

November 2007

PLANNING AND BUILDING CONTROL ENFORCEMENT

Introduction

1. The purpose of this Note is to provide local councils with an overview of the enforcement procedures in respect of planning and building control matters.

A. Planning Enforcement

2. Planning is a relatively complex area of law. The ways in which the law may be breached are numerous and varied and it is not possible to mention all of the possible breaches in this Note. The relevant legislation is mainly found in sections 172 – 210 of the Town and Country Planning Act 1990 (the 1990 Act). Local councils should always consider whether any works or change of use requires the permission or the consent of the Local Planning Authority (LPA). Planning enforcement action can only be taken when something has been done without the appropriate permission/ consent. Examples include:
 - carrying out building works e.g. construction of buildings or extensions and certain external alterations;
 - demolition work or alterations (external and internal) to listed buildings;
 - certain material changes of use of land or buildings;
 - certain advertising signs;
 - non-compliance with conditions attached to permissions or consents; and
 - felling or carrying out works to a tree which is the subject of a Tree Preservation Order (or is situated within a Conservation Area) without authorisation.
3. In cases of doubt, local councils should consult the LPA before committing themselves to a decision or before taking action.

Breaching the legislation

4. A breach of planning control will not necessarily result in formal enforcement action being taken. Most breaches do not result in the commission of criminal offences (though breaches relating to listed buildings and the display of certain advertisements may well do). Under current legislation, criminal offences are usually committed only when:
 - an enforcement notice has been issued;
 - an enforcement notice has taken effect; and
 - the person on whom the notice was served has not complied with it.

5. The obvious point here is that it is very much in the interests of those who breach planning requirements to maintain effective and meaningful contact with the LPA.

Will formal enforcement action be taken?

6. Generally, formal enforcement action is viewed as a last resort but the Government has advised that essential enforcement action should not be delayed (e.g. by protracted negotiations) where the breach is unacceptable and is causing serious harm to public amenity.

7. Even when it is technically possible to take enforcement action, councils are required first to decide whether such formal action would be 'expedient'. Consequently, formal enforcement action is discretionary and all the relevant planning circumstances of each case must first be considered. In practice most councils will have a policy outlining which types of breaches are considered to be serious and the steps which may be taken.

Enforcement Notices

8. In accordance with section 172 of the 1990 Act, an enforcement notice is served on the person who caused the breach and on any other party with a legal interest in the land or building in question – s.173 of the 1990 Act refers. The notice will specify what action is required to remedy the problem and will give a period for compliance. In accordance with s.174 of the 1990 Act, the recipient of an enforcement notice can, however, appeal against it to the Secretary of State. An appeal suspends a

notice from taking effect. If the appeal is allowed no further action can be taken but if the appeal is dismissed the enforcement notice will take effect but the Secretary of State can amend its requirements, including the period for compliance.

Other Powers

9. In exceptional circumstances (e.g. where unauthorised works have a serious impact on public amenity) councils can serve a stop notice (s.183 of the 1990 Act refers) or seek an injunction (s.187B of the 1990 Act refers) from the courts requiring the unauthorised works to cease immediately. An amendment to the Planning Act in 2004 has introduced temporary stop notices which have the effect of stopping an unauthorised development or use for a period of 28 days – s.171E of the 1990 Act refers. During this time the impact of the development or use can be assessed and consideration given to issuing a formal enforcement notice and a stop notice.

B. Building Control Enforcement

What are the Building Regulations?

10. The Building Regulations exist to ensure the health and safety of people in and around all types of buildings (i.e. domestic, commercial and industrial). They also provide for energy conservation, and access to and use of buildings. The Regulations are in addition to and entirely different from other controls including:
 - planning permission;
 - fire precautions;
 - water regulations; and
 - party wall matters.
11. The Regulations contain various sections dealing with definitions, procedures, and what is expected in terms of the technical performance of building work. For example, they:
 - define what types of building, plumbing, and heating projects amount to 'Building Work' and make these subject to control under the Building Regulations;
 - specify what types of buildings are exempt from control under the Building Regulations;

- set out the notification procedures to follow when starting, carrying out, and completing building work; and
- set out the requirements with which the individual aspects of building design and construction must comply in the interests of the health and safety of building users, of energy conservation, and of access to and use of buildings.

