Planning Enforcement

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Programme

Gathering Information

Time Limits & “Expediency” for Action

Human Rights

Notices and actions:
• Enforcement Notices
• Stop Notices
• Temporary Stop Notices
• Listed Building Enforcement
• Breach of Condition Notices
• Section 215 Notices
• Injunctions and criminal action
Sources of Information

National Planning Policy Guidance (Part 10)

Case law
Police and Criminal Evidence (PACE)

dance:
Waveney DC: Planning & Building Control – Enforcement Policy
Waveney DC: Planning Enforcement Code of Practice
Waveney DC Constitution
RTPI Practice Advice Note 6; & Enforcement Handbook (2000)
Background
Background

Section 57 – “planning permission is required for the carrying out of any development of land”
Section 55 – definition of development
The Town and Country Planning (General Permitted Development Order) 2015 (Schedule 2) – forms of development which do not require planning applications.
Gathering Information
Gathering Information

Site visits
Town & Parish Councils
Requisitions for Information
Land Registry searches
Companies House
DVLA searches
Interviews
Aerial Photographs
Site Visits

Officers have rights of entry powers under for enforcement duties under
The Town and Country Planning Act 1990
The Planning (Listed Building & Conservation Areas) Act 1990
The Anti-Social Behaviour Act 2003, Part 8

Officers must carry an ID card with their rights of entry on at all times
24 hours notice needs to be given prior to entry to a dwelling house
if entry is refused or reasonably apprehended a Warrant of entry can be sought from a magistrates court
Two copies of the Warrant and an information will be required.

Access is a power for Council Officers alone not general public.
Requisitions for Information (RFI)

Section 330 TCPA 1990

Can be served on the occupier of any premises and any person who directly or indirectly receives rent in respect of the premises

RFI may require information about
- the nature of the recipient’s interest in the land and the name and address of any other person known to have an interest in the land
- the purpose for which the premises are being used
- when the use began
- the name and address of any person known to have used the premises for that purpose

Return within 21 days
Failure to comply is an offence
Planning Contravention Notice

s.171C – can serve a planning contravention notice where “it appears to the local authority that there may be a breach of planning control in respect of any land”

Can be served on the owner or occupier of the land or someone who has any other interest in it; or is carrying out operations on the land or is using it for any purpose
Searches

Land Registry
http://www.landregistry.gov.uk/
https://www.landregistry.gov.uk/www/wps/myportal/My_Home

DVLA
VQ4 form

Companies House
http://www.companieshouse.gov.uk/
Others forms of gathering information

Interviews – Police and Criminal Evidence (PACE)

Photographs
– Google street view
– Ariel Photograph
– Historic records held by the Council

Town & Parish Councils
– You have a vital wealth of local knowledge
Breach of Planning Control
Breach of Planning Control

“Breach of planning control” means –

Carrying out development without the required planning permission; or

Failing to comply with any condition or limitation subject to which planning permission has been granted.
Time Limits

Building, engineering, mining or other operations – **four years** beginning with the date on which the operations were substantially completed.

Change of use to use as a single dwellinghouse – **four years** beginning with the date of the breach.

In the case of any other breach of planning control – **ten years** beginning with the date of the breach.
Time Limits

Thurrock BC v SoS for Environment, Transport & the Regions and Terry Holding [2002]
The 10 year period for change of use must be continuous

A dormant use could also be an existing use
Time Limits

The “second bite” provision allows the authority to take enforcement action in certain circumstances notwithstanding that the limitation periods for enforcement action have passed.

A can take further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the LPA have taken or reported to take enforcement action in respect of that breach.

Section 171B(4)
Expediency

CPA S171(1)(b): Harm

The key test is whether the breach of planning control would unacceptably affect public amenity.

