

PLANNING ENFORCEMENT BRIEFING NOTE

1. The Issues

- 1.1 Local Planning Authorities (the LPA) regularly encounter situations where development on a given site is being carried out either without the necessary planning permission or not in accordance with the permission granted. When this occurs the LPA must decide whether or not to take enforcement action.
- 1.2 In the majority of cases the LPA will consider the use of an Enforcement Notice (EN) and infrequently, where it is imperative that ongoing development is halted, the service of a Stop Notice. As the latter can only be served following the issuing of the EN, it is the weakness of the process governing the EN which gives rise to the greatest concern.
- 1.3 For completeness sake reference must also be made to the Temporary Stop Notice which does not require the service of the EN first, but has a number of other limitations restricting its use. Further consideration will be given to this enforcement tool later in this briefing note.

2. The Problem

- 2.1 In considering whether or not to serve an EN the LPA must decide whether or not it is "*expedient*" to do so having regard to planning criteria. The Government has provided guidance through PPG18 which must also be taken into account by the LPA and, in appropriate cases, the LPA will have to have regard to relevant provisions of the Human Rights Act to ensure that any action is not disproportionate to the breach of planning control which is occurring.
- 2.2 One of the practical difficulties faced by the LPA in making decisions about appropriate enforcement action is the large number of cases where the breach has either been identified by or is commonly known to members of the public and who are pressing for action to be taken. The public often do not understand the concept of "*expediency*" which is required by the planning legislation, but they do have a high expectation of action as they are encouraged to be involved in the local planning decision making process. There can be circumstances where a *prima facie* breach is apparent but the development has not proceeded far enough to allow the LPA to make the judgement whether or not it is expedient to take action. The public are too often left bewildered when what to them is an obvious breach of planning control goes unchecked for a period while investigations have to take place to allow the "*expediency*" test to be run (and, of course, provided that the development is sufficiently advanced to allow the "*expediency*" test to be reasonably carried-out).

- 2.3 For the LPA, aside from the public awareness issue just mentioned, there are many difficult professional judgements to be made. The LPA must ask itself a whole host of questions such as should an application be invited first? If not, is the action expedient? What is the proportionate response? Is under-enforcement the correct approach? If so, does the LPA need to prepare a “scheme” to attach to the EN? Is this a delegated decision or one for Committee? What about the time for compliance? Is an appeal anticipated and, if so, how does the evidence look?
- 2.4 Finally, most of this enforcement work is carried out at the expense of the LPA and hence comes from the public purse. Even if the EN ultimately requires the developer to right the wrong there is little chance of any payment being made to the LPA for the enforcement investigation.

3. Suggested Solution

- 3.1 If the starting point is taken as being that “developers” have taken themselves outside the lawful planning process (by either carrying out development without permission or by doing work not in accordance with the permission granted), then part of the solution initially should be to require them to put themselves back into the process as quickly and efficiently as possible. This can be achieved with a relatively straightforward amendment of existing legislation.
- 3.2 As stated earlier the current legislative requirement is that a Stop Notice can only be served following the issue of an EN. This could be changed and a new procedure for Stop Notices introduced to replace the existing EN and Stop Notice process as described below.
- 3.3 Where it appears to the LPA that there has been a breach of planning control the LPA can serve a Stop Notice on the owner and any other person who has an interest in the land and any person whom it appears to the LPA is carrying out the development. The Stop Notice will require each and every person served to cease the development immediately and within a prescribed period (say 3 months) apply for planning permission to continue the development (whether that be permission to carry out a development for which no permission exists or to seek an amendment to an existing permission where development is not be carried out in accordance with the permission granted) failure to cease the development and/or to apply for permission within the prescribed period would be a criminal offence (just as failure to comply with a Stop Notice is currently). There should be no compensatory risk for the LPA linked to such a procedure.
- 3.4 A fee would be payable for the application required under this Stop Notice which would be at higher rates consistent with the approach proposed in the current consultation on planning fees. The rates should

be designed to cover the LPA's costs of running an enforcement service and discretionary so as to enable a proportionality in approach..

- 3.5 This system puts the onus on the developer to ensure that the planning system is followed. The requirement under the new Stop Notice procedure for an application to be submitted re-engages the public in the process as consultations would take place and representations taken into account before the LPA makes a decision. If permission is granted then the development is back on course and, if it is not likely to be approved, there is the opportunity to try to formulate a solution before, if it becomes necessary, an EN is served. To maintain the onus on the developer, the compensation provisions for Stop Notices should also be repealed.

4. Temporary Stop Notices

- 4.1 Returning to the issue of Temporary Stop Notices, this tool is not well used because of its limitations both in time and the exclusions as regards certain types of development. The legislation only allows the LPA to serve such a notice if the LPA is satisfied that it is expedient that the breach is stopped immediately. In addition, a major exemption relates to caravans used as a main residence (subject to certain provisos).
- 4.2 In addition to these restrictions a Temporary Stop Notice only lasts 28 days and is subject to possible compensation claims. A period 28 days can often be insufficient time to determine an appropriate course of action and the threat of compensation if the LPA "get it wrong" can mean the process is not used. The public expectation that it can be used against unauthorised encampments is regularly disappointed due to residential caravans being excepted.
- 4.3 In view of these concerns the Temporary Stop Notice is not regarded as a particularly effective tool. If the suggestion for the new Stop Notice procedure outlined in section 3 is adopted it would become redundant in any event and could be repealed. This means that the exemptions for Temporary Stop Notices would fall away.

5. Enforcement Notices

- 5.1 There will be cases where it is appropriate to move straight to the use of an Enforcement Notice and that provision should remain.
- 5.2 The provisions with regard to EN should be redrafted such that the period within which an appeal may be lodged may run concurrently with the period for compliance with no separate or a very much shorter period before the EN comes into effect.
- 5.3 In cases where the new proposed Stop Notice procedure is adopted the decision on the resultant planning submission shall be deemed to

be the exercise of the “expediency” test in justifying the service of an EN.

- 5.3.1 The opportunity should be taken to redraft the law to allow the LPA to require, through an EN, the submission of a “scheme” to remedy a breach of control (e.g. to require the submission of a landscaping scheme where such has not been submitted despite the existence of a condition on a planning permission requiring the submission of a landscaping scheme).