

The Planning Series: 7 - Enforcement

October 2019



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The Planning Series: 7 - Enforcement

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Paper Overview:

This briefing provides an overview of planning enforcement. It sets out what enforcement is, when enforcement action can take place, types of enforcement action, time limits, Welsh Government enforcement, and appeals against enforcement action. It also sets out how the *Planning (Wales) Act 2015* has changed the planning enforcement system.



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1. What is enforcement?

The town and country planning system in Wales regulates the use and development of all land and buildings.

Local Planning Authorities (LPAs) may need to consider taking enforcement action against unauthorised development or a breach of any conditions imposed as part of a planning permission.

Although in most cases it is not a criminal offence to carry out an unauthorised development or make a 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 be an offence.

2. When can enforcement action take place?

Part 7 of the *Town and Country Planning Act 1990* gives LPAs a range of enforcement powers to address breaches of planning control.

These powers are discretionary. When deciding on whether to take enforcement action, LPAs are required to consider each case individually and whether the breaches could be resolved without taking such action.

The Welsh Government's **Development Management Manual** states:

14.2.3 When considering enforcement action, the decisive issue for the LPA should be whether the unauthorised development would unacceptably affect public amenity or the existing use of land and buildings meriting protection in the public interest. Enforcement action should be commensurate with the planning impacts caused by the unauthorised development; it is usually inappropriate to take formal enforcement action against a trivial or technical breach of control which causes no harm to public amenity. The intention should be to remedy the effects of the unauthorised development, not to punish the person(s) carrying out the operation or use. Nor should enforcement action be taken simply to regularise development for which permission had not been sought but which is otherwise acceptable.

3. What types of enforcement action can be taken?

A private citizen cannot take enforcement action, but they can inform the LPA if they think there has been a breach of planning control.

Enforcement actions that can be taken by LPAs include the following:

Enforcement Notice

The LPA may issue an Enforcement Notice where planning controls appear to have been breached. An Enforcement Notice sets out the remedial action that needs to be taken to correct the breach. Once served, there must be a period of at least 28 days before the notice comes into effect. The notice itself will state the date on which it is to come into effect.

Once the notice comes into effect, there is a further period of time to allow for compliance. The length of time depends on the nature of the breach. Different time periods can be specified in the notice in respect of different steps to be taken, or activities to cease.

Failure to comply with an Enforcement Notice is a criminal offence and can lead to an unlimited fine. Previously there had been an upper fine limit of £20,000, however this was removed in 2015 following the coming into force of section 85 of the *Legal Aid, Sentencing and Punishment of Offenders Act 2012*.

There is a right of appeal against an Enforcement Notice (see below).

Enforcement Warning Notice

An Enforcement Warning Notice is intended for use where the LPA considers that an unauthorised development could potentially be made acceptable with control through the imposition of conditions if a planning application were made.

There is no right of appeal against an Enforcement Warning Notice, other than through application to the High Court for judicial review.

The power to issue an Enforcement Warning Notice was inserted into the *Town and Country Planning Act 1990* by the *Planning (Wales) Act 2015*.

Planning Contravention Notice

A Planning Contravention Notice may be used where it appears that there may have been a breach of planning control and the LPA requires information about the activities on the land or to find out more about the nature of the recipient's interest in the land.

The penalty for non-compliance is a maximum of £1,000. A second conviction for continuing non-compliance can be penalised by a daily fine. Deliberately providing false information relating to a Planning Contravention Notice can lead to a fine of up to £5,000.

There is no right of appeal against a Planning Contravention Notice, other than through application to the High Court for judicial review.

Stop Notice

A Stop Notice can be issued by the LPA to stop a development or an activity. Such a notice may be served at the same time as an Enforcement Notice or after an Enforcement Notice has been served.

Failure to comply with a Stop Notice can lead to an unlimited fine. The upper fine limit was £20,000 prior to 2015.

There is no right of appeal against a Stop Notice, other than through application to the High Court for judicial review.

Temporary Stop Notice

A Temporary Stop Notice requires that an activity which is a breach of planning control should stop immediately and does not have to be issued with an Enforcement Notice. A Temporary Stop Notice ceases to have effect after 28 days and should only be issued when the LPA believes that the breach should be stopped immediately.

Failure to comply with a Temporary Stop Notice can lead to an unlimited fine. Again, the upper fine limit was £20,000 prior to 2015.

There is no right of appeal against a Temporary Stop Notice, other than through application to the High Court for judicial review.