- To help decide this we consider if planning permission would have been granted for this development had it been the subject of a planning application
- Consider material planning considerations.
- Where not substantiate potential to lose appeal / Judicial review.
Human Rights
Human Rights

Article 8 of the European Convention on Human Rights

Everyone has the right to respect for his private and family life, his home and his correspondence
Human Rights

The First Protocol

Article 1 Protection of property

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.
Human Rights

Key concept “proportionality”

Ensure that decisions and notices have a Human Rights section

Complete an appropriate assessment human rights considerations and evidence in any actions.
Human Rights

Chapman v United Kingdom (2001)

Allowed refusal of planning permission for gypsy accommodation where:

- it was proportionate to the need to protect the environment and

- in the public interest to do so
Human Rights

Chapman v United Kingdom (2001)

Enforcement of planning controls “pursue the legitimate aim of protecting the rights of others through the preservation of the environment”
Enforcement Notices
Enforcement Notices

Section 172: LPA may issue an EN where it appears to them –

a) that there has been a breach of planning control;

and

b) that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations
Enforcement Notices

N shall specify:
The steps which the LPA require to be taken, or
The activities which the LPA require to cease

Section 173(3) & (4)
Enforcement Notices

eps may relate to:
Making development comply with a planning permission
Discontinuance of use
Restoration of land to condition before breach
Remedy injury to amenity

Section 173(3) & (4)
Enforcement Notice

I must:
Say whether unauthorised development or breach of condition
Describe the land
Describe breach of planning control
Give reasons for issue
Refer to relevant development plan policies
State date of coming into effect
Set out “Steps” for compliance
State period(s) for compliance (can be more than one period)
Enforcement Notices

Service of copy enforcement notices

A copy of EN shall be served:

- On the owner and on the occupier of the land to which it relates; and
- On any other person having an interest in the land, being an interest which, in the opinion of the LPA, is materially affected by the notice

Section 172(2)
Enforcement Notices

Service of copy enforcement notices

Service of copy EN shall take place:

Not more than twenty-eight days after its date of issue; and

Not less than twenty-eight days before the date specified in it as the date on which it is to take effect

Section 172(3)
Enforcement Notices

Serve 3 copies of the Notice on every individual with an interest in the land
Provide information on the right of appeal
Send a copy to Land Charges
Place a copy on any relevant planning files
**You must** put a copy on the Enforcement Register
Enforcement Notices

Deemed planning permission

Section 173(11):

Grants retrospective planning permission on under enforcement
Enforcement Notices

once deemed planning permission

Section 173(11): where –

An EN in respect of any breach of planning control could have required any buildings or works to be removed or any activity to cease, but does not do so; and

All the requirements of the notice have been complied with, then, so far as the notice did not so require, planning permission shall be treated as having been granted by virtue of section 73A...
Appeals
Appeals

A person having an interest in the land to which an Enforcement Notice (EN) relates or a relevant occupier may appeal to the Secretary of State against the notice

Section 174(1)
Appeals

The right to appeal

Appeal must be filed before EN comes into effect
Appeals

Ground (a) – Planning permission ought to be granted, or the condition or limitation concerned ought to be discharged

Ground (b) – that those matters have not occurred

Ground (c) – the matters (if they occurred) do not constitute a breach of planning control

Ground (d) – the breach was immune from enforcement action = public inquiry

Ground (e) – the enforcement notice was not served correctly

Ground (f) – the steps are excessive

Ground (g) – Over-civilian treatment
Appeals

The power of correction

Section 176: on an appeal, the SoS may:

- Correct any defect, error or misdescription in the EN; or
- Vary the terms of the EN,

if he is satisfied that the correction or variation will not cause injustice to the appellant or the LPA.
Appeals – Listed Building EN

grounds
that the building is not of a special architectural or historic interest
that the matters alleged have not occurred
that those matters (if they occurred) do not constitute such a contravention
the works were urgently necessary
listed building consent should be granted
that copies of the notice were not served as required by section 38(4)
the requirements of the notice are excessive (no (i), (j) or (k))
compliance period too short
steps required by the notice for the purpose of restoring the character of the building to its former state would not serve that purpose (no (g), (j) or (k))
steps required to be taken by virtue of section 38(2)(b) exceed what is necessary to alleviate the effect of the works executed to the building (no (g), (i) or (k))
steps required to be taken by virtue of section 38(2)(c) exceed what is necessary to bring the building to the state in which it would have been if the matters alleged of the LP had been complied with (no (a), (i) or (I))
Breach of Enforcement Notice
Breach of Enforcement Notice

