Planning for a better future

Our planning manifesto for the government

Planning Officers Society

Manifesto Background Paper 11

Improving Enforcement Services

The NPPF states that, “Effective enforcement is important to maintain public confidence in the planning system”. Government has recently expressed its concern about the impact that retrospective planning applications have on the public’s confidence in the planning system. In this paper POS tackles these concerns and looks at the wider enforcement system to set out changes that are designed to make it more effective and efficient. Changes are also recommended to improve the funding that enforcement services receive.

Limited company number (registered in England & Wales): 6709078
Registered charity number: 1140770
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Planning Officers Society

POS is the single credible voice for public sector planners, pursuing good quality and effective planning practice. The Society's aim is to ensure that planning makes a major contribution to achieving sustainable development in ways that are fair and equitable and achieve the social, economic and environmental aspirations of the community.

We operate in three main ways:

- As a support network for planners in the public sector
- As promoters of best practise in planning
- As a think tank and lobbying organisation for excellence in planning practice

Where we can, we will work across the sector to craft proposals that have widespread support from the people who operate the planning system at the coalface: landowners, developers, agents, legal, local authorities and politicians. We will be both radical and practical as we look for solutions to tangible problems that will make a real difference to crucial areas. Our objective is to improve the planning system to enable it to deliver its key aim of sustainable development. It is within this context that we have set out this advice to Government so we can plan together for a better future.

POS Manifesto

This started in early 2014 when we looked ahead to the national parliamentary elections in May 2015. The main parties were drafting their manifestos, so we thought about what we could do to help them. This resulted in Planning for a better future: Our planning manifesto for the next government. The time since then has seen an unprecedented amount of change to the planning system, so our initial planning manifesto for the next government has morphed into an on-going planning manifesto for government.

These are think pieces that tackle a topical area within planning practice and sets out our recommendations for improvement. They comprise a growing series of Manifesto Background Papers that look in detail at specific issues. Those that are still current are summarised in our main Planning Manifesto paper that sets out the current ask from POS to the government.

The views expressed in these documents reflect the initial view of POS. It is a consensus position. It should not be taken as a final position; rather an informed starting point to debate the issues. It is expected that the recommendations will evolve as the debate progresses.

Where we can, we will work across the sector to craft proposals that have widespread support from the people who operate the planning system at the coalface: land owners, developers, agents, legal, local authorities and politicians. We will be both radical and practical as we look for solutions to tangible problems that will make a real difference to crucial areas. Our objective is to improve the planning system to enable it to deliver its key aim of sustainable development.

Other titles in the series can be viewed from our website.

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Published: February 2022

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Summary

The NPPF states that, “Effective enforcement is important to maintain public confidence in the planning system”. Government has recently expressed its concern about the impact that retrospective planning applications have on the public’s confidence in the planning system. In this paper POS tackles these concerns and looks at the wider enforcement system to set out changes that are designed to make it more effective and efficient. Changes are also recommended to improve the funding that enforcement services receive.

Our recommendations are:

- To strengthen the wording in the NPPF to make it clear that LPAs should invest in providing a good enforcement service.
- To increase the resources going into enforcement services through amendments to fees, fines, recovered costs and confiscation orders.
- Government must increase investment in PINS so that they can prioritise enforcement appeals.
- Make extensive improvements to retrospective applications to stop the ability of some contraveners to game the system.
- Introduce an Unauthorised Development Notice and improve Stop Notices to give LPAs the tools they need to take swift control of enforcement situations and bring them to a resolution more quickly.
- Planning Contravention Notices, Unauthorised Development Notices and Stop Notices should all stop the clock on enforcement time limits when served.
- Targeted amendments to Enforcement Notices to make them a more effective and efficient tool and to limit the ability of contraveners to string out the process.
- Minor reforms to Completion Notices to enable them to be a more effective enforcement tool.
- Both parties should be expected to bear their own costs when Planning Enforcement Orders are made and costs should only be awarded if the actions of one party amounts to unreasonable behaviour.
- Reforms to the Land Registry to ensure that overseas companies must register sufficient information to enable LPAs to serve Notices.

1 Introduction

1.1 Government is looking to improve planning enforcement. This paper sets out recommendations from POS that we hope will assist government with this task. We concentrate mainly on improving the way retrospective planning applications work but also include suggestions for improvements in other areas. Before setting out our recommendations we draw attention to wording in the NPPF around enforcement that needs amending and urge that the resourcing of PINS in the context of enforcement appeals must be looked at by government.

NPPF

1.2 The phrase, “Enforcement action is discretionary” (NPPF paragraph 59) is often misunderstood to imply that offering an enforcement service is optional. The NPPF should be reworded to make it clearer that enforcement is not an optional service – it is only in deciding on an individual case that the expediency test can result in a conclusion that action isn’t justified on planning grounds for that breach.