LPA's in Wales have been able to issue Temporary Stop Notices since 2015. This is provided for by the *Planning and Compulsory Purchase Act 2004 (Commencement No. 14 and Saving) Order 2015*.

Breach of Condition Notice

This is served where conditions attached to a planning permission have not been properly followed.

Failure to comply with a breach of condition notice can lead to a fine of up to £1,000.

There is no right of appeal against a Breach of Condition Notice, other than through application to the High Court for judicial review.

Injunction

If the LPA considers that a breach of planning control is sufficiently serious, it may apply to the Courts for a restraint injunction. Those in breach of an injunction can be imprisoned.

Others

Other types of actions include those that can be taken against unauthorised advertisements and failure to comply with regulations made about listed buildings and conservation areas.

Section 215 notices may be served by the LPA if it considers that the condition of a piece of land adversely affects the amenity of the area in question. The notice requires steps to be taken which the LPA considers will remedy the problem.

4. Is the issue of a Completion Notice a type of enforcement?

LPA's have the 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 notice – within the specified period of twelve months, or more – is that planning permission will be deemed to have expired.

However issuing a Completion Notice is not a form of enforcement action. Issuing such a 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 because a Completion Notice has not been complied with.

5. Are there time limits for enforcement action?

LPA's must take action within specified time limits. The **Development Management Manual** states:

14.2.5 When investigating whether development is unauthorised the aim should be to make an early decision both on the need for planning permission, and if required, on whether the development is acceptable. As part of this investigation phase, the LPA should explore with the owner or occupier of the land, what steps, if any, could be taken to reduce any adverse effects on public amenity to an acceptable level. Negotiation and informal means can bring swift compliance, especially in cases of honest mistakes. However, it is vital that this stage is quick and efficient and not a source of delay or indecision. It is possible to complete this stage with two communications with the developer: an information request and then an informal request for compliance.

14.2.6 Prompt enforcement action means unacceptable unauthorised development is less likely to become well established and difficult to remedy. Also the statutory time limits for taking enforcement action will be adhered to.

For most types of 'operational' development, plus the change of use of a building to a single dwelling house, the time limit is four years after the development is completed. For any other breach of planning control the time limit is ten years after completion.

The Welsh Government commissioned research from Arup and Fortismere Associates to provide evidence to inform its **Review of the Planning Enforcement System** in 2013. The review recommended that the *Planning (Wales) Bill* should remove the time limits for enforcement action. However this recommendation was not taken forward in the *Planning (Wales) Act 2015*.

6. Can the Welsh Government take enforcement action?

LPA's are responsible for the enforcement of planning control. However if it appears to the Welsh Government that in any particular case an enforcement notice should be issued, it may issue such a notice, but not without first consulting the relevant LPA. An Enforcement Notice issued by the Welsh Government has the same effect as a notice issued by the LPA.

7. Is there a right of appeal against enforcement action?

There is a right of appeal against an Enforcement Notice, but not against the other types of Notices listed above. An **appeal against an Enforcement Notice** may be made to the Planning Inspectorate, an independent executive agency of the Welsh Government, during the 28 day period before it comes into effect. 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.

The validity of the other types of Notices, and the propriety of the LPA's decision to serve such a Notice, may be challenged by application to the High Court for judicial review.

8. How has the *Planning (Wales) Act 2015* changed the planning enforcement system?

The *Planning (Wales) Act 2015* made a **series of changes** with the aim of modernising planning enforcement:

- providing LPA's with the power to require the submission of retrospective planning applications where unauthorised development can be regularised and controlled by planning conditions;
- providing a power to decline to determine retrospective planning applications for development that is subject to an enforcement notice;

- prohibiting the variation or amendment of a planning application after an appeal has been made, only in circumstances prescribed by the Welsh Government in secondary legislation;
- ensuring that new matters will only be allowed to be raised during an appeal in exceptional circumstances;
- consolidating the costs regime for appeals, applications and references to the Welsh Government ('call-ins'); and
- allowing the Welsh Government to write procedure rules for inquiries and hearings.

9. Key Sources

Welsh Government

The **planning section** of the Welsh Government's website provides information including the **Development Management Manual**.

Planning Aid Wales

Planning Aid Wales is a charity helping eligible individuals and communities to participate more effectively in the planning system. It provides advisory services, including a helpline.

Planning Portal

The **Planning Portal** is the UK Government's planning and building regulations resource. It includes information on the planning system in Wales, although some of the content only applies to England.

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