Execution and cost of works required by enforcement notice - (direct action)

TCPA Section 178:
Where any steps required by an EN to be taken are not taken within the period for compliance with the notice, the LPA may

a) Enter the land and take the steps (direct action);
b) Recover from the person who is then the owner of the land any expenses reasonable incurred by them in doing so
Breach of Enforcement Notice

OFFENCE WHERE EN NOT COMPLIED WITH

Owner or person with control commits an offence when EN breached

Section 179
Breach of Enforcement Notice

A person guilty of an offence under section 179 is liable –

On summary conviction, to a fine not exceeding £20,000; and

On conviction on indictment, to an unlimited fine
Breach of Enforcement Notice

In the case where EN is not complied with, determining the amount for any fine… the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.

Section 179(9)
Stop Notices
Stop Notices

Purpose of Stop Notice

A “stop gap” measure before EN kicks in

Dependant on EN
Stop Notices

A may serve a “stop notice” if:

1. It relates to an activity prohibited by an EN (served in tandem)
2. They consider it expedient
3. It is served before expiry of period of compliance with EN
Stop Notices

Limitations on use of stop notices

A stop notice may not be served where the EN has taken effect

A stop notice shall not prohibit the use of any building as a dwellinghouse

Section 183(3) & (4)
Stop Notices

Cost/benefit assessment for stop notices

The LPA must carry out a “cost/benefit” assessment before resolving whether to serve a stop notice or not:
Stop Notices

Procedural requirements

Date of effect of Stop Notice –

Must not be earlier than three days after the date when the notice is served,

Unless the LPA consider that there are special reasons for specifying an earlier date and a statement of those reasons served with the stop notice

Sections 184(1), (2) & (3)
Stop Notices

Procedural requirements

The date of effect of Stop Notice must not be later than twenty-eight days from the date when the notice is first served on any person.

Section 184(1), (2) & (3)
Stop Notices

Stop Notice shall cease to have effect when –

The EN to which it relates is withdrawn or quashed; or

The period for compliance with the EN expires; or

Notice of the withdrawal of the Stop Notices is served.
Stop Notices

Compensation for loss due to stop notice

Compensation by the LPA in respect of loss or damage directly attributable to the prohibition contained in the notice.

Limited to certain situations only
Temporary Stop Notices
Temporary Stop Notices

Section 171E – The issue of TSN

The LPA think –

That there has been a breach of planning control in relation to any land, and
That it is expedient that the activity (or any part of the activity) which amounts to the breach is stopped immediately.
Temporary Stop Notices

Section 171E – The issue of TSNs

The notice must be in writing and must-

Specify the activity which the authority think amounts to the breach;

Prohibit the carrying on of the activity (or so much of the activity as is specified in the notice);

Set out the authority’s reasons for issuing the
Temporary Stop Notices

Section 171E – The issue of TSN

The authority must display on the land-

A copy of the notice;

A statement of the effect of the notice...

TSN has effect from the time a copy of it is
Temporary Stop Notice

Section 171E – The issue of TSN

TSN may be served on any of the following-

The person who the authority think is carrying on the activity;

A person who the authority think is an occupier of the land;
Temporary Stop Notices

Section 171E – The issue of TSNs

TSN ceases to have effect:

At the end of the period of 28 days (or shorter period as specified) starting on the day the copy notice is so displayed,

If it is withdrawn by the LPA
Temporary Stop Notices

Section 171F – Restrictions on TSNs

TSN does not prohibit -

The use of a building as a dwelling house;