Enforcement appeals

1.3 Enforcement is often where the planning system earns credibility (or otherwise) from the public. Planning appeals have been the slowest to be dealt with by PINS for many years. This undermines the NPPF message in paragraph 59 that “Effective enforcement is important to maintain public confidence in the planning system”.

1.4 We have seen cuts to enforcement services over the last decade or more as Councils try to tackle the savings that they have needed to make due to austerity measures. Some Councils have taken the view that if government (via PINS) isn’t investing in a good enforcement appeal service why should they as cash-strapped Local Planning Authorities (LPA) bother to invest in their enforcement service.

Funding

1.5 At the end of this paper, we list our suggestions for leveraging more funding into enforcement services so that they have the resources to be effective.

2 Improving retrospective applications

2.1 Last year Gareth Bacon, Conservative MP for Orpington, introduced a Private Members Bill entitled Unauthorised Development (Offences) Bill. It sought “to ensure that everyone who engages with the planning system is on a level playing field and follows the same procedures”. The MP was particularly concerned with the way some people play the system by knowingly carrying out development without planning permission and then using the power in §73A to make retrospective applications and then exercising their §78 and §174 rights to appeal decisions and notices to stretch out the time it takes for the LPA to take effective enforcement action.

2.2 Shortly after, Dr Ben Spencer, Conservative MP for Runnymede and Weybridge, also sought to introduce a Private Members Bill entitled Planning (Enforcement) Bill addressing similar concerns.

2.3 Neither Bills have advanced (as is the case for the majority of Private Members Bills) but the Housing Minister Christopher Pincher indicated to Parliament during a debate on planning permissions and unauthorised developments in the House of Commons on 26 January 2022 that Government was willing to investigate the concerns behind the Bills and to legislate to improve planning enforcement services.

2.4 This paper sets out comprehensive proposals for a mixture of new powers, targeted amendments to existing powers, better fines and clearer procedures to be followed when development occurs without planning permission. They are designed to eliminate the gaming and disregard for due process highlighted by the two MPs so that a level playing field can be restored.

Principles

2.5 The principles behind the recommendations are:

- Planning is complex and people can make genuine mistakes especially around what is permitted development. The proposals in this paper seek to not cause people who are in this position any additional hardship, provided they cooperate with the LPA.
- The LPA can be under pressure to act when the 4/10-year rule deadline is looming. Currently only the service of an Enforcement Notice or a Breach of Condition Notice stops the clock. LPAs may not have the evidence it needs to serve such notices when they are first investigating a suspected breach. POS is recommending that the service of a Planning Contravention Notice, an Unauthorised Development Notice (a recommended new power) or a Stop Notice should also stop the clock.
- Currently contraveners can play the system by submitting retrospective applications and appealing against both planning refusals and enforcement notices. The proposals in this paper seek to streamline the enforcement process so that retrospective planning applications can only be made when the LPA invites them and at the end of the assessment process there is only one decision from the LPA (a planning permission or an enforcement notice) and therefore a single right of appeal on any enforcement matter.
- Much of the activity around enforcement action is free to the contravener. The proposals introduce fees for all stages of the process which are designed to act as a disincentive to playing the system and not cooperating with the LPA.
- Paying costs or compensation are a feature of some of the current system (eg Stop Notices and Planning Enforcement Orders) and this should change. The LPA should only be liable to pay costs or compensation when they have clearly acted unreasonably. For example, where it is not clear around the interpretation of whether a development is permitted development or not then the LPA should not be automatically liable for compensation if they serve a Stop Notice and, on appeal, it is decided that it was permitted by the GPDO or otherwise lawful. The inspector should only award costs if the LPA had acted unreasonably. In this context the national Planning Practice Guidance should be amended to encourage people to make applications for CLUoD especially

where the interpretation of the GPDO in the context of a proposed development is open to interpretation.

Recommendations

2.6 POS has looked carefully at the process that takes place when an unauthorised development is brought to an LPA's attention and is investigated. The key stages are:

1. Is the development lawful?
2. Is the development complete?
3. Is the development potentially acceptable? (Expediency stage 1)
4. If requested, has a valid planning application been received?
5. Is the development acceptable? (Expediency stage 2)

2.7 These are set out in a diagram in the appendix.

2.8 Stage 1 is concerned with establishing whether the development constitutes a breach of planning control because it may be lawful, such as a legitimate exercise of permitted development rights, and therefore no enforcement action is needed.

