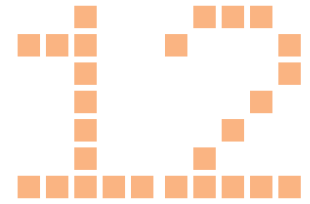


DEVELOPMENT CONTROL

Enforcement



This is Sheet 12 of The Planning Pack. This pack has been written by Planning Aid, with assistance from Urban Forum. The Planning Pack is endorsed by the Royal Town Planning Institute

Introduction

This information sheet provides a brief introduction to 'Enforcement'. It is Sheet 12 of a series of 17 that forms an information pack to help you understand and get involved in the planning system.

Local planning authorities can take action (known as enforcement action) against developments which do not have the appropriate planning permission, in order to maintain the quality of the local environment.

This information sheet has been prepared to explain how the planning system deals with unauthorised development, your rights and how you can influence decision making. If the unauthorised development relates to a Listed Building, Conservation area, or advertisement see Sheet 11 for information. Further information on enforcement and other forms of control can be obtained from your local planning authority or Planning Aid service.

Legal Framework for Enforcement of Planning Control

The law concerning enforcement is complex and is set out in the following legislation:

- >> The Town and Country Planning Act 1990
- >> The Planning and Compensation Act 1991
- >> The Planning and Compulsory Purchase Act 2004
- >> The Town and Country Planning (Enforcement Notices and Appeals) Regulations 1991.

In addition, the government sets out policy on enforcement matters in the following guidance:

- >> Planning Policy Guidance Note 18: Enforcing Planning Control 1991
- >> Circular 02/02: Enforcement Appeals Procedure
- >> Circular 02/05: Temporary Stop Notices
- >> Enforcing Planning Control: a good practice guide (and accompanying Circular 10/97)

Before undertaking any works you should check with your local planning authority whether planning permission is required. It is not a criminal offence to carry out most types of work without planning permission, however, you run the risk that you may have to undo the works carried out at your own

expense. **It is an immediate offence for some development to be undertaken, such as the erection of advertisements or works to a listed building, without the correct consents. If you are served with an enforcement notice, failure to comply with its requirements is a criminal offence.**

Enforcement Action

All local planning authorities have powers to take enforcement action against anyone who has carried out relevant development without planning permission (this is known as a breach of planning control). In a few cases the local planning authority may decide that enforcement would serve no useful purpose and not take action. If this is the case they have to give a reason why no action has been taken. However, where there has been a legitimate complaint from a neighbour or interest group (known as third parties), the authority should investigate and if appropriate seek to regularise the development. The complainant should be informed of the outcome of the investigation. If the local planning authority decide action is required, they may initially request a planning application be submitted (known as a retrospective planning application), which will be dealt with like a normal planning application. Where the local planning authority feels the development is unacceptable enforcement action can be taken.

If you have made a complaint you may be asked to provide evidence, for example details of opening hours, delivery times or when work started.

What action can the local planning authority take?

Having decided to take enforcement action, the local planning authority will seek information on the owners and occupiers of the property or land.

The **Planning Contravention Notice** is normally the first stage in resolving a breach of planning control. The notice requests information about the alleged breach, and gives a clear warning that further action is being considered. It is an offence not to respond within the time period or to knowingly provide false information.

With this information the local planning authority can serve an **enforcement notice**. The notice will set out the alleged breach of planning control and the steps required to remedy the breach. Normally the notice will ask that a development is removed or a use ceased within a specified period. The local planning authority must also state why it is necessary to serve the notice and the date it becomes effective. Enforcement notices can be subject to appeal to the Secretary

of State (Department for Communities and Local Government), in much the same way as against refusal of planning permission (see Sheet 7 – Applying for planning permission), effectively putting the enforcement notice on hold.

Enforcement action may only be taken within **four** years after the initial breach in the case of building operations or conversion to a single dwelling, or **ten** years in the case of other changes of use or breach of conditions. However, this is a general rule and you should always seek professional planning advice from your local planning authority, a planning consultant or, if eligible, your local Planning Aid service first.

The local planning authority can also serve a breach of condition notice where someone has not complied with the conditions attached to their planning permission. There is no right of appeal to the Secretary of State if a **breach of condition notice** has been served.

Where there has been a serious breach of planning control, the local planning authority can serve a stop notice requiring building work or the unauthorised use to cease. A **stop notice** must be served with, or after, the relevant enforcement notice and it usually requires the development to stop **within 3 days** of the stop notice being served. The notice must state the nature of the breach, what must be done to rectify the breach and an end date for compliance. A stop notice continues to have effect even if an appeal is lodged, but should only be used if there is likely to be continuing serious impacts on the environment, amenity or public safety. Local planning authorities may be required to pay compensation if they serve a stop notice and the ultimate enforcement notice is quashed at appeal.

