

# **PLANNING COMMITTEE**

3<sup>rd</sup> April 2023

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## **Enforcement Report – Stop Notice**

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Relevant Strategic Purpose(s)	creating communities which are safe well maintained and green
If you have any questions about this report, please contact the report author in advance of the meeting.	
The Appendix to this report contain exempt information as defined in Paragraphs 1, 2 and 6 of Part 1 of Schedule 12A to the Local Government Act 1972, as amended.	

### **1. RECOMMENDATIONS**

**The Committee is asked to**

**Authorise the Head of Planning, Regeneration and Leisure Services to issue and serve a Stop Notice (subject to statutory limitations) if officers deem it is expedient to do so on the basis of the circumstances which prevail at the time.**

### **2. BACKGROUND**

- 2.1 The scheme of delegation for Bromsgrove prescribes that the power to authorise the issue and service of Stop Notices under section 183 of the Town & Country Planning Act 1990 is delegated to Planning Committee and therefore where officers consider such action to be expedient, they must seek the endorsement of Planning Committee in order to exercise that function.
- 2.2 In cases of urgency, when, in the opinion of Head of Planning, Regeneration and Leisure Services, reporting to Planning Committee is impractical, the power to authorise the issue and service of Stop Notices under the Act is delegated to the Head of Planning, Regeneration and Leisure Services in consultation with the Principal Solicitor.
- 2.3 In this case the need to serve a stop notice is not currently considered urgent, so the former provision applies.

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## **2.4 What does a stop notice do?**

A stop notice can prohibit any or all of the activities which comprise the alleged breach(es) of planning control specified in the related enforcement notice, ahead of the deadline for compliance in that enforcement notice (section 183 of the Town and Country Planning Act 1990).[extract below]

183 *Stop notices.*

(1) *Where the local planning authority consider it expedient that **any relevant activity should cease before the expiry of the period for compliance with an enforcement notice**, they may, **when they serve the copy of the enforcement notice or afterwards**, serve a notice (in this Act referred to as a “stop notice”) prohibiting the carrying out of that activity on the land to which the enforcement notice relates, or any part of that land specified in the stop notice. **(my emphasis)***

A stop notice cannot be served independently of an enforcement notice, but can be served afterwards provided the Enforcement Notice has not come into effect.

## **2.5 How quickly can a stop notice take effect?**

The local planning authority must specify in the stop notice when it is to take effect. The effective date must normally be no less than 3 days (or later than 28 days) after the date when the stop notice is served (section 184(3) of the Town and Country Planning Act 1990).

When there are special reasons for specifying an earlier date a stop notice may take effect before 3 days, in which case, a statement of reasons must be served with it. For example, it may be considered essential to protect an Area of Outstanding Natural Beauty, Green Belt or conservation area, from operational development (such as buildings, roadways or other hard surfaces) which if it continued, would be especially harmful.

## **2.6 Are there any restrictions on what a stop notice can prohibit?**

There are restrictions on what a stop notice can prohibit. These are set out in section 183 of the Town and Country Planning Act 1990. One important restriction is that a stop notice may not prohibit the use of any building as a dwelling house, although it may be used to prohibit the use of land as a site for a caravan occupied by a person as his or her own main residence.

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**2.7 Could the local planning authority be liable for compensation as a result of serving a stop notice?**

Where the associated enforcement notice is quashed, varied or withdrawn or the stop notice is withdrawn compensation may be payable in certain circumstances and subject to various limitations (section 186 of the Town and Country Planning Act 1990).

**2.8 How does a local planning authority decide whether to serve a stop notice?**

The power to serve a stop notice is discretionary. Before serving such a notice a local planning authority must be satisfied that it is expedient that any relevant activity should cease before the expiry of the period for compliance specified in an enforcement notice.

The relevant local planning authority should ensure that an assessment of the likely consequences of serving the notice is available to the Committee or officer who will authorise service of it. The assessment should examine among other things the foreseeable cost and benefits likely to result from the stop notice.

The local planning authority should ensure that a stop notice's requirements prohibit only what is essential to safeguard amenity or public safety in the neighbourhood; or to prevent serious or irreversible harm to the environment in the surrounding area.

Before deciding to serve a stop notice, the local planning authority's representative should discuss, whenever practicable, with the person carrying on the activity, whether there is any alternative means of production or operation which would overcome the objections to it in an environmentally and legally acceptable way.

**2.9 What about human rights?**

The provisions of the European Convention on Human Rights, such as Article 1 of the First Protocol, Article 8 and Article 14, are relevant. In some instances there is a clear public interest in taking rapid action to address breaches of planning control. To ensure that this is a proportionate approach, before serving a stop notice, the local planning authority must be satisfied that there has been a breach of planning control and that the activity which amounts to the breach must be stopped immediately and before the end of the period allowed for compliance with the related enforcement notice.

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**2.10 What are the penalties for contravention of a stop notice?**

A person who contravenes a stop notice after a site notice has been displayed, or the stop notice has been served on them, is guilty of an offence (section 187(1) of the Town and Country Planning Act 1990).

A person guilty of this offence is liable on conviction to an unlimited fine. In determining the amount of fine imposed the Court is to have regard to any financial benefit which has accrued, or appears likely to accrue, in consequence of the offence.