2.9 Stage 2 is important so that the use of a Stop Notice can be used to ensure that unauthorised works stop. Currently there are two types:

- Full Stop Notice – carries a risk of compensation if the associated Enforcement Notice is quashed on any ground except (a) (planning permission is granted) – this risk is very high, so they are not used often – they must also be served alongside or after an Enforcement Notice which usually delays their use
- Temporary Stop Notice – only carries a risk of compensation if the development was already permitted, but only lasts 28 days

2.10 Stop Notices tend to only be used where a serious nuisance is being caused because of the risk of compensation. POS considers that the existing powers should be combined into a single power and amended so that a Stop Notice can be served on nearly all occasions where a development that needs planning permission is taking place without consent. People should not be carrying out development unlawfully and it is in the public interest that they know this and are told to stop all works. Furthermore, it is a waste of embedded carbon to be carrying out building works that subsequently must be demolished.

2.11 The compensation regime should be based on the current Temporary Stop Notice provisions and should not be automatic but based on an unreasonable behaviour judgement by the Inspector dealing with any subsequent appeal. The LPA should only be liable for compensation where it should have been very clear that the development was lawful. Where the evidence was either not available or unclear or the legislative provision was open to interpretation, the LPA would not be found to have acted unreasonably and would therefore not be liable for compensation. This would enable the new Stop Notice to be used far more routinely to bring planning breaches under control more swiftly. The fine regime should also be improved to support these aims and our recommendations for this are set out in the appendix.

2.12 POS considers that the LPA should run the enforcement investigation process and they need to dictate whether an application for planning permission or a CLUoD is made. There should be clear legislative backing for this and POS is recommending a new power to serve an Unauthorised Development Notice. In the interests of natural justice, if the contravener considers that the development is lawful, they should have the opportunity to put their case to the LPA provided this is done within a set deadline (28 days) and it does not interfere with the requirement to stop all building works until that point is established. How these new powers will work are set out in the appendix.

2.13 Stage 3 is the point where the LPA should consider whether the development has the potential to be acceptable. If not, they should serve an Enforcement Notice and if so, they should invite a planning application. There should be a strict 28-day deadline for a valid application to be made.

2.14 Stage 4 is needed to avoid some of the gaming that currently takes place where procedures are dragged out. We are recommending that an Enforcement Notice should be served where the LPA invites an application for planning permission but no application or an invalid application is made. An appeal against such a Notice would have limited grounds of appeal. These are set out in the appendix.

2.15 Stage 5 is where a valid application has been made and the LPA can decide whether the development is acceptable or not. POS is recommending that the determination of such a retrospective application should either be the grant of a planning permission, where the development is acceptable, or the service of an Enforcement Notice where it is not. There is no need to refuse planning permission (that would be contained within the Enforcement Notice) and having two decisions (a refusal of planning permission and an Enforcement notice) both effectively dealing with the same issues and both having a separate right of appeal is unnecessary.

2.16 If an appeal is withdrawn, the council should not be required to refund the fee at any point as they currently are required to do.

2.17 All these proposals are set out in more detail in the appendix to this paper. Our recommendations include better provisions for fines, including daily fixed penalties, to deal with the worst perpetrators plus sensible limitations on the applications that can be submitted and the grounds of appeal that can be made.

Updating Enforcement Notice grounds of appeal

2.18 POS is also recommending that the grounds of appeal against an enforcement notice (§174(2)) should be updated. Grounds b, c and d all relate to whether the breach of planning control is lawful or not. The drafting of these provisions predates the introduction of CLUoDs and needs to reflect that legislative provision. The current wording of these grounds is:

(b) that those matters have not occurred;
(c) that those matters (if they occurred) do not constitute a breach of planning control;
(d) that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters;

2.19 They should be replaced by a single ground which states:

(b) that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, a certificate of lawful use or development ought to be issued;

2.20 Just as ground (a) currently attracts a fee the equivalent of that needed for an application for planning permission, so too should this new ground attract a fee the equivalent of that needed for a retrospective application for a CLUoD. POS proposes in this paper that these fees should be doubled as part of its package of disincentives to ignore planning controls.

Criminalising planning breaches

2.21 POS does not support making the carrying out of development without planning permission a criminal offence. Planning is very complicated and has got increasingly so in recent years. It is easy for members of the public to genuinely make a mistake and they should not be criminalised for that. We consider that the comprehensive set of improvements to the enforcement regime we have set out in this paper strike the right balance between protecting people's legitimate rights and preventing some people from playing the system.

3 Other areas for improvement

3.1 In this section we draw attention to other areas of the enforcement regime that could be tweaked to make them more effective.

Completion Notices

3.2 Completion Notices (§94-96 of the 1990 Act) need to be reviewed. This power is seldom used and the main reason is that the consequences of a Completion Notice can be worse than the status quo.

3.3 When a Completion Notice is served the result, when the development is not completed within the deadline specified in the Notice, is that the planning permission is extinguished so the development can no longer be completed. The problem is that what has been built is effectively made lawful by §95(5) which states:

> *Subsection (4) [the extinguishing of the planning permission] shall not affect any permission so far as development carried out under it before the end of the period mentioned in that subsection is concerned*

3.4 The intention of this section was to protect self-contained buildings that had already been built (eg a completed house within a larger estate). It did not provide for the situation where a Completion Notice results in a partly completed structure becoming lawful after the Notice takes effect, invariably resulting in an eyesore.

