

ADOPTION OF THE PLANNING ENFORCEMENT POLICY

Additional text for section 5.5 of Enforcement Policy

5.4 Enforcement Notice

Where it is expedient to do so and there is clear evidence of a breach of planning control, an Enforcement Notice may be used. This Notice is served on all interested parties where harm to the environment or the local amenity has been caused by a breach of planning control. Such a notice will specify the works to which it refers, what steps are required to be taken, or what activities are to cease, to remedy the breach and also the time period within which these steps need to be taken. An Enforcement Notice does not take effect for 28 days and within this period there is a right of appeal by the recipient of such a Notice. If there is an appeal, then the requirements of the Notice are suspended until the Secretary of State confirms the Notice. An appeal is made to the Planning Inspectorate and will be decided by an independent Inspector.

The Inspectorate set out that an appeal can be made on the following grounds:

1. Planning permission should be granted for the development or change of use.
2. The development does not require planning permission.
3. No breach of planning control has taken place.
4. Sufficient time has elapsed since the development took place (4 years for development, 10 years for change of use) so that enforcement action cannot now be taken.
5. The Enforcement Notice has not been properly served.
6. The requirements of the Enforcement Notice are excessive.
7. The period for compliance stated in the Notice is too short.

In the case of an appeal on ground 1), a fee would be payable equivalent to the normal planning application fee for the development involved. Fees are not applicable in the other cases.

Once the Notice takes effect, its requirements must be met and failure to comply constitutes a criminal offence. The Council may decide to prosecute in certain cases. If an appeal is allowed, the Notice is quashed and in appropriate cases, planning permission granted.

5.5 Listed Building Enforcement Notices

Where it is expedient to do so and there is clear evidence of a breach of listed building control, a Listed Building Enforcement Notice may be used. This Notice is served on all interested parties where harm to the special interest of a listed building has been caused by a breach of control. Such a notice will specify the works to which it refers, what steps are required to be taken, in order to remedy the breach and also the time period within which

these steps need to be taken. A Listed Building Enforcement Notice does not take effect for 28 days and within this period there is a right of appeal by the recipient of such a Notice. If there is an appeal, then the requirements of the Notice are suspended until the Secretary of State confirms the Notice. An appeal is made to the Planning Inspectorate and will be decided by an independent Inspector.

The Inspectorate set out that an appeal can be made on the following grounds:

1. That the building is not of special or architectural or historic interest
2. That the matters alleged to constitute a contravention of section 9(1) or (2) have not occurred
3. That those matters (if they occurred) do not constitute such a contravention
4. That the works to the building were urgently necessary in the interests of safety or health or for the preservation of the building, that it was not practicable to secure safety or health or, as the case may be, the preservation of the building by works of repair or works for affording temporary support or shelter, and that the works carried out were limited to the minimum measures immediately necessary
5. That listed building consent ought to be granted for the works, or that any relevant condition of such consent which has been granted ought to be discharged, or different conditions substituted;
6. That copies of the notice were not served as required by section 38(4).
7. That the requirements of the notice exceed what is necessary for restoring the building to its condition before the works were carried out; (NB: It should be noted that its condition before the works were carried out refers to its former authorised condition, which is its condition when listed, subject to any listed building consents subsequently granted. It does not refer to its physical condition, for example in terms of repair.)
8. That the period specified in the notice as the period within which any steps required by the notice is to be taken falls short of what should reasonably be allowed;
9. That the steps required by the notice for the purpose of restoring the character of the building to its former state would not serve the purpose. (Note: this ground cannot be pleaded at the same time as grounds 10 and/or 11)
10. That the steps required to be taken exceed what is necessary to alleviate the effect of the works executed to the building. (Note: This ground is concerned with alleviation, not with restoration and cannot be pleaded at the same time as grounds 9 and/or 11)

11. That steps required to be taken exceed what is necessary to bring the building to the state in which it would have been if the terms and conditions of the listed building consent had been complied with (Note: This ground cannot be pleaded at the same time as grounds 9 and/or 10)

Once the Notice takes effect, its requirements must be met and failure to comply constitutes a criminal offence. The Council may decide to prosecute in certain cases. If an appeal is allowed, the Notice may be varied, quashed or listed building consent granted for all or part of the works.

The serving of and/or compliance with a Listed Building Enforcement Notice does not prohibit prosecution for the original offence under s9 of the Planning (Listed Buildings and Conservation Areas) Act 1990. The focus of the listed building enforcement notice is to require remediation of the breach of control, the purpose of prosecution is to punish a perpetrator of unauthorised works and to act as a deterrent to others (see DCLG Best Practice Guidance on Listed Building Prosecutions 2006)