12. Anyone wanting to carry out building work which is subject to the Building Regulations is required by law to make sure it complies with the regulations and (with some exceptions) to use one of the two types of Building Control Service available, i.e.:

- the Building Control Service provided by the local authority; or
- the Building Control Service provided by approved inspectors.

What happens if the Regulations are breached?

13. If a person carrying out building work contravenes the Building Regulations, the local authority or another person may decide to take them to the magistrates' court where they could be fined up to £5,000 for the contravention, and up to £50 for each day the contravention continues after conviction - section 35 of the Building Act 1984 refers (the 1984 Act). This action will usually be taken against the builder or main contractor, although proceedings must be taken within 6 months of the offence (s.127 of the Magistrates Courts Act 1980). Alternatively, or additionally, the local authority may serve an enforcement notice on the owner requiring them to alter or remove work which contravenes the regulations (s.36 of the 1984 Act refers). If the owner does not comply with the notice the local authority has the power to undertake the work itself and recover the costs of doing so from the owner (s.36(3) of the 1984 Act refers).

Can an enforcement notice be challenged?

14. Normally the enforcement notice will give the person served 28 days to rectify the building work. Under s.36(3) of the 1984 Act however if a person wishes to contest the notice on the grounds that the building work does comply with the Building Regulations, he or she has the following options:

- to advise the local authority that he or she wishes to obtain a written report from a

suitably qualified person (s.37 of the Building Act 1984) with a view to persuading the authority to withdraw the notice. In this event the 28 day period to rectify the building work is extended to 70 days (s.37(2) of the 1984 Act refers);

- to appeal against the notice in the magistrates' court and demonstrate there that the building work complies – s.40 of the 1984 Act refers. This option can be used either as an alternative to the first option), or if proceedings under the first option have been unsuccessful. The appeal must be made within 28 days of receiving the notice, or within 70 days if the first option has been used – see s.40(4) of the 1984 Act.

What happens if a local council believes it is unable to comply with the requirements of the Building Regulations?

15. S.9 of the 1984 Act, provides that if a council believes that the work cannot be expected to comply with one or more of the requirements in the Building Regulations because they are too onerous or because they are inapplicable, it has the right to apply to the local authority for a relaxation or dispensation of the requirement(s) in question in order for the completed building work to be considered to achieve compliance. The application must be made within 28 days of receiving the enforcement notice from the authority. If they refuse the council's application it has a right of appeal (in England) to the Office of the Deputy Prime Minister or (in Wales) to the Welsh Assembly Government against that refusal, providing it does so within one month of that decision – see s.39(1) of the 1984 Act. However, if the council takes this course of action in response to an enforcement notice, and if it has originally maintained that its work was in compliance, its case is likely to be more difficult to justify.

Can unauthorised works comply with the Building Regulations?

16. Regulation 21 of The Building Regulations (SI.2000 No. 2531), allows a property owner to apply to the local authority for a regularisation certificate in respect of 'unauthorised' building work. This means work which was carried out on or after 11 November 1985 and which should have been submitted to the Building Regulations procedures but was not. Applicants will be charged for this regularisation service.
17. In assessing compliance the local authority may request the 'opening up' of unauthorised work. The authority will then decide if remedial work needs to be

carried out, in accordance with the Building Regulations which were applicable to that work when it was originally carried out, before they can issue a regularisation certificate. A regularisation certificate is evidence (but not conclusive evidence) that the requirements of the Building Regulations specified in the certificate have been complied with.

18. If a council is concerned about unauthorised building work which was built before 11 November 1985 and which may not comply with the Building Regulations, it should discuss the problem with its local authority.

Other Legal Topic Notes (LTNs) relevant to this subject:

LTN	Title	Relevance
58	Planning	Sets out the planning appeals system.

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