**2.11 How can a stop notice be challenged?**

There is no right of appeal to the Secretary of State against the prohibitions in a stop notice. The validity of a stop notice, and the propriety of the local planning authority's decision to issue a notice, may be challenged by application to the High Court for judicial review.

## **3. EXPEDIENCY**

3.1 Paragraph 183(1) of the Town and Country Planning Act 1990 (as amended) prescribes that "Where the local planning authority consider it expedient that any relevant activity should cease before the expiry of the period for compliance with an enforcement notice, they may, when they serve the copy of the enforcement notice or afterwards, serve a notice (in this Act referred to as a "stop notice") prohibiting the carrying out of that activity on the land to which the enforcement notice relates, or any part of that land specified in the stop notice."

3.2 The expiry of the time period for compliance with any requirement of an enforcement notice cannot be earlier than the effective date of that enforcement notice, which must be at least 1 month from the date of the enforcement notice.

3.3 Stop Notices are usually served where it is necessary to urgently and immediately stop an activity before the earliest date of compliance which could be imposed through an Enforcement Notice, and the current adopted scheme of delegation effectively permits the service of a Stop Notice in such circumstances without reference to planning committee, by authorisation of the Head of Service in conjunction with the Council's Principal Solicitor.

3.4 Other than in urgent cases where the Stop Notice needs to take effect before the earliest date on which the requirements of an Enforcement Notice can be prescribed, it may be desirable to have the ability to serve a Stop Notice where –

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1. The impact of an activity which the Enforcement Notice seeks to prohibit starts to have a greater impact than envisioned when the notice (and prescribed time period for compliance) was first drafted and served (i.e an escalation in harm has occurred post service, but before the notice comes into effect).
2. An appeal is lodged (against the preceding enforcement notice) and the effect of the appeal is to hold the requirements of the enforcement notice in abeyance, such that it does not come 'into effect' (so service of a Stop Notice isn't precluded by 183(3) of the Act ) and the breach would otherwise continue unabated, until such a time as that appeal may be dismissed.
- 3.5 In this case, the Local Planning Authority could serve an Enforcement Notice without an accompanying Stop Notice, but the consequence of doing so would mean that a likely appeal (against the Enforcement Notice) would hold the requirements of the Enforcement Notice in abeyance pending determination of the appeal.
- 3.6 That means that the unauthorised use could effectively continue until such a time as the appeal were determined (which is a matter outside the control of the Council). Recent performance statistics published by the Planning Inspectorate indicate that such an appeal being considered under the written representations procedure could take at least 12 months to determine. Your officers consider that a conservative estimate.
- 3.7 That means that the harm arising from the activity in terms of the impact upon residential amenity could continue unabated for another 12 months. That timeframe would be in exceedance of the expiry period for the requirement to cease the use, which your officer's intend to specify in the Enforcement Notice.(which seeks to strike a balance between a reasonable period to comply following service of the notice with the impact of the unauthorised activity.
- 3.8 Accordingly, the only way to compel a landowner to cease any specified activity resulting in harm during the period of consideration of an appeal against the Enforcement Notice, is by serving a Stop Notice (which carries a legal penalty for non compliance).
- 3.9 In the event of an appeal against the Enforcement Notice, the requirements of the Stop Notice would remain in force from the date specified within it until such a time as the appeal may be allowed and the enforcement notice quashed by the Planning Inspectorate. In the

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event an appeal against an Enforcement Notice is allowed the Stop Notice would continue to have effect up until the expiry of the timescale for compliance with the same requirements set out in the Enforcement Notice (which would run from the date of the appeal decision). This would mean that notwithstanding any appeal against the Enforcement Notice, failure to comply with the requirements of the Stop Notice would be a criminal offence and place the landowner at risk of prosecution.

- 3.10 Accordingly, a Stop Notice would provide a recourse for the Council to consider prosecution against a landowner for continuing an activity that it had determined to be harmful and would be unable to lawfully continue whilst the enforcement notice appeal was under consideration and unless and until an appeal were determined in the use's favour.

## **4. FINANCIAL IMPLICATIONS**

- 4.1 There is a financial implication for the Council in terms of officer time in preparing, then serving the relevant notice and the potential risk of the costs of defending any legal challenge or requirement for compensation. Compensation is only payable in specific circumstances. There would be no recompense for the Officer time expended on the matter as this would be met from existing budgets.

## **5. LEGAL IMPLICATIONS**

- 5.1 In terms of the exempt elements of the report (exempt appendix), and the "public interest" test for exempt consideration, Officers considered that it is rarely likely to be in the public's best interest to reveal information which is the subject of possible legal action (S.100 1 of the Local Government Act 1972, as amended by the Local Government (Access to Information) (Variation) Order, 2006) refers.

## **6. OTHER - IMPLICATIONS**

### **Relevant Strategic Purpose**

- 6.1 The proposed action supports the Council's strategic purpose of creating communities which are safe well maintained and green by controlling unauthorised development which results in demonstrable harm to amenity or public safety in the neighbourhood; or to threatens serious or irreversible harm to the environment in the surrounding area.

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**7. RISK MANAGEMENT**

7.1 Please refer to section 4 of this report on Financial implications.

**8. APPENDICES and BACKGROUND PAPERS**

Exempt Appendix

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