3.5 The only way to remove such a structure in these circumstances would be through the service of a Discontinuance Notice (§102 of the 1990 Act) which attracts the prospect of compensation. This is perverse and §95(5) needs to be amended so that its provisions allow for incomplete structures. POS suggests that the new wording should be along the lines of:

> *Subsection (4) shall not affect any permission so far as development carried out under it before the end of the period mentioned in that subsection is concerned, provided such development resulted in a fully completed structure that constitutes an independent planning unit.*

3.6 With this provision uncompleted structure(s) would become unlawful when the Completion Notice takes effect on the basis that what has been built (ie a partially completed structure) does not have a planning permission as the permission, when it was in existence, was for the finished building and not the incomplete one.

3.7 An LPA should then be able to take normal enforcement action against an incomplete building or structure on the basis that it doesn't have a planning permission. The LPA should be able to serve an Enforcement Notice at the same time as a Completion Notice, linking the requirements of the Enforcement Notice to the confirmation of the Completion Notice by the Secretary of State.

3.8 POS believes that a discretionary power to serve an Enforcement Notice is preferable to an automatic requirement to remove the works (as is the case with a Discontinuance Notice) as in some cases the works that were carried out might be de-minimus (such as a drainage or foundation trench) and enforcement action against such elements may not be expedient.

3.9 It would need to be clear that ground (a) would not be a ground of appeal against the Enforcement Notice in these circumstances. In fact, there would be few circumstances where an appeal in these circumstances would be reasonable and it may be better if the Secretary of State confirmed the Enforcement Notice at the same time as the Completion Notice.

3.10 These changes are likely to increase the use of Completion Notices and government may wish to consider whether confirmation by the Secretary of State is the right approach or whether a right of appeal, dealt with by PINS, would be a better regime. "Call-in" powers would still be available to the Secretary of State as with other such appeals.

Planning Contravention Notices

3.11 Were an LPA discovers a breach of planning control that may have taken place some time ago, they are under pressure in case one of the enforcement action time limitations (the 4 or 10 year rules) is about to bite. An LPA may not have sufficient evidence of when the breach took place and what exactly the breach is. The tool for this is a Planning Contravention Notice (PCN), but by the time the PCN comes back and the LPA concludes their investigation, they can find that they are out of time. POS therefore recommends that the service of a PCN should be expressly considered as "purporting to take enforcement action" (§171B(4)(b)) and enables the enforcement action to continue. That section should also be amended to apply to both the 4-year and 10-year time limits, rather than just the 4-year one.

3.12 POS is similarly recommending that an Unauthorised Development Notice (a new power) and a Stop Notice (an amended power) should similarly stop the clock.

Planning Enforcement Orders

3.13 Planning Enforcement Orders (PEO) are a relatively new provision that enables deliberately concealed breaches to not benefit from the enforcement action time limitations. When applying for a PEO, if the council loose they must pay the other side's costs, which can run into thousands of pounds. This puts councils off using the procedure even when there is deliberate concealment. POS recommends that each side ought to bear their own costs in a PEO hearing, unless the actions of one party amounts to unreasonable behaviour in the same way that costs are awarded in §78 planning appeals.

Serving Notices

3.14 LPAs can have problems in identifying the owner of a property due to the way the land registry identifies overseas companies registered in the Virgin Islands or Panama. This makes it very difficult to find who is in control of the property and progress enforcement action. The law should be amended so that you cannot register a foreign based company on the land registry unless there is a clear entry setting out the person responsible so that the LPA can progress enforcement matters with respect to that property.

4 Improving funding for enforcement services

4.1 The credibility of a planning service is undermined by a poor enforcement service. Unfortunately, this area has had to bear a disproportionate level of resource reduction over the last decade or so in response to wider Local Government cuts due to austerity measures. POS recommends that the following changes are made to get more resources into planning enforcement services:

- The fees charged for retrospective planning and CLUoD applications should be twice that of a prospective application for planning permission, as set out in this paper.
- Appealing against an Enforcement Notice should carry a fee not just for ground (a) but for all the other grounds, as set out in this paper.
- Magistrates need to take enforcement breaches more seriously and impose greater fines. Further training is needed and in particular their attention needs to be drawn to §171G(7) (Temporary Stop Notices), §179(9) (Enforcement Notices) and §187(2A) (Stop Notices) which all say, "In determining the amount of any fine to be imposed on a person convicted of an offence under this section, 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".
- A greater proportion of fines need to go to the LPA to fund enforcement services.
- Magistrates also need to award fuller costs to LPAs – too often they say that the cost of Council officers would happen anyway, yet the size of an enforcement team and other support services, such as legal officers, are directly related to the scale of breaches in an area.
- The use of fixed penalty fines needs to be explored, as set out in this paper.
- The use of confiscation orders under POCA within planning enforcement should be more extensive and their use as a source of income to fund the service should be explicitly allowed.