The carrying out of an activity of such description or in such circumstances as is prescribed
Temporary Stop Notices

Restrictions on TSNs

A second or subsequent TSN must not be issued in respect of the same activity unless the local authority has first taken some other enforcement action in relation to the breach planning control which is constituted by the activity.
Temporary Stop Notices

Ns: Offences

person commits an offence if he
intravenes a TSN-

Which has been served on him, or

A copy which has been displayed on site.
Temporary Stop Notices

Offences

A person does not commit an offence if he proves-

That the Temporary Stop Notice was not served on him, and

That he did not know, and could not reasonably have been expected to know, or its existence
Temporary Stop Notices

Section 171G – TSN: Offences

each person convicted of an offence is liable-

On summary conviction, to a fine not exceeding £20,000;

On conviction on indictment, to a fine.
Temporary Stop Notices

Section 171H – TSNs: Compensation

Compensation entitlement applies if and only if a TSN is issued and at least one of the following paragraphs applies:

The activity specified in the TSN is authorised by pp or a development order or local development order;
A certificate of lawfulness in respect of activity is issued or granted;
Listed Building Enforcement
Listed Building Enforcement

Unauthorised works
Listed Building Enforcement Notices
Injunctions
Listed Buildings at Risk
Urgent Works Notices
Repairs Notices
Compulsory Purchase
Section 38 Power to issue listed building enforcement notice

Where it appears to the local planning authority—

(a) that any works have been or are being executed to a listed building in their area; and

(b) that the works are such as to involve a contravention of section 9(1) or (2), they may, if they consider it expedient to do so having regard to the effect of the works on the character of the building as one of special architectural or historic interest, issue a notice under this section (in this Act referred to as a “listed building enforcement notice”).

A listed building enforcement notice shall specify the alleged contravention and require such steps as may be specified in the notice to be taken within such period as may be so specified—

(a) for restoring the building to its former state; or

(b) if the authority consider that such restoration would not be reasonably practicable or would be undesirable, for executing such further works specified in the notice as they consider necessary to alleviate the effect of the works which were carried out without listed building consent; or

(c) for bringing the building to the state in which it would have been if the terms and conditions of any listed building consent which has been granted for the works had been complied with.
Injunctions

Section 44A of the Planning (Listed Buildings and Conservation Areas) Act 1990
Urgent Works Notice

Urgent Works Notices are for works urgently necessary for the preservation of the building. The view of the Secretary of State is that these should be restricted to emergency repairs – to keep a building wind and weather-proof and safe from collapse – steps should be minimum consistent with achieving this objective and not involve the owner in great expense. If the Urgent Works Notice is not complied with the Council has powers to undertake these works in default.
Repairs Notice

Consider when a building is neglected and need for permanent repair accumulates to risk of serious harm. Works specified must be those reasonably necessary for the proper preservation.

S48 Listed Building Act 1990
- Local Authority (or EH) serves RN
- Precursor to Compulsory Purchase if, after not less than 2 months, reasonable steps not taken for proper preservation
- Compulsory Purchase is the sanction for failure to comply.

Proceedings under S47 Listed Building Act 1990
- Secretary of State confirmation required
Repairs Notice

English Heritage also recommends:

- separate schedule of repairs with plans
- location map including any adjacent land also included in the CPO
- local authority contact name and details
Repairs Notice

Must be served on the “Owner” (S.336 TCPA 1999)
- leaseholder
- freeholder
- mortgage (if in possession)
- receiver
- anyone else with legal interest in the land (Land Registry search or s330 TCPA Requisition for Information Notice)

Serve Notice on everyone with a legal interest in the property
Separate Notices on each property of more than one in same ownership e.g. a terrace
Proof of service – at least recorded delivery
Explanation if Urgent Works and Repairs Notices served concurrently
Breach of Condition
Breach of Condition

Any planning condition is not complied with, the LPA may serve a BCN on-

Any person who is carrying out or has carried out the development; or

Any person having control of that land

Section 187A(2)
Breach of Condition

BCN:

