

Enforcing Planning Control

Where breaches of planning control cannot be resolved by negotiation then formal enforcement action can be taken where it is expedient to do so. The following describes options for formal action.

Enforcement Notice and Listed Building Enforcement Notice

These are the most common notices. They describe the breach of planning control and require the owner to comply with the steps set out in the notice by a certain date. There is a right of appeal to the Planning Inspectorate. Failure to comply with a valid enforcement notice is a criminal offence and can lead to prosecution either in the Magistrates' Court, or exceptionally in the Crown Court.

Breach of Condition Notice

This is only for straightforward breaches of condition. There is no right of appeal. Failure to comply is a criminal offence.

Stop Notice and Temporary Stop Notice

Stop notices can be served where serious harm is being caused that needs to be stopped quickly. A cost/benefit assessment has to take place as part of the decision-making exercise. The LPA may be liable to pay compensation if it is found subsequently that the development was lawful. A temporary stop notice can only last up to 28 days. A stop notice can only be served when an enforcement notice is in place but has not yet taken effect. There is no right of appeal. Breach of a stop notice is a criminal offence.

S.215 Notice

This is a notice that can be issued where the condition of the land adversely affects the amenity of the area. However, the scope for use of these notices is somewhat limited in practice by the wide circumstances permitted in the recipient's right of appeal to the Magistrates Court.

What if the Developer does not comply with a Notice?

There are three options which can be used separately or in combination:

Prosecution.

This is commenced in the Magistrates' Court. A breach of an enforcement notice is an either way offence which means that it can be dealt with in the Crown Court or Magistrates' Court. The financial gain acquired by the developer can be taken into account and large fines imposed, although in practice large fines are relatively rare. The Court has to take into account the financial means of the developer in determining a fine. It should be noted that any fine that is awarded,

goes to the Treasury rather than to the LPA. Prosecution does not of itself result in the breach of planning control being rectified.

Direct Action

The LPA authority has powers to enter the land and take action to remedy the breach of planning control. Difficulties include public order and costs issues.

Injunction

In severe cases the LPA can apply to the court for an injunction. Once granted, if the injunction is not complied with, it can result in imprisonment. Whether to grant an injunction is at the discretion of the court.

Timescales for taking enforcement action

The Planning and Compensation Act 1991 introduced rolling time limits within which planning authorities can take planning enforcement action against breaches of planning control.

The time limits are:

4 years for building, engineering, mining or other operations in, on, over or under land without planning permission

This development becomes immune from enforcement action four years after the operations are substantially completed.

4 years for the change of use of a building, or part of a building, to use as a single dwellinghouse

This development becomes immune from enforcement action four years after the date the change of use first occurred.

10 years for all other changes of use and breaches of conditions

The ten year period runs from the date the breach of planning control first commenced.

Unauthorised works to listed buildings never become immune, and action can be taken at any time. Action can be taken against the owner of the property and anyone with an interest in the land, regardless as to whether the breach occurred when the land was in another person's ownership.