

PLANNING POLICY GUIDANCE:

ENFORCING PLANNING CONTROL

1. New and substantially improved powers to enforce planning control are given to local planning authorities (LPAs) by the Planning and Compensation Act 1991. The enforcement provisions of the Act are based on the main recommendations of the report by Robert Carnwath QC, entitled "Enforcing Planning Control" (HMSO, February 1989). The report also recommended (Recommendation No. 14) that current Ministerial policy guidance about enforcement, in DOE/WO Circulars, should be revised, taking account of the concern expressed about certain aspects of the current guidance. This Note gives revised guidance.

THE NEW ENFORCEMENT RÉGIME

2. The new and improved enforcement powers provided by the 1991 Act are:-

(1) the power to serve a "planning contravention notice" where it appears that there may have been a breach of planning control and the LPA require information about activities on the land, or the nature of the recipient's interest in the land (new section 171C of the Town and Country Planning Act 1990);

(2) the power to serve a "breach of condition notice" where there is failure to comply with any condition or limitation imposed on a grant of planning permission (new section 187A of the 1990 Act);

(3) the ability to seek an injunction, in the High Court, or County Court, to restrain any actual or expected breach of planning control (new section 187B of the 1990 Act);

(4) the power to serve a stop notice to prohibit the use of land as the site for a caravan occupied as a person's only or main residence, and to make a stop notice immediately effective where special reasons justify it (amended sections 183 and 184 of the 1990 Act); and

(5) improved powers of entry on to land for the LPA's authorised officer to obtain information required for enforcement purposes (new sections 196A, 196B and 196C of the 1990 Act).

3. The penalty provisions for enforcement offences have also been revised. The maximum summary penalty on conviction of the offence of contravening the requirements of an effective enforcement notice, or the prohibition in a stop notice, is increased from £2,000 to £20,000. And, when sentencing a convicted person for an enforcement notice or stop notice offence, the Court is to have regard to any financial benefit which has accrued, or appears likely to accrue, to him in consequence of the offence. These exceptional summary maxima are intended to signal clearly how seriously Parliament regards this type of offence. The increased penalties are consistent with Government policy stated in the White Paper entitled "Crime, Justice and Protecting the Public" (Cm 965), published in February 1990. Chapter 5 of the White Paper acknowledges that there is increasing

public concern about activities which damage the quality of people's lives (paragraph 5.8). It states:-

"If people ignore or flout laws and regulations designed to protect the public from serious harm, they should be properly punished, and the punishment should take account of the resulting profits or savings..."

4. During consideration of the Bill in Parliament, amendments to impose a general duty on LPAs to ensure compliance with planning control were proposed. Although these amendments were not accepted (because the Government considers that enforcement action should remain within the LPA's discretion), the Government's view is that the integrity of the development control process depends on the LPA's readiness to take effective enforcement action when it is essential. Public acceptance of the development control process is quickly undermined if unauthorised development, which is unacceptable on planning merits, is allowed to proceed without any apparent attempt by the LPA to intervene before serious harm to amenity results from it. Enactment of the new and improved powers summarised in paragraph 2 gives LPAs a wider choice of available enforcement options. Authorities will therefore need to assess, in each case, which power (or mix of powers) is best suited to dealing with any particular expected, or actual, breach of control, to achieve a satisfactory, lasting and cost-effective remedy. Rapid initiation of enforcement action is usually vital to prevent a breach of control from becoming well established and more difficult to remedy.

THE GENERAL APPROACH TO ENFORCEMENT

5. Nothing in this Note should be taken as condoning a wilful breach of planning law. LPAs have a general discretion to take enforcement action, when they regard it as expedient. They should be guided by the following considerations:-

(1) Parliament has given LPAs the primary responsibility for taking whatever enforcement action may be necessary, in the public interest, in their administrative area (the private citizen cannot initiate planning enforcement action);

(2) the Commissioner for Local Administration (the local ombudsman) has held, in a number of investigated cases, that there is "maladministration" if the authority fail to take effective enforcement action which was plainly necessary and has occasionally recommended a compensatory payment to the complainant for the consequent injustice;

(3) in considering any enforcement action, the decisive issue for the LPA should be whether the breach of control would unacceptably affect public amenity or the existing use of land and buildings meriting protection in the public interest;

(4) enforcement action should always be commensurate with the breach of planning control to which it relates (for example, it is usually inappropriate to take formal enforcement action against a trivial or technical breach of control which causes no harm to amenity in the locality of the site); and

(5) where the LPA's initial attempt to persuade the owner or occupier of the site voluntarily to remedy the harmful effects of unauthorised development fails, negotiations should not be allowed to hamper or delay whatever formal enforcement action may be required to make the development acceptable on planning grounds, or to compel it to stop (LPAs should bear in mind the statutory time limits for taking enforcement action).