If the nature of the breach of control is such that it is necessary to stop the activity immediately, a local planning authority can issue a **temporary stop notice**, without having to wait for the service of the enforcement notice itself. This notice must set out the nature of the breach and give reasons for serving it. This temporary notice has effect for **28 days**, at which time the authority must consider whether to serve a full stop notice and enforcement notice. A temporary stop notice cannot prohibit the use of a building as a dwelling house. Compensation liability is similar to that of a full stop notice.

Failure to comply with a valid enforcement notice, breach of conditions notice, stop notice or temporary stop notice is a criminal offence for which a substantial fine is payable on conviction through the Courts.

Injunctions can be used to stop a serious breach of planning control (or an anticipated unacceptable breach of control). An application has to be made to the County or High Court for an injunction and the courts will decide whether to grant the

injunction and under what terms. Anyone seeking an injunction normally has to sign an undertaking to pay damages if their request is withdrawn and therefore it is only sought in the most serious cases.

Appealing against a Notice

Anyone who has an interest in the property concerned and has been served with an enforcement notice has a right to appeal. An appeal must be made before the notice becomes effective, which is at least **28 days** after it has been served. An appeal is made directly to the **Planning Inspectorate** and an independent Inspector is appointed to decide the case. A fee is payable if an appeal is being made on the grounds that planning permission should be granted, but not for the other grounds of appeal.

An appeal can be made on the following grounds:

- A. Planning permission should be granted for the development or change of use.**
- B. The development does not require planning permission**
- C. No breach of planning control has taken place.**

D. Sufficient time has passed since the development took place so that enforcement action cannot be taken (see page 2).

E. The notice has not been correctly served.

F. The notice asks for an unreasonable amount of work to put things right.

G. The period of compliance stated in the notice is too short.

An appeal can be made on one or all of the grounds given above, but the person who appeals will be required to provide evidence to support each ground they choose. The appeal can be decided by either **written representations**, a **public inquiry** or an **informal hearing**. If an appeal is not lodged or it is too late then the notice becomes effective. If this happens there is no choice but to comply with the requirements of the notice as the local planning authority can start court proceedings. If the appeal is allowed then the enforcement action will be cancelled (quashed) and planning permission granted. If the enforcement notice is quashed on legal grounds, there is nothing to stop the local planning authority issuing a corrected notice.

The Secretary of State's (Department for Communities and Local Government) decision on any point of law may be chal-



lenged in High Court proceedings at the request of the local planning authority, appellant or any other person served with the enforcement notice. The Secretary of State may at any stage present a case for the opinion of the High Court.

Getting enforcement action taken

Enforcement action is a discretionary power. This means that your local planning authority will only take action if they think it is appropriate. To initiate action you may have to make a strong case to the local planning authority and the following points should help you to do this:

- >> contact the local planning authority to find out if planning permission was granted or if planning permission is needed;
- >> if permission was not granted, but was needed contact the enforcement officer at the local planning authority giving details of the breach of planning control;
- >> put your complaint in writing to the enforcement officer (correspondence is confidential and will not be made public);
- >> keep a record of any events such as opening hours, number of deliveries and times, vehicle registration numbers and any examples of noise and disturbance. The local planning authority may require this information in order to support any action, especially if the case goes to appeal.

You should remember that the local planning authority may investigate and decide it is not appropriate to take enforcement action. Even if they do take action the procedures are lengthy and may involve a considerable amount of negotiation and compromise.

If you are unhappy with the way your local planning authority has dealt with your enforcement enquiry, you may consider making a complaint to the **Local Government Ombudsman**. The Ombudsman can investigate alleged maladministration. Further information is contained in Sheet 15: Redress and Sheet 16 Contacts and Publications.

Lawful Development Certificates

An area of planning procedure related to enforcement is the issue of Lawful Development Certificates. An application for a **Certificate of Lawfulness of Existing Use or Development (CLEUD)** can be made if you wish to establish that an existing building or land use is lawful and is therefore immune from enforcement action. Usually this applies to buildings and uses which have not been granted planning consent. For buildings, the applicant must be able to prove that the structure has been in existence for at least four years; for most changes of use, the time span required is ten years. Such Certificates can be reassuring for prospective purchasers or for banks to prove that no action will be taken. Applications can be made as per planning applications including an appropriate fee.

If you are uncertain whether your proposal requires consent you can apply for a **Certificate of Lawfulness of Proposed Use or Development (CLOPUD)**. Again this application can be made as per planning applications including an appropriate fee.

Untidy Land

Your local planning authority, where they consider it appropriate, has the power to require landowners to clean up/ repair land (including buildings) which adversely affects the amenity of the area. To do this the local planning authority would serve a Section 215 notice, which would state what the notice relates to and what works the landowners are required to do and by when.