Shall specify the steps to be taken, or the activities which ought to cease, to secure compliance with the conditions; and

Give a period for compliance of not less than 28 days from service.
Breach of Condition

The offence

any time after the end of the period allowed for compliance with the

Any of the conditions specified in the BCN is not complied with;

and

The steps specified in the BCN have not been taken or ... The

activities specified in the notice have not ceased,

The person responsible will be guilty of an offence and liable to a fine
Section 215 Notices
Section 215 Notices
Best Practice Guidance

S215 action can be taken against land and buildings – in s336 of the Act the definition of ‘land’ includes a building.

The scope of works that can be required in s215 notices is wide and includes planting, clearance, tidying, enclosure, demolition, re-building, external repairs and repainting.

Powers could be used in relation to the subdivision of fields and woods into small plots if neglect or unlawful works are damaging to the landscape or other countryside amenity.

Powers could be used in relation to listed buildings and their setting, and in the...
Section 215 Power to Require Proper Maintenance of Land

If it appears to the local planning authority that the amenity of a part of their area, or of an adjoining area, is adversely affected by the condition of land in their area, they may serve on the owner and occupier of the land a notice under this section. The notice shall require such steps for remedying the condition of land as may be specified in the notice to be taken within such period as may be so specified. Subject to the following provisions of this Chapter, the notice shall take effect at the end of such period as may be specified in the notice. That period shall not be less than 28 days after the service of the notice.
Definition of Amenity

Amenity’ is a broad concept and not formally defined in the legislation or procedural guidance, ie it is a matter of fact and degree and, certainly common sense. Each case will be different and what would not be considered amenity in one part of an LPA’s area might well be considered so in another. LPAs will therefore need to consider the condition of the site, the impact on the surrounding area and the scope of their powers in tackling the problem before they decide to issue a notice. LPAs should not be excessively concerned with producing an overly technical definition of ‘amenity’ though. Experience has shown that where a notice is appealed or a prosecution is pursued, a clear and well-presented case will usually be sufficient to ensure that the appeal is refused.
Section 216 Penalty for non-compliance

If any owner or occupier of the land on whom the notice was served fails to take steps required by the notice within the period specified in it for compliance with it, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale (Maximum £1000).
Section 217 Appeal to magistrates' court

The condition of the land...does not adversely affect the amenity of any part of the area...

The condition of the land to which the notice relates is attributable to, and such as results in the ordinary course of events from, the carrying on of operations or a use of and which is not in contravention of Part III;

The requirements of the notice exceed what is necessary for preventing the condition of the land from adversely affecting the amenity of any part of the area...

The period within which any steps required by the notice are to be taken falls short of what should reasonably be
Section 219 Execution and cost of works required by s. 215 notice

... the LPA who served the notice may—

(a) enter the land and take those steps, and

(b) recover from the person who is then the owner of the land any expenses reasonably incurred by them in doing so.

Where a notice has been served under section 215—

(a) any expenses incurred by the owner or occupier of any land for the purpose of complying with the notice, and

(b) any sums paid by the owner of any land under subsection (1) in respect of expenses incurred by the local planning authority in taking steps required by such a notice, shall be deemed to be incurred or paid for the use and at the request of the person who caused or permitted the land to come to be in the condition in which it was when the notice was served.
Injunctions
Injunctions

Where a LPA consider it necessary or expedient for any actual or apprehended breach of planning control to be restrained by injunction, they may apply to the High Court or the county court for an injunction.
Injunctions

The court may grant such an injunction as it thinks appropriate for the purpose of restraining the breach.

Section 187B
Criminal Offences
Criminal Offences

The unauthorised display of advertisements
Unauthorised works to a listed building
Non-compliance with a condition on a listed building consent
Unauthorised works to a protected tree
Some types demolition in a Conservation Area
Failure to comply with the requirements of an Enforcement Notice, Breach of Condition Notice, Stop Notice, Temporary Stop Notice or