

# Planning Enforcement

## A Guide to the actions available to the Council



### Enforcement Actions We Can Use

After we have received a complaint and undertaken an investigation and established that there is a breach of planning control, we have a number of options available to assist in resolving the breach. Not all options will be suitable in each case. These are;

### Planning Contravention Notice

This is the main method to obtain information on a suspected unauthorised development. It will usually set out a list of questions about the site/development. We can offer a formal meeting to allow additional oral information to be given. It is an offence to fail to comply with the requirements of the notice within the period set for its return, or to make false or misleading statements in reply.

### Obtaining Land Ownership Details

Section 16 of the Local Government (Miscellaneous Provisions) Act 1976 is primarily intended to establish information about the ownership and other interests of land. It is an offence to fail to comply with the requirements of the notice within the period set for its return, or to make false or misleading statements in reply.

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Likewise, Section 330 Town and Country Planning Act 1990 can be used to get ownership information, usually at an early stage of the enforcement process. It involves serving a Notice on persons having an interest in the premises. It is an offence to fail to comply with the requirements of the Notice within the period set for its return, or to make false or misleading statements in reply.

### **Breach of Condition Notice (BCN)**

We can serve this on the developer or occupier when they do not comply with conditions imposed on a planning permission. If they do not comply with the BCN, we can take legal action. It can only be used to secure complete compliance. It does not apply to breaches of control related to listed building, advertisement or protected trees. We will use this procedure in preference to the service of Enforcement Notices where appropriate. It is a criminal offence to fail to comply with a BCN within the period for compliance specified and there is no right of appeal against the notice other than to the Courts.

### **Enforcement Notice**

We will serve this when we are satisfied that there has been a breach of planning control and that it is deemed expedient to take formal action. With an enforcement notice the recipient(s) must take the specified steps within a set time period. Failure to comply with a notice is a criminal offence. The recipient(s) of a notice have a right of appeal to the Secretary of State through the Planning Inspectorate. An appeal suspends the effect of the notice until it is determined. If the recipient(s) lodge an appeal, we will tell all correspondents and neighbours of the appeal and how they can make representations to the Planning Inspectorate. Any representations are available for public inspection

### **Stop Notice**

We can serve a stop notice with an Enforcement Notice, or after we have served an Enforcement Notice if we consider that continuing unauthorised development is causing irreparable and immediate significant harm. The Stop Notice continues to take effect even if an appeal is lodged against the Enforcement Notice. The Stop Notice does not usually come into effect until three days after we have served it, although we can reduce this period if necessary. Work must stop immediately the Notice comes into effect. There are compensation liabilities if the Enforcement Notice is quashed, but these are not related to the planning merits of the case. There is no right of appeal; failure to comply with the notice is an offence.

### **Temporary Stop Notice**

We can serve these where we consider that there has been a breach of planning control, and it is necessary to stop the activity or development in question immediately to safeguard the amenity of the area. This differs from the normal Stop Notice powers as it is immediate and does not have to be accompanied by an Enforcement Notice. In addition it is temporary and only lasts for 28 days. There is no right of appeal to the Secretary of State. A judicial review can challenge the validity and propriety of our decision.

## Prosecution

We can commence Court proceedings where a person or body has breached a formal notice. In addition, in some instances we can commence legal proceedings for unauthorised works without the need to serve any formal Notices, e.g. unauthorised works to a listed building or a protected tree, or an unauthorised advertisement.

These proceedings can include:

- a prosecution; and
- a formal caution - this is a formal process where a party formally admits the offence. It may be referred to at the sentencing stage if someone is ever found guilty of a subsequent offence. We may also take it into consideration when we decide whether or not to prosecute at a later stage for another similar offence.

In order to bring a successful prosecution, in respect of listed buildings or protected trees, we must be able to prove that:

- the building or tree was protected;
- a formal notice has been breached;
- a party has carried out, caused, or permitted the works
- the works were carried out without the Council's consent; or
- the works were not exempt.

We will apply two tests in cases where a prosecution appears likely, consideration of which will be done in consultation with our legal advisors. These are:-

### ■ The evidential test

We will not start a prosecution unless there is sufficient, admissible and reliable evidence that the offence has been committed, and that there is a reasonable prospect of conviction.

### ■ The public interest test

We will only bring a prosecution where this is in the public interest. We may formally caution in cases where a prosecution can properly be brought but where we do not consider such action is appropriate in the circumstances of the case. We will use cautions in accordance with Home Office guidance. People who have previously received a formal caution will normally be dealt with by prosecution.

## Injunction

We can apply to the County Court or High Court for an injunction to stop an actual or imminent breach of planning or listed building control, even when the identity of the person is unknown. We can seek an injunction whether or not other enforcement action(s) have been taken. Failure to comply with an injunction can lead to an unlimited fine and/or imprisonment.

## Untidy Land or Buildings (Section 215 Notices)

Under Section 215 of the Town and Country Planning Act 1990 we have the power to require an owner/occupier to carry out improvement works to their land or building if the condition of the land or building is causing harm to the amenity of an area.

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### **Direct Action**

We do have the power, in special circumstances and as a last resort, to make sure an enforcement notice is complied with by carrying out the required steps ourselves in default of the owner's or occupier's action. We can recover all the costs incurred from the owner. Where we cannot immediately recover costs we will register a charge on the property with the Land Registry, thus assuring full cost recovery plus interest.

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