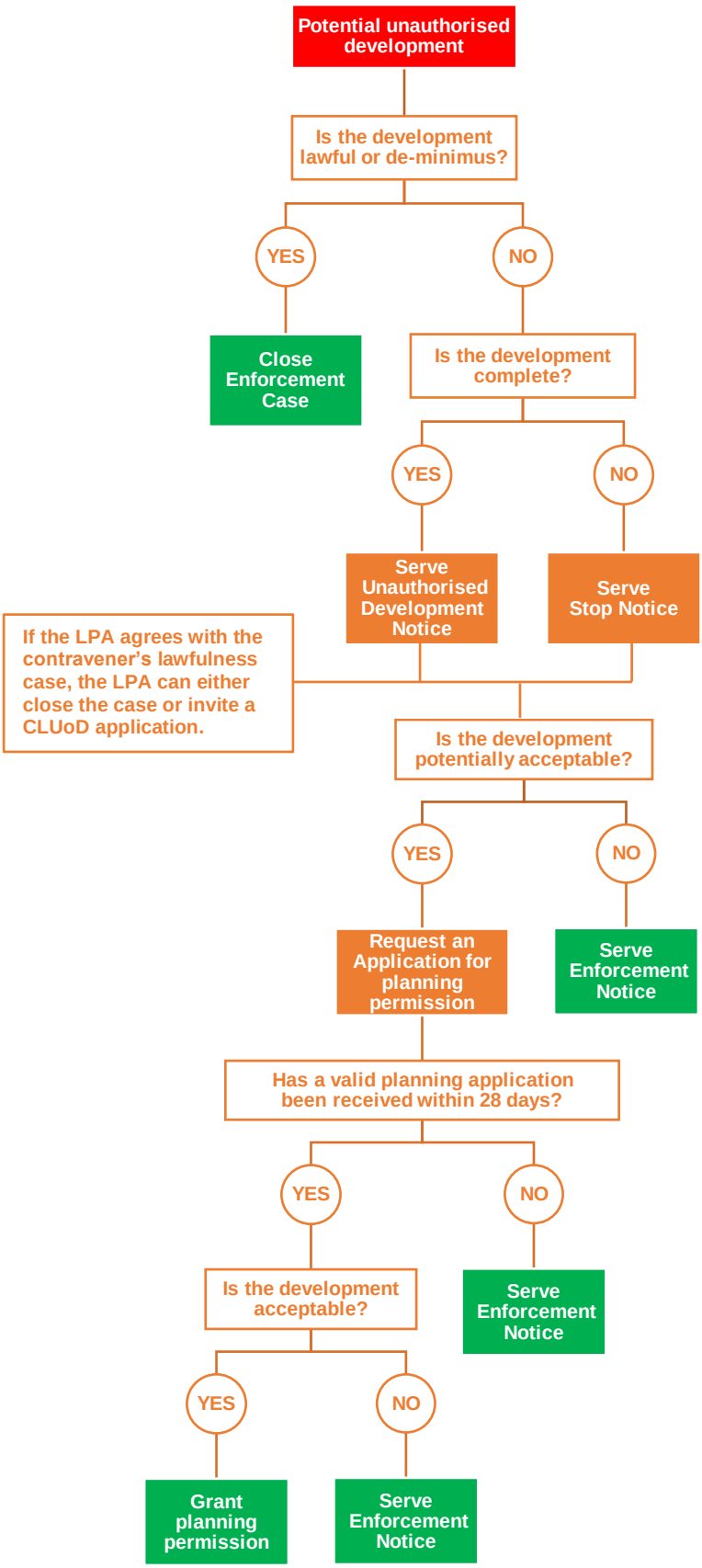
4.2 These and other initiatives should be explored to ensure that each LPA has the resources it needs to fund a good quality enforcement service.

5 Conclusions

5.1 POS believes that if the changes set out in this paper were implemented the planning enforcement regime would represent a much more efficient and effective tool for local planning authorities and the gaming that currently takes place will be all but eliminated. This paper sets out a wide-ranging package of recommendations and POS is ready to work with DLUHC and front-line enforcement officers to refine them.

Appendix: Enforcement Process Flow Chart

The diagram below sets out the proposed process for dealing with planning breaches.



Procedures

Below are the steps that should be followed when a potential breach of planning control is considered by an LPA. The term “development” is used to include a physical building, mining, engineering or other operation or the carrying out of a material change of use of a building or an area of land. The latter is necessary to enable these provisions to apply to changes of use where caravans or mobile homes are brought onto land without planning permission.

