



BRIEFING PAPER

Number 1579, 8 July 2019

Planning enforcement in England

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Summary

This briefing describes the legal powers available to local planning authorities ensure enforcement of planning law. It applies to England only.

Development without planning permission

Constituents often express concern about development taking place without the appropriate planning permission.

Carrying out development without planning permission is generally not a criminal offence (unless in relation to making changes to listed buildings and advertisements, which operate under separate regimes). Failure to comply with an enforcement notice, however, is a criminal offence. An enforcement notice is a notice requiring compliance with planning consent. If the notice is upheld, the penalty for failure to comply is a fine of up to £20,000 on summary conviction or an unlimited fine on indictment.

Enforcement action

Enforcement action is discretionary and local planning authorities are told to act in a proportionate way in responding to suspected breaches of planning control. The [National Planning Policy Framework](#) states that enforcement can be important for maintaining public confidence in the planning system, but enforcement action is discretionary and must be proportionate. Detailed information about planning enforcement powers is given in the online Planning Practice Guidance on [ensuring effective enforcement](#). For example, a local planning authority may decide not to take enforcement action if it believes that a development would have been granted planning permission.

There are often complaints about lack of enforcement action. Such complaints may be taken to the Local Government and Social Care Ombudsman (LGSCO), although this step can only be taken once the local planning authority's own complaints procedures have been completed. More information about this process is available from the [LGSCO website](#).

Trends in enforcement action

MHCLG publishes [statistics on enforcement action](#) carried out by district planning authorities and 'county matters' planning authorities. The (provisional) figures recently published for 2018/19 show (MHCLG says) that "in recent years, [the] level of activity has remained broadly proportionate to the number of planning decisions made".

The number of some types of planning enforcement action has declined in recent years. For example, the 3,867 enforcement notices issued in 2018/19 were 30% lower than the number issued in 2008/09 (5,532). Likewise, over the same period there were drops in the number of planning contravention notices and breach of condition notices.

Changes since 2012

Some changes to the enforcement regime were made by the *Localism Act 2011*, coming into force in April 2012. The right to use two separate defences in a single case – to both appeal to the Secretary of State against an enforcement notice and to apply for retrospective planning consent – is now more limited. The Act also increased enforcement provision in respect of concealed breaches of planning control.

More recently, in a [written ministerial statement](#) in December 2015, the then Housing Minister, Brandon Lewis, outlined the Government's concerns about the harm caused by

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unauthorised development and announced a change to planning policy to make intentional unauthorised development a material consideration that would be weighed in the determination of planning applications (including retrospective applications) and appeals. The policy was put in place following concern about unauthorised development in the Green Belt, but applies equally to all unauthorised development.

Funding to support planning enforcement

In April 2018, the Government [launched a consultation](#) on powers to deal with unauthorised encampments. The consultation observed that there was considerable variation in how enforcement powers were used and invited views on what additional powers might be needed. The [Government response to the consultation](#) (published in February 2019) identified a number of actions, including practical and financial support for local authorities, including new good practice guidance and funding for planning enforcement to support them in dealing with unauthorised encampments more effectively. In answer to a [PQ in June 2019](#), the housing minister, Kit Malthouse, said that further details of the £1.5 million fund for planning enforcement would be announced “over the summer”.

- Planning policy for Gypsies and Travellers and issues around unauthorised encampments are covered in other Commons Library briefings - [Gypsies and Travellers: Planning Provisions](#) (28 March 2019) and [Gypsies and Travellers](#) (9 May 2019).
- Other Commons Library briefings on various matters to do with planning are available on the [topic page for housing and planning](#).

1. Development undertaken without planning permission

It is not generally an offence to undertake development without planning permission, or make changes to a building without planning permission.¹ An exception to this is in relation to making changes to listed buildings, whereby carrying out work without the required permission is an offence (enforcement here operates under a different regime).

In normal circumstances, local planning authorities (LPAs) have considerable powers to enforce planning law, although they also have some discretion over whether to take enforcement action. Failure to comply with an enforcement notice, however, is a criminal offence.

The law is set out in the [Town and Country Planning Act 1990 Part VII](#).

The [National Planning Policy Framework](#) states that enforcement can be important for maintaining public confidence in the planning system, but enforcement action is discretionary and must be proportionate.² The [Planning Practice Guidance \(PPG\) on effective enforcement](#) published by the Ministry of Housing, Communities and Local Government (MHCLG) sets out steps for responding to suspected breaches of planning control.

