PP or LBC? Completion notice is seemingly the only option if no condition was attached requiring the rebuilding.

(response by Scott Stemp, No5 Barristers' Chambers)

Q: With regard to PCN's what about sending recorded delivery and evidence of service? Given covid-19 is this possible?

A: Recorded delivery is the most appropriate way to serve as you can record evidence of service, however the legislation does state that first class post is also sufficient.

(response by Craig Allison, NAPE Vice Chair)

Q: Does the panel have a view on the correct mechanism to agree relaxation of construction hours controls?

A: Similar question to one answered above, see Ministerial Statement issued on 13th May 2020. <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2020-05-13/HCWS234/>

(response by Neill Whittaker and Craig Allison, NAPE Chair and Vice Chair)

Q: How many existing restaurants will actually be materially changed if they offer takeaways from the existing facilities during this period?

A: In line with the additions to the permitted development order, restaurants are required to notify the local authority if they are to operate as a takeaway and as such data will be held on how many restaurants take up this change. The relevant update can be found here <http://www.legislation.gov.uk/ukxi/2020/330/made>

(response by Neill Whittaker, NAPE Chair)

Q: Issues of caravan useage. We have an increased number of complaints relating to siting and occupation of caravans, but unsure what action to take whilst COVID-19 restrictions are in place

A: A difficult issue because of the prevailing guidance to LPAs in relation to G&T communities in the covid situation to give more leeway. EConvHR issues still pertain and addressing/discharging the various. Points/duties highlighted in Porter will be more difficult as a result. Notwithstanding the increase in complaints it is likely something which LPAs will simply have to mostly endure unless they are able to provide other spaces to be utilised in the course of the lockdown.

(response by Scott Stemp, No5 Barristers' Chambers)



Q: Scott Stemp fielded a question about virtual formal interviews. If I understood Scott's response correctly he was not in favour of such because of issues relating to admissibility of evidence/hearsay rules. Later on, a colleague in my council advised that his department are giving consideration to use of virtual Interview Rooms e.g. Zoom. The view of our legal officer was sought who commented that he did not foresee an admissibility/hearsay challenge if a suspect is cautioned and all other PACE safeguards are in place. To this end, could Scott be asked on what basis his opinion was arrived at.

A: With a 'virtual' IUC you have no control over unauthorised recordings of an IUC being made and you have no control over the interview circumstances that the defendant is in. You cannot see the room they are in - if there are other people in there? It is an easy scenario to exclusion of an interview: (A) the officer asks 'are you alone?' to which the suspect replies 'yes' (B) the interview proceeds and the suspect makes admissions in interview (C) the suspect later seeks exclusion on the basis that there was a person out of view in the room threatening/coercing them to give incriminating but false evidence. The prosecutor has no evidence to contradict the defendant's version of events, even if they ask for the camera to be panned around the room beforehand since they will just say someone came into the room after the 'sweep'. This is why you need controlled interview circumstances, so you know who is in the room and who is doing what (and when, and how). It's why you don't allow anyone other than the suspect and their lawyer into an interview room. In a virtual interview, you cannot ensure PACE safeguards are in place. You may have virtual IUCs where defendants don't seek to challenge admissibility - but that will likely be because of their instructions (which don't give rise to challenge of admissibility) or because their legal reps don't spot the issue. But when it *does* become an issue, it is one the prosecutor will have zero evidence to rebut.

(response by Scott Stemp, No5 Barristers' Chambers)