Is the development lawful?

The first task for the LPA is to check whether there is a breach of planning control, because if there is not there is generally no further enforcement action that needs to be taken by the LPA. The reasons why a development could be lawful are:

- The development does not involve §55 operations or a material change of use
- The development is permitted by the GPDO
- The development has planning permission
- The development is now lawful due to the 4/10-year rules and deliberate concealment powers (a Planning Enforcement Order) are not appropriate
- The development is a breach, but it is so small scale that enforcement action is not justified – often called de-minimus

At this stage the LPA often requires further information to establish whether there is a breach of planning control. The tool that is used is a PCN. To ensure that contraveners are not able to string out this process and drag it beyond the 4/10-year time limits on taking enforcement action, POS is recommending that the clock should stop when a PCN is served.

If an LPA decides that the works fall into one of the above categories there is no material breach of planning control and no further enforcement action is needed. The LPA will need to advise the contravener as appropriate, but this should not amount to a free CLUoD or planning permission. They should invite an application for a CLUoD or planning permission as appropriate to enable a definitive position to be established and to avoid any problems selling the property further down the line.

Any third parties will also need to be informed that the case is closed.

Is the development complete?

The purpose of this stage is that, under new powers suggested by POS, the next actions will be specified in law.

If the works are complete, the LPA should serve an Unauthorised Development Notice which will inform the contravener of what they have done and what happens next. The way this new Notice would work is set out below under Powers.

Where works are still in progress, a Stop Notice should be served. This is an amended power to make Stop Notices a more effective enforcement tool. The way this new Stop Notice would work is set out below under Powers.

Both these Notices, when served, should stop the clock on the 4/10-year time limits on taking enforcement action.

Under both Notices the contravener can explain if they think that planning permission isn't required. They have 28 days to do this. If the LPA agrees that this is the case, they can close the enforcement investigation (as set out under the "Is the development lawful?" section above) and lift the Unauthorised Development or Stop Notice. There would be no compensation liability. If the matter is more finely balanced, the LPA should invite them to apply for a CLUoD so a definitive decision on the matter can be taken. The fee for a CLUoD in these circumstances should be twice the fee for the equivalent application for planning permission. If a contravener is invited to make a CLUoD and fails to do so, they forfeit their right to appeal on that ground in the event of an enforcement notice being served later.

Both Notices prevent the contravener from making an application for planning permission or a CLUoD unless invited to do so by the LPA. This puts the LPA in control and is to avoid contraveners being able to use the making of such applications as a delaying tactic. LPAs will be free to negotiate on amendments or other changes that may make an unauthorised development acceptable, but this would be against the background where that is the LPA's choice and the unauthorised building works must have stopped as required by the LPA in the Stop Notice.

Is the development potentially acceptable? (Expediency stage 1)

At this stage the LPA is satisfied that the development is unlawful and must decide whether to go straight to the service of an Enforcement Notice or to invite an application for planning permission.

Where the LPA considers that the development is still unauthorised (having considered any case put by the contravener because of the service of an Unauthorised Development Notice or a Stop Notice) and that the development is not acceptable, they should serve an Enforcement Notice.

Where the LPA considers that the development is still unauthorised (having considered any case put by the contravener) but it is potentially acceptable, they should invite the contravener to apply for retrospective planning permission. POS is recommending that this part of the process needs to be more formal with better legislative provision and clear deadlines. The consequences of a valid planning application not being made by the deadline should normally be that the LPA serves an Enforcement Notice.

Has a valid planning application been received within 28 days?

The new process would routinely set a 28-day time limit for submitting a valid planning application. A longer period could be set, but not less. The period should only be extended where the LPA agrees to entering pre-application negotiations with the contravener. The LPA would charge their usual fee for this engagement.

The fee for the retrospective planning application would be twice the fee for a prospective one.

Is the development acceptable? (Expediency stage 2)

Where a valid application is made, it should be determined in the normal way. If the development is acceptable, retrospective planning permission would be granted. If the development is unacceptable an Enforcement Notice would be served rather than planning permission being refused. This is to avoid there being two rights of appeal: one against the refusal of planning permission and one against the Enforcement Notice.

In cases where an invalid or no planning application has been made within the deadline, LPAs are currently at a disadvantage if the development is potentially acceptable. In many cases the LPA will need to impose conditions (such as controlling external materials or restricting hours of use) and it is very clumsy or impossible to do this effectively through an Enforcement Notice.

One solution would be a new power that enables the LPA to issue a planning permission itself. The problem with this is that the LPA are unlikely to have a set of plans to approve. On balance POS considers that where a development has the potential to be acceptable, but the contravener has failed to submit a valid or any planning application, the LPA should issue an Enforcement Notice. The reason for serving such a Notice would be that the contravener did not submit a valid planning application within the deadline to enable the LPA to judge the acceptability of the development. If the Notice was appealed on this ground the Inspector would judge whether the submitted application was in fact valid and, if it was found to be so, to assess its merits and either grant or refuse the retrospective application. This ensures that contraveners cannot play the system. How this amended Enforcement Notice power would work is set out below under Powers.

Powers

Below are the main powers that should be available to an LPA when dealing with breaches of planning control. They comprise existing powers plus new or amended powers that POS is recommending so that planning enforcement services can better deal with breaches of planning control.

Unauthorised Development Notice (new power)

The legislative expectation would be that where an unauthorised development is complete and the LPA consider that it needs planning permission, an Unauthorised Development Notice would be served by the LPA. This new power formalises the process where the LPA engages with a contravener in these circumstances.

An Unauthorised Development Notice would inform the contravener:

- that the development is unlawful and the reasons why it needs planning permission.
- that if they think the development is lawful, they must make their case to the LPA in full within 28 days of the date of the Notice and that this is the only opportunity that they will have to make that case.
- that they cannot apply for planning permission or a CLUoD for the unlawful development unless invited to do so by the LPA.
- that after 28 days the LPA will either:
  - close the case if the LPA considers the development is lawful;
  - invite them to make a CLUoD application if the development may be lawful;
  - invite them to make a planning application if the development is potentially acceptable; or
  - serve an Enforcement Notice if the development is not acceptable.

The service of this Notice would stop the clock with respect to the 4/10-year rule enforcement time limitations. There should be no right of appeal against an Unauthorised Works Notice, however consideration should be given to the implications of this. It is the experience of some enforcement services that Breach of Condition Notices, which similarly have no right of appeal, do result in a disproportionately high level of Judicial Reviews as a consequence. If a right of appeal is contemplated, then it must be a very fast-track process if the aim of a swifter enforcement process is to be maintained. The provisions of the Notice must continue to apply during any appeal period.

Stop Notice (amended power)

The legislative expectation would be that where an unauthorised development is in progress, a Stop Notice will generally be served by the LPA. This amended power combines the two existing Stop Notice powers into a single new regime and adds additional provisions to manage the enforcement process better.

A Stop Notice would contain all the provisions within an Unauthorised Development Notice and additionally require:

- All building, engineering mining or other operations to stop within 24 hours.
- All building materials, scaffolding, tools and other building equipment and machinery to be removed from the site within 7 days.
- If the breach is a change of use, the new use must cease within 7 days.
- All vehicles, machinery and other items brought into buildings or onto land in connection with a change of use to be removed within 7 days.

The service of this Notice would stop the clock with respect to the 4/10-year rule enforcement time limitations. There should be no right of appeal against a Stop Notice, but the concerns set out above with respect to Unauthorised Development Notices also apply. In the case of Stop Notices, any appeal must not interfere with the requirement to stop work, as set out in the above bullet points.

It would be an offence to ignore a Stop Notice with the following penalties applicable:

- Fixed penalty fines of £500 which can be levied daily
- Magistrates Court for up to £20K fine
- High Court for an injunction

Compensation would only be payable on an unreasonableness principle: that it should have been clear to the LPA that the development was lawful and that judgement raised no unique or obscure legal principles. If the contravener frustrated or prevented the LPA from collecting the evidence that they needed to make such a judgement, no compensation should be payable. Compensation matters (if they arise) would be dealt with as part of any appeal against a subsequent Enforcement Notice.

Enforcement Notice (amended power)

The powers around the service of an Enforcement Notice are recommended to be changed in some key areas to strike the right balance between protecting people's legitimate rights whilst preventing some people from playing the system.

The structure of an Enforcement Notice should be amended to make it clear why planning permission is needed. The sections in a Notice would be as follows with the proposed new section in red:

- Powers under which the notice is issued

- The land to which the notice relates
- The matters which appear to constitute a breach of planning control
- Why planning permission is required for the breach
- Why planning permission should not be given for the breach
- Steps required to rectify the breach
- Compliance period
- When this notice takes effect

In the diagram at the beginning of this appendix there are three points in the process at which an enforcement Notice can be served.

Point 1: where the LPA considers the development is unacceptable without the need for an application (expediency stage 1)

Point 2: where the contravener is invited to make a valid application and fails to do so

Point 3: where the LPA considers the development unacceptable after determining a valid application (expediency stage 2)

The right of appeal should be amended to remove some of the grounds of appeal depending at which point the Notice was served. The proposed amended grounds of appeal would be:

Grant planning permission ground
a) that planning permission ought to be granted for the development.

Lawfulness ground (as proposed to be amended)
b) that a CLUoD ought to be issued for the development.

Procedural grounds
c) copies of the Notice were not properly served on the relevant parties.
d) that the steps for compliance required by the Notice are excessive.
e) that the period for compliance with the Notice is too short.

Grounds of appeal available to the appellant for Enforcement Notices served at different points in the process should be:

<table>
<tr><th></th><th>Ground a</th><th>Ground b</th><th>Grounds c, d & e</th></tr>
<tr><td>Point 1</td><td>Yes, but appellant must submit a valid set of plans unless the development is complete.</td><td rowspan="3">Only if a case was made within the 28-day deadline after the service of an Unauthorised Development Notice or a Stop Notice.

If the LPA invited the contravener to apply for a CLUoD and they failed to do so, they also forfeit the right to appeal under this ground.</td><td rowspan="3">Yes, but a ground (d) appeal (that the steps for compliance required by the Notice are excessive) cannot be made on the ground that the development should remain (effectively a ground (a) appeal).</td></tr>
<tr><td>Point 2</td><td>If no application was made, the appellant forfeits the right to appeal under this ground.

If an invalid application was made, the ground is that the planning application submitted to the LPA was made within the specified deadline and was legally valid when made and that planning permission ought to be granted for the development.</td></tr>
<tr><td>Point 3</td><td>Yes</td></tr>
</table>

Where there is a ground (a) appeal against a Point 1 Enforcement Notice, the appellant must submit plans, reports and other materials necessary to describe their proposals, unless the development is complete, otherwise that appeal ground would not be considered. The Inspector's first task would be to effectively validate the appeal in the same way that an LPA validates a planning application. If the Inspector considers that the material submitted by the appellant is not sufficient to properly describe the development, they will not consider ground (a) further and dismiss that part of the appeal. The appellant would be barred from submitting any additional plans, reports or other materials to supplement the material they submitted with their appeal.

Where there is a ground (a) appeal against a Point 2 Enforcement Notice, the Inspector's first task would be to decide whether the invalid planning application submitted to the LPA was in fact valid at the time. If they agree with the LPA that it was invalid, they will not consider ground (a) further and dismiss that part of the appeal. If they found it to have been valid, they would go on to consider whether it should be granted planning permission. The appellant would not be allowed to submit any additional plans, reports or other materials to supplement the planning application that they had made.

Where there is a ground (a) appeal against a Point 3 Enforcement Notice, the appellant would not be allowed to submit any additional plans, reports or other materials to supplement the planning application that they had made.

In all cases where there is a ground (b) appeal, the appellant would not be allowed to supplement the case that they made to the LPA in response to the Unauthorised Development Notice or the Stop Notice, except where there is directly relevant case law or there have been changes made to the relevant part of the GPDO that post-dates their original submissions.

Some appellants appeal under ground (d) and argue that the steps in the Notice are excessive in that the development should be allowed to remain. This is effectively a ground (a) appeal and such a ground should be considered no further.

Each ground of appeal would attract a fee to discourage time-wasting on grounds where there is no case to be made. The proposed fees are set out below.

<table>
<tr><th></th><th>Ground a</th><th>Ground b</th><th>Grounds c, d & e</th></tr>
<tr><td>Point 1</td><td>2x the application fee</td><td rowspan="3">2x the fee for the equivalent retrospective CLUoD application. LPA is only liable for compensation if they acted unreasonably</td><td rowspan="3">£250 for each ground</td></tr>
<tr><td>Point 2</td><td>4x the application fee with a 50% refund if the submitted application is found to have been valid by the Inspector</td></tr>
<tr><td>Point 3</td><td>2x the application fee</td></tr>
</table>

Generally, the appellant would need to pay twice the normal planning application fee to argue that planning permission should be granted (ground a) and twice the normal retrospective CLUoD application fee to argue that the development was lawful (ground b). The “procedural grounds” (grounds c to e) each attract a fee of £250.

The recommendation is that with a Point 2 Enforcement Notice (where the appellant has failed to make an application that was valid) the fee for a ground (a) appeal would be four times the application fee for the equivalent development to discourage people from failing to engage with the process and to cover the additional work in the appeal to deal with the validation issue. If the Inspector found that the submitted application was both timely and valid, the LPA would have to refund 50% of the fee. The Inspector would go on to consider whether planning permission should be granted for the development described in the application.

The penalties for ignoring an Enforcement should be:

- Fixed penalty fines of £500 which can be levied daily
- Magistrates Court for up to £20K fine
- High Court for an injunction
- Direct Action

The ban on the contravener applying for planning permission or a CLUoD for the development that is in breach (as set out in the Unauthorised Development Notice or Stop Notice) would continue until the Enforcement Notice is complied with in all respects. A contravener would not be barred from applying for a materially different development, but the LPA would have to judge whether this was so and could decline to determine such an application if it was not. This power would operate in the same way as the powers in §70A to decline to determine applications within two years of a dismissed appeal or §70C to decline to determine retrospective applications where an enforcement notice for the development is in operation.