1.1 How do local planning authorities decide whether to act against unauthorised development?

If it is determined that there has been a planning breach, then there are several planning enforcement options available to an LPA. These range from a temporary stop notice which can stop a specified activity at short notice, seeking a court injunction, and/or serving a planning enforcement notice.

The [Planning Portal](#) sets out what might happen after a planning breach, pointing out that planning permission will often be granted retrospectively:

A planning breach in itself is not illegal and the council will often permit a retrospective application where planning permission has not been sought.

However, if the breach involves a previously rejected development (or the retrospective application fails) the council can issue an enforcement notice requiring you to put things back as they were.

Your local planning authority can serve an enforcement notice on you when they consider you have broken planning control rules.

The failure to obtain or comply with details of a planning permission is commonly known as a “planning breach”.

¹ A specific and different regime operates for the enforcement of advertisements under the provisions of the *Town and Country Planning (Control of Advertisements) (England) Regulations 2007* (SI 2007/1783), where non-compliance with the rules can be an offence.

² MHCLG, [National Planning Policy Framework](#). CP 48, February 2019: page 16

Normally this will be because they consider what you are doing, or have done, is harmful to your neighbourhood.

The decisive issue for the local planning authority should be whether the breach would unacceptably affect public amenity or the existing use of land and buildings meriting protection in the public interest.³

One issue LPAs will look at the amount of harm caused by the suspected breach and examine whether it justifies acting. As the Planning Portal says, sometimes no action will be taken if the LPA believes that planning permission is likely to be given. Generally, an LPA is expected to act where *serious harm* to local public amenity is being caused.⁴

1.2 What enforcement options does the LPA have?

LPAs have considerable enforcement powers but they cannot normally be taken to Court for a failure to use them.

Some of the key powers available to LPAs include various types of notice and pre-emptive injunctions:

- **Enforcement notices:** Under Section 172 of the *Town and Country Planning Act 1990*, local authorities have the power to issue an enforcement notice, requiring steps to be taken to remedy the breach of planning control within a given period. The steps can include demolition and restoration of a site or alterations to a building. There is a right of appeal to the Secretary of State against an enforcement notice (section 174). One ground for appeal is to argue that planning permission should be granted. If the notice is upheld, the penalty for failure to comply is a fine of up to £20,000 on summary conviction or an unlimited fine on indictment (section 179).
- **Planning contravention notices:** Section 171C of the *Town and Country Planning Act 1990* provides LPAs with the power to serve a planning contravention notice. This may be used where it appears that there may have been a breach of planning control and the LPA require information about the activities on the land or to find out more about the nature of the recipient's interest in the land. Penalty for non-compliance is a maximum £1,000 on summary conviction (section 171D). A second conviction for continuing non-compliance can be penalised by a daily fine.
- **Stop notices:** Section 183 of the *Town and Country Planning Act 1990* provides LPAs with power to quickly stop any activity which contravenes planning control guidelines and where there are special reasons which justify doing this: for example, to prevent further environmental damage or to stop the construction of an unauthorised building. A stop notice may only be served with or after an enforcement notice relating to the same activity. Penalty for non-compliance is a fine of up to £20,000 on

It is a criminal offence to fail to comply with an enforcement notice.

³ Planning Portal, [Planning Permission: Failure to obtain or comply with planning permission](#) (undated)

⁴ Local Government and Social Care Ombudsman, [Planning enforcement](#), April 2019

summary conviction or an unlimited fine on indictment (section 187).

- **Temporary stop notices:** Section 171E of the *Town and Country Planning Act 1990* stops any activity, through a temporary stop notice, that breaches planning control for a period of 28 days. This allows the LPA time to decide whether further enforcement action, such as issuing an enforcement notice, possibly with a stop notice, should be taken. Penalty for non-compliance is a fine of up to £20,000 on summary conviction or an unlimited fine on indictment (section 171G). A temporary stop notice differs from a stop notice (see below) in that it does not have to wait for an enforcement notice to be issued and the effect of the temporary stop notice is immediate.
- **Breach of condition notices:** Section 187A of the *Town and Country Planning Act 1990* enables a breach of condition notice to be served where there is a failure to comply with any condition or limitation imposed on a grant of planning permission. Penalty for non-compliance is a fine of up to £2,500 on summary conviction.
- **Pre-emptive injunctions:** If a local site is particularly vulnerable and intelligence suggests it is going to be targeted for unauthorised camping, causing disruption to others going about their day-to-day lives, LPAs could consider applying to the courts for a pre-emptive injunction preventing unauthorised camping (and/or protests) in a defined geographical area.
- The scope of works under section 215 of the *Town and Country Planning Act 1990* enables an LPA to make good the loss of public amenity. If it appears that the **amenity of an area is being adversely affected** by the condition of neighbouring land and buildings these powers allow the LPA to serve a notice on the owner requiring that the situation be remedied.