WHERE DEVELOPMENT IS CARRIED OUT WITHOUT PERMISSION

6. In assessing the need for enforcement action, LPAs should bear in mind that it is not an offence to carry out development without first obtaining any planning permission required for it. New section 73A of the 1990 Act specifically provides that a grant of planning permission may relate to development carried out before the date of the application. Accordingly, where the LPA's assessment indicates it is likely that unconditional planning permission would be granted for development which has already taken place, the correct approach is to suggest to the person responsible for the development that he should at once submit a retrospective planning application (together with the appropriate application fee). It may also be appropriate to consider whether any other public authority (eg the highway or environmental health authority) is better able to take remedial action.

7. While it is clearly unsatisfactory for anyone to carry out development without first obtaining the required planning permission, an enforcement notice should not normally be issued solely to "regularise" development which is acceptable on its planning merits, but for which permission has not been sought. In such circumstances, LPAs should consider using the new "planning contravention notice" to establish what has taken place on the land and persuade the owner or occupier to seek permission for it, if permission is required. The owner or occupier of the land can be told that, without a specific planning permission, he may be at a disadvantage if he subsequently wishes to dispose of his interest in the land and has no evidence of any permission having been granted for development comprising an important part of the valuation. As paragraph 14 of DOE Circular 2/87 (WO 5/87) points out, it will generally be regarded as "unreasonable" for the LPA to issue an enforcement notice, solely to remedy the absence of a valid planning permission, if it is concluded, on an enforcement appeal to the Secretary of State, that there is no significant planning objection to the breach of control alleged in the enforcement notice. Accordingly, LPAs who issue a notice in these circumstances will remain at risk of an award against them of the appellant's costs in the enforcement appeal.

WHERE UNAUTHORISED DEVELOPMENT CAN BE MADE ACCEPTABLE BY THE IMPOSITION OF CONDITIONS

8. A LPA may consider that development has been carried out without the requisite planning permission, but the development could be made acceptable by the imposition of planning conditions (for example, to control the hours, or mode, of operation; or to carry out a landscaping scheme). If so, the authority may invite the owner or occupier of the land to submit an application, and pay the appropriate application fee, voluntarily. It can be pointed out to the person concerned that the authority do not wish the business, or other activity, to cease; but they have a public duty to safeguard amenity by ensuring that development is carried out, or continued, within acceptable limits, having regard to local circumstances and the relevant planning policies. LPAs should bear in mind the need to consult on such applications in the normal way and the possible effect of such development on the functions of statutory undertakers.

9. If, after a formal invitation to do so, the owner or occupier of the land refuses to submit a planning application in these circumstances, the LPA should consider whether to issue an enforcement notice. Section 173(4)(b) of the 1990 Act (as amended by the 1991 Act) provides that one of the purposes for which the LPA may, in an enforcement notice, require remedial steps to be taken is for "removing or alleviating any injury to amenity which has been caused by the breach". For that purpose, section 173(5) of the 1990 Act provides that an enforcement notice may require, among other things, "the carrying out of any building or other operations" (paragraph (b)); or "any activity on the land not to

be carried on except to the extent specified in the notice;" (paragraph (c)). Accordingly, where an owner or occupier of land refuses to submit a planning application which would enable the LPA to grant conditional planning permission, the authority would be justified in issuing an enforcement notice if, in their view, the unauthorised development has resulted in any injury to amenity, or damage to a statutorily designated site, which can only be satisfactorily removed or alleviated by imposing conditions on a grant of planning permission for the development. If an enforcement notice is issued to enable the LPA to grant conditional planning permission, they should explain clearly (in their statement of reasons for issuing the notice) what injury to amenity, or damage to the site, has been caused by the unauthorised development and how their conditional grant of permission will effectively remedy it. The owner or occupier will then have no doubt about the purpose of the enforcement action, or what he is required to do in order to remove or alleviate the perceived injury to amenity.

WHERE THE UNAUTHORISED DEVELOPMENT IS UNACCEPTABLE ON THE SITE BUT RELOCATION IS FEASIBLE

10. It is not the LPA's responsibility to seek out and suggest to the owner or occupier of land on which unauthorised development has taken place an alternative site, to which the activity might be satisfactorily relocated. But if, as part of their economic development functions, the authority are aware of a suitable alternative site, it will usually be helpful to suggest it, and to encourage removal of the unauthorised development to it.

