

Enforcement Notices

SEOG

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Law and Guidance

- Town and Country Planning Act 1990
- Planning and Compensation Act 1991
- Planning and Compulsory Purchase Act 2004
- Town and Country Planning (Enforcement Notice & Appeals) Regulations 2002
- PPG18
- Circular 10.97 Enforcing planning control
- Good Practice Guide

Authority to take action

Statutory authority – Town & Country Planning Act 1990 s172

Council authority

Whole Council has the authority; can be delegated to:

Committee – need committee resolution – always check minutes; can be further delegated to

Chief Planning/Legal Officer

Notice can only be signed by the person with authority to do so

Breach of planning control - s171A

The carrying out development
(operational development or material change of use)
without planning permission

or

failing to comply with a condition imposed on a
planning permission

Is a breach of planning control

Need to identify the nature of the breach

Purpose of taking enforcement action

- To remedy a breach of planning control
- Not to punish
- A planning notice tells the recipient what he must do, and within what period he must do it
- If he complies – no further action – LPA has achieved its object
- If he fails to comply – he commits a criminal offence
- LPA can then prosecute - to punish, and deter

Enforcement Notice

- Section 172 TCPA 1990
- LPA *may* issue an EN
- Where it *appears* to them:
 - a) Is a breach of planning control
and
 - b) Is expedient to do so having regard to the development plan and to any other material considerations

Requisitions for Information

Planning Contravention Notices (PCN) - s171C
or

Power to Require Information - s330s

PCN Where it appears to the LPA that there may have been a breach of planning control, they may serve a (PCN)

S330 For the purpose of enabling the LPA to make an order or issue or serve any notice or other document, they may serve a (s330)

Content - s173

1. Alleged breach of planning control
2. Precise boundaries of Land Affected – OS plan with a scale of not less than 1/2500 plan, outline land in colour (red) and description
3. Reasons LPA considers it expedient to issue notice (reflect the reason for refusal of any application)
4. All relevant policies and proposals in the Dev Plan
5. Steps & Period required for compliance : see over
6. When notice takes effect (min 28 days after service)
7. Date notice is issued
8. Signature of authorised person
9. Explanatory note: see over

Explanatory Note

Every copy of an EN must be accompanied by an explanatory note which shall include:

- a) A copy of sections 171A, 171B and 172 to 177 of the TCPA 1990, or a summary to include
 - i) is a right of appeal to the SS
 - ii) must be made in writing to arrive to SS before EN takes effect
 - iii) Grounds of appeal under s 174
 - iv) The fee payable for the deemed application (double the normal application fee)

Explanatory Note

- b) Notification that appellant must submit to SS either with the appeal or within 14 days from date SS sends him notice requiring him, a statement in writing specifying the grounds on which he is appealing, and stating briefly the facts on which he proposes to rely
- c) A list of names and addresses of the persons on whom a copy of the EN has been served

Steps for compliance

Specify precisely what must be done. The recipient is entitled to know precisely what must be done, in order to comply with the notice e.g:

Remove the unauthorised extension from the land
or

Cease using the land for ...the stationing of heavy goods vehicles/repair of washing machines/the parking of commercial vehicles.....

Avoid ambiguous & vague requirements, e.g. “Reduce it to a reasonable height..”

Carefully consider terminology used: e.g. is it “parking” or “keeping” or “storage”

Service

On Owner, Occupier & any person having an interest *which in opinion of LPA is materially affected by the EN* e.g. mortgagee

Method - s329

Personal service - hand deliver to person

Leaving at usual or last known place of abode (or address given)

Recorded Delivery at “ “

If Ltd co, hand deliver or RD to reg or principal office

E mail service not available for ENs

First class post not available for ENs

Service – name unknown

Where a notice is required to be served on either:

a person with an interest in the land, whose name cannot, after reasonable enquiry, be ascertained, or an occupier

The notice shall be taken as duly served if:

a) it is addressed to him either by name, or by referring to him as “the owner” or “the occupier”, and sent by one of the stated methods,

or

Service – name unknown

b) it is so addressed and plainly identified as a communication of importance, and

Is sent registered or recorded delivery and is not returned,

or

It is delivered to someone on the premises,

or

Is affixed conspicuously to some object on the premises

Service – unoccupied premises

- The notice shall be taken as duly served on all persons with an interest in the land, and on all occupiers, if
- It is described to be to “the owners and any occupiers”
and
- Is affixed conspicuously to some object on the land

Local Land Charge & EN Register

- LLC is a charge on land, which is in favour of, and enforceable by the local authority. Local Land Charges Act 1975 specifies what is a LLC.
- Enforcement notice is registerable as a LLC and must actually be registered by LPA as such.
- Runs with the land & binding on all future owners - whether or not they have knowledge of it
- Every LPA must keep a register of enforcement notices
- If the notice is not in the register - can be a defence to a later prosecution for non compliance

Options for recipient

1. Comply with the notice
2. Fail to comply with the notice
In which case he commits a criminal offence
3. Appeal against the notice.
Whilst an appeal is in progress, the notice is held in abeyance.
If his appeal is successful, the notice is quashed.
If his appeal is unsuccessful, the notice is upheld

Appeal

- a) Planning permission ought to be granted/the condition should be discharged. Automatic ground, if the fee has been paid.
- b) That those matters have not occurred;
- c) That those matters (if they occurred) do not constitute a breach of planning control;
- d) No enforcement action could be taken – out of time 4 yrs bld/10 yrs MCU – s171B
- e) Copies of the EN were not properly served
- f) The steps required, exceed what is necessary to remedy the breach/injury caused
- g) Period for compliance is too short

Non Compliance with the EN

(If no appeal made, or appeal dismissed
EN takes effect)

Failure to comply with the requirements of an EN, by the date specified, is a criminal offence (s 179)

Either-way offence

Summary £20,000 fine Indictment £ unlimited

Defence 1 - Def took all reasonable steps to comply

Defence 2 - Wasn't served with the EN and EN not placed in the EN register.

Defences must be proved on a balance of probabilities.

Burden of proof for this defence: on the defendant.

Standard of proof: a balance of probabilities