There is no provision for compensation to be paid because of the issue of an enforcement notice, for which an appeals system operates. However, there is a provision for compensation due to loss resulting from a stop notice, because there is no provision for appeal against a stop notice.

Failure to comply with either an enforcement notice or a stop notice is a criminal offence. In certain circumstances unlimited fines can be imposed.

Many LPAs publish their own planning enforcement charters setting out the timescales involved with enforcement action, the process and when the LPA is likely to take enforcement action in its particular area. One example of this is the [London borough of Haringey's planning enforcement charter](#).⁵

Temporary stop notices are discussed in detail in another Commons Library briefing, [Gypsies and Travellers: planning provisions](#).⁶ The power

⁵ November 2018

⁶ SN 07005, 28 March 2019

comes from section 52 of the *Planning and Compulsory Purchase Act 2004* and is intended to allow faster enforcement action.

1.3 How much enforcement action takes place?

MHCLG publishes statistics on enforcement action carried out by district planning authorities and 'county matters' planning authorities.⁷ The table below shows the (provisional) figures published for 2018/19.

| Enforcement action by planning authorities England, 2018/19 | | | |
|--|-------------------------------------|--|--------------|
| | District planning authorities | 'County matters' planning authorities | Total |
| Enforcement notices issued | 3,867 | 39 | 3,906 |
| Stop notices served | 135 | 5 | 140 |
| Temporary stop notices served | 228 | 14 | 242 |
| Breach of condition notices served | 946 | 100 | 1,046 |
| Planning contravention notices served | 3,896 | 25 | 3,921 |
| Enforcement injunctions: | | | |
| Granted | 41 | 2 | 43 |
| Refused | 2 | 0 | 2 |

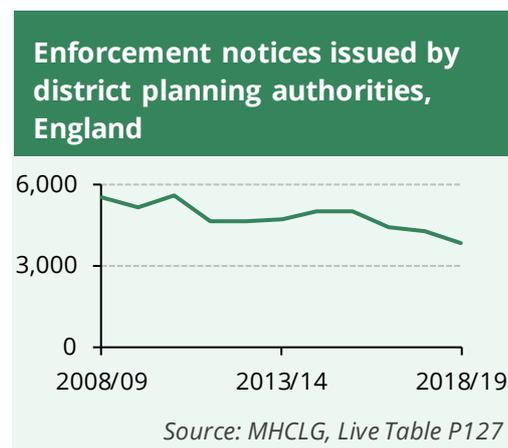
Notes: Figures are provisional.

Source: MHCLG, [Planning Live Tables P127 and P145](#)

The number of some types of planning enforcement action has declined in recent years. For example, the chart on the right shows the trend in the number of enforcement notices issued by district planning authorities over the last ten years. The 3,867 notices issued in 2018/19 was 30% lower than the number issued in 2008/09 (5,532).

The number of planning contravention notices served in 2018/19 was 26% lower than in 2008/09. The number of stop notices and temporary stop notices declined slightly in the period (by 6% and 9% respectively). The number of breach of condition notices served fell by 20% between 2008/09 and 2017/18, before rising to returning to a similar level to 2008/09 in 2018/19.

MHCLG's statistical release says of the figures that "In recent years, this level of [planning enforcement] activity has remained broadly



⁷ The division of planning responsibilities between county and district councils is laid down in schedule 1 to the *Town and Country Planning Act 1990*, as amended. District councils determine planning applications, except for a group of issues labelled "county matters". These matters all relate to minerals, to waste, to the manufacture of cement or to land partly in a National Park.

proportionate to the number of planning decisions made.”⁸ The number of planning decisions made was 17% lower in 2018/19 than in 2008/09.⁹

Section 2 of this briefing discusses geographical variation in planning enforcement. Statistics for individual district planning authorities are published by MHCLG as part of its [planning live tables](#), in Live Tables [P129](#) and [P130](#) (Excel files).

1.4 Time limits for enforcement action

In relation to the point up to which an LPA may take enforcement action, there are two time limits, laid down in section 171B of the *Town and Country Planning Act 1990*:

- Four years is the time allowed to an