11. If an alternative site has been suggested, the LPA should make it clear to the owner or occupier of the site where unauthorised development has taken place that he is expected to relocate to the alternative site (or some other site he may prefer). The LPA should set a reasonable time-limit within which relocation should be completed. What is reasonable will depend on the particular circumstances, including the nature and extent of the unauthorised development; the time needed to negotiate for, and secure an interest in, the alternative site; and the need to avoid unacceptable disruption during the relocation process. If a timetable for relocation is ignored, it will usually be expedient for the LPA to issue an enforcement notice. In that event, the compliance period in the notice should specify what the LPA regard as a reasonable period to complete the relocation.

WHERE THE UNAUTHORISED DEVELOPMENT IS UNACCEPTABLE AND RELOCATION IS NOT FEASIBLE

12. Where, in the LPA's view, unacceptable unauthorised development has been carried out, and there is no realistic prospect of its being relocated to a more suitable site, the owner or occupier of the land should be informed that the authority are not prepared to allow the operation or activity to continue at its present level of activity, or (if this is the case) at all. If the development nevertheless provides valued local employment, the owner or occupier should be advised how long the LPA are prepared to allow before the operation or activity must stop, or be reduced to an acceptable level of intensity. If agreement can be reached between the operator and the LPA about the period to be allowed for the operation or activity to cease, or be reduced to an acceptable level, and the person concerned honours the agreement, formal enforcement action may be avoided. But LPAs should be aware of the possibility of intensification of the development after expiry of the statutory period for enforcement action. If no agreement can be reached, the issue of an enforcement notice will usually be justified, allowing a realistic compliance period for the unauthorised operation or activity to cease, or its scale to be acceptably reduced. Any difficulty with relocation will not normally be a sufficient reason for delaying formal enforcement action to remedy unacceptable unauthorised development.

WHERE THE UNAUTHORISED DEVELOPMENT IS UNACCEPTABLE AND IMMEDIATE REMEDIAL ACTION IS REQUIRED

13. Where, in the LPA's view, unauthorised development has been carried out and the LPA consider that:-

- (1) the breach of control took place in full knowledge that planning permission was needed (whether or not advice to this effect was given by the LPA to the person responsible);
- (2) the person responsible for the breach will not submit a planning application for it (despite being advised to do so); and
- (3) the breach is causing serious harm to public amenity in the neighbourhood of the site,

the LPA should normally take vigorous enforcement action (including, if appropriate, the service of a stop notice) to remedy the breach urgently, or prevent further serious harm to public amenity.

UNAUTHORISED DEVELOPMENT BY SMALL BUSINESSES OR SELF-EMPLOYED PEOPLE

14. Although some breaches of control are clearly deliberate, the LPA may find that an owner or operator of a small business, or a self-employed person, has carried out unauthorised development in good faith, believing that no planning permission is needed for it. The cost of responding to enforcement action may represent a substantial financial burden on such a small business, or self-employed person. LPAs should consider this in deciding how to handle a particular case.

15. The initial aim should be to explore - in discussion with the owner or operator - whether the business can be allowed to continue operating acceptably on the site at its current level of activity, or perhaps less intensively. The LPA should carefully explain the planning objections to the current operation of the business and, if it is practicable, suggest ways to overcome them. This may result in the grant of a mutually acceptable conditional planning permission, enabling the owner or operator to continue in business at the site without harm to local amenity. If the site's owner or occupier is at first reluctant to negotiate with the LPA, the service of a "planning contravention notice" may help to convey the LPA's determination not to allow the development to go ahead by default.

16. If a mutually satisfactory compromise cannot be reached, and formal enforcement action is essential, the LPA should make their intentions clear, at the outset, to the owner or operator of a small business or a self-employed person. Unless it is urgently needed, formal enforcement action should not come as a "bolt from the blue" to a small business or self-employed person. It should be preceded by informal discussion about possible means of minimising harm to local amenity caused by the business activity; and, if formal action will clearly be needed, by discussion of the possible relocation of the business to another site. As explained in paragraph 10, it is not the LPA's responsibility to take the initiative in finding or providing a suitable alternative site. If formal enforcement action is likely to compel a small business or self-employed person to relocate their trading activities, the LPA should aim to agree on a timetable for relocation which will minimise disruption to the business and, if possible, avoid any permanent loss of employment as a result of the relocation. Once an enforcement notice has taken effect, LPAs should bear in mind that, where the circumstances justify it, new section 173A of the 1990 Act enables them to withdraw the notice; or to waive or relax any requirement in it, including the compliance period. A reasonable compliance period, or an extension of the initial period, may make the difference between enabling a small

business or self-employed person to continue operating, or compelling them to cease trading.

