



Planning Guide - Enforcement

The town and country planning system regulates the development and use of land in the public interest. Where land use constitutes a breach of development control, local planning authorities (LPAs) may need to consider taking enforcement action. LPAs have discretion to determine whether a breach of planning control has occurred, the gravity of the breach, and the course of action (if any) it considers appropriate to resolve the problem.

Although it is not a criminal offence to carry out an unauthorised development or change in land use, powers are available to LPAs to bring unauthorised development under planning control. Failure to comply with a court order, or enforcement action taken under it, may constitute an offence.

Under Part VII of the *Town and Country Planning Act 1990*¹ (TCPA 1990), LPAs have various enforcement powers in respect of breaches of planning control². The issuing of an enforcement notice, or the service of a breach of condition notice, constitutes enforcement action.

Can individuals take enforcement action?

A private citizen cannot initiate enforcement action, but may advise the LPA of a possible breach of planning control.

What are the circumstances in which authorities will take enforcement action?

Enforcement action under Part VII of the TCPA 1990 is discretionary in nature: in deciding whether or not to take enforcement action, LPAs are required to determine whether it would be expedient to do so in the circumstances of the case. As noted in the Welsh Assembly Government's consultation, *Planning Enforcement System Review*:

"It is currently for the enforcement body to decide whether to take enforcement action in response to a breach of planning control. It is also for the enforcing body to decide the appropriate form of action to take. [...] The discretionary approach means that the response to a breach is more likely to be proportionate and appropriate given the particular circumstances of the case... we consider the imposition of a duty to enforce would be unrealistic and unreasonable. We propose no change to this approach and consider that enforcement action should remain discretionary³."

As regards taking decisions on enforcement action, section 4.8 of *Planning Policy Wales* (2002) states:

"4.8.1 An effective development control process requires LPAs to be prepared to take enforcement action in appropriate circumstances. The decisive issue for the authority is whether the breach of control would unacceptably affect public amenity, including the existing use of land and buildings meriting protection in the public interest.

¹ *Town and Country Planning Act 1990*,
<http://www.lexisnexis.com/uk/legal/results/docview>

² Breaches of planning control include the carrying out of development without the required planning permission, and failing to comply with any condition or limitation subject to which planning permission has been granted. See Planning Quick Guide P46: Planning Permission for further details of 'development'.

³ Welsh Assembly Government, April 2006, *Planning Enforcement System Review*,
http://new.wales.gov.uk/docrepos/40382/4038231121/403821/403821/4038243/403824/consult_paper06_e.pdf?lang=en



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4.8.2 Enforcement action taken by an authority to prevent or remedy breaches of planning control needs to be effective and timely. This means that LPAs should look at all means available to them to achieve the desired result. In all cases there should be dialogue with the owner or occupier of land and in some cases mediation may also be an agreed way forward. In many cases this dialogue could result in an accommodation which means that enforcement action is unnecessary. Such early dialogue or mediation would avoid enforcement action coming as a surprise to the owner or occupier.

4.8.3 The statutory time limits for taking enforcement action must be adhered to and prompt initiation of action may be necessary to prevent an unacceptable breach of planning control from becoming well established and more difficult to remedy. Any enforcement action ultimately deemed necessary should be commensurate with the breach of planning control to which it relates. The intention should be to remedy the effects of the breach of planning control, not to punish the person(s) responsible for the breach".

Further guidance on enforcement for LPAs in Wales is provided by *Technical Advice Note 9: Enforcement of Planning Control*⁴ (TAN 9).

Is there a time limit for taking enforcement action?

Section 171B of the TCPA 1990 provides that the taking of enforcement action under Part VII is subject to time limits.

Where there has been a breach of planning control consisting of the carrying out of development without planning permission in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.

Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

What enforcement action can authorities take?

Injunctions restraining breaches of planning control

Section 187B of the TCPA 1990 provides that where a LPA considers it necessary for any actual or apprehended breach of planning control to be restrained by injunction, it may apply to the High Court or County Court for an injunction to restrain the particular breach.

Enforcement notices

Section 172 of the TCPA 1990 provides that a LPA may issue an enforcement notice where it appears that there has been a breach of planning control. Sections 173-175 of the Act prescribe the contents of enforcement notices, the procedures that must be followed by LPAs, and the right of appeal against an enforcement notice.

An enforcement notice will be served on a specified date on the owner and occupier of the land and on any person who has an interest in the land which will be materially affected by the notice. The LPA may withdraw an enforcement notice at any time before it takes effect.

⁴ Welsh Assembly Government, *Technical Advice Note 9: Enforcement of Planning Control*, http://www.wales.gov.uk/subiplanning/content/tans/tan09/tan9_home_e.htm

Stop notices

Where a LPA considers that any relevant activity should cease before the expiry of the period for compliance with an enforcement notice, it may serve a notice prohibiting the carrying out of that activity on the land to which the enforcement notice relates, or any part of that land specified in the stop notice.

A stop notice may not be served where the enforcement notice has already taken effect and may not prohibit the carrying out of any activity if the activity has been carried out (whether continuously or not) for a period of more than four years ending with the service of the notice.

A stop notice may be served by the LPA on any person who appears to them to have an interest in the land or to be engaged in any activity prohibited by the notice.

Temporary Stop Notices

By section 171E of the TCPA 1990 (inserted by Section 52 of the *Planning and Compulsory Purchase Act 2004*⁵), if a LPA considers that there has been a breach of planning control in relation to any land, and that the activity (or part of it) breaching planning control should be stopped immediately, it may issue a temporary stop notice.

Section 52 of the *Planning and Compulsory Purchase Act 2004* came into force in England on 7 March 2005, but Welsh Ministers have not yet commenced the section in Wales. Accordingly, at the present time, LPAs in Wales do not have power to issue temporary stop notices.

Is the issue of a completion notice a type of enforcement?

Planning authorities have power to issue completion notices to encourage developers to complete development for which planning permission has been obtained. The penalty for failure to comply with a valid completion notice – within the specified period of twelve months, or more – is that planning permission will be deemed to have expired.

However, as a matter of planning law and procedure, issuing a completion notice does not constitute a form of enforcement action. Issuing a completion notice does not guarantee the completion of uncompleted or unfinished development: enforcement action will still be required to deal with development for which planning permission has expired due to non-compliance with a completion notice.

Enforcement by the Welsh Assembly Government

The onus of responsibility for enforcement of planning control is placed on LPAs by national planning policy for Wales (see *Planning Policy Wales*⁶ and TAN 9). However, under section 182 of the TCPA 1990, if it appears to Welsh Ministers that an enforcement notice should be issued in respect of any land, it may issue such a notice (but may not do so without consulting the LPA). An enforcement notice issued by Welsh Ministers has the same effect as a notice issued by the LPA.

⁵ *Planning and Compulsory Purchase Act 2004*,
<http://www.lexisnexis.com/uk/legal/results/docview/docview>

⁶ Welsh Assembly Government, March 2002, *Planning Policy Wales*,
<http://new.wales.gov.uk/docrepos/40382/4038231121/403821/403821/403828/planningpolicy-e.pdf?lang=en>

Right of Appeal

There is a right of appeal against an enforcement notice under Section 174 of the TCPA 1990, as amended. A person having an interest in the land to which an enforcement notice relates or a relevant occupier may appeal to Welsh Ministers against the notice. The grounds for appeal include that planning permission ought to be granted for the activities cited in the enforcement notice or that the implied breach of planning control has not taken place. For more information about the appeals procedure, see Planning Quick Guide 51: Appeals – Introduction.

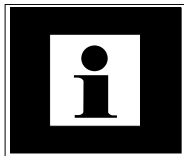
Complaints to the Public Services Ombudsman for Wales

Depending on the circumstances of the case, an individual may have cause for complaint against a LPA to the Public Services Ombudsman for Wales in respect of a planning authority's decision on enforcement action.

As noted in TAN 9:

"The Commissioner for Local Administration [now the Public Services Ombudsman for Wales] has held, in a number of cases, that there had been maladministration where the local planning authority had failed to take effective enforcement action which was plainly necessary, and has occasionally recommended a compensatory payment to the complainant for the consequent injustice".

Further information on the Public Services Ombudsman for Wales is available on:
<http://www.ombudsman-wales.org.uk/>



Further Information:

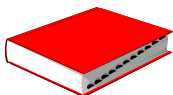
The statutory provisions cited above may be subject to subsequent amendment; the consolidated text of those provisions can be obtained from Butterworths' *LexisNexis* service:

http://assembly/presidingoffic/mrs/resources/electronic/qlinks_lexisnexis.htm



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