17. The Government remains committed to fostering business enterprise, provided that the necessary development can take place without unacceptable harm to local amenity. LPAs should bear this in mind when considering how best to deal with unauthorised development by small businesses. Nevertheless, effective enforcement action is likely to be the only appropriate remedy if the business activity is causing irreparable harm.

UNAUTHORISED DEVELOPMENT BY PRIVATE HOUSEHOLDERS

18. When they are considering the possibility of enforcement action involving unauthorised development by a private householder, LPAs should bear in mind that independent professional advice about whether planning permission was needed for the development may sometimes not have been readily available, or affordable. This is particularly true where the householder may have relied on "permitted development" rights in the General Development Order (the GDO) as authorisation for the development, but a specified limitation has been exceeded in carrying it out. In these circumstances it is inappropriate to initiate a prosecution of a householder, under new section 187A(9) of the 1990 Act (prosecution for the offence of failure to secure compliance with the limitation imposed on a grant of planning permission by virtue of the GDO), unless the breach of condition notice served on the householder includes a full explanation of the allegedly unauthorised development and he has failed to take satisfactory steps to regularise it, despite being allowed adequate time to do so. In considering whether it is expedient to take enforcement action against development carried out in excess of the permission granted by the GDO, the LPA should have full regard to what would have been permitted if the development had been carried out in strict accordance with the relevant provisions. LPAs should not normally take enforcement action in order to remedy only a slight variation in excess of what would have been permitted by virtue of the GDO provisions.

ENFORCEMENT OF PLANNING CONTROL OVER MINERAL WORKING

19. Minerals planning control is well established as part of the general planning system and there are no separate enforcement powers for unauthorised minerals working. The general policies and principles applicable to enforcement apply equally to minerals cases. Nevertheless, unauthorised minerals working sometimes poses particular enforcement problems, both in terms of the occasionally irremediable nature of the working and the speed at which damage can be caused. Certain of the new powers in the 1991 Act should therefore be helpful to mineral planning authorities (MPAs), to prevent damage which would otherwise be virtually or totally irremediable, either to the site itself or to its surroundings.

20. It is clearly preferable for effective liaison and contacts between MPAs and minerals operators to be sufficiently good for contraventions of planning conditions to be avoided, and for any problems to be resolved through discussion and co-operation. In cases where formal enforcement proceedings are necessary, it is important to ensure that action is taken quickly. MPAs need to be able to stop an unauthorised activity as soon as it is detected. Examples are where a mineral operator is moving soil materials in contravention of clear planning conditions, so as to jeopardise the restoration and aftercare of the site; or where unauthorised excavation outside the permitted boundary causes irremediable damage, or endangers the safety and stability of the surrounding land. Section 183 of the 1990 Act (as amended by section 9 of the 1991 Act) enables a stop notice to be served at the same time as the copy of an enforcement notice; and section 184(3) (as amended) now enables a stop notice to take effect before the expiry of 3 days, or immediately, where special reasons justify it - for example to prevent irremediable damage. The planning injunction provisions of section 187B are also

available in respect of unauthorised minerals development.

21. Further guidance on any more detailed aspects of enforcement of planning control over mineral working will be included, where necessary, in revisions to the relevant Minerals Planning Guidance Notes (MPGs).

THE ORGANISATION OF THEIR ENFORCEMENT FUNCTIONS BY LPAS

22. How LPAs organise the administrative function of enforcing planning control is for each authority to decide. The organisation should correspond to the volume and complexity of enforcement casework in each LPA's area and be sufficiently flexible to adapt to short-term increases in the demand for enforcement. All authorities should ensure that there is a close and co-operative working relationship between the Planning Department and the Solicitor's (or Secretary's or Chief Executive's) Department. Without such an effective working relationship, formal enforcement action (which depends for its success upon speed of assessment and process) may be hampered by poor communications and misunderstandings. Public criticism is then likely, especially if statutory time-limits for taking enforcement action are allowed to expire because of administrative delay. Unless they have done so recently, all LPAs are recommended to carry out a thorough review of the effectiveness of their procedural arrangements for planning enforcement; and, where necessary, to introduce revised arrangements.

23. When complaints about alleged breaches of planning control are received from parish or community councils, or members of the public, they should always be properly recorded and investigated. If the LPA decide to exercise their discretion not to take formal enforcement action, following a complaint, they should be prepared to explain their reasons to any organisation or person who has asked for an alleged breach of control to be investigated.

CANCELLATION OF ADVICE

24. The following PPGs are cancelled:-
PPG 1 (January 1988) - paragraphs 30 and 31;
PPG 4 (January 1988) - paragraph 19.
Paragraphs 15 and 16 of, and Annex B to, DOE Circular 22/80 (WO 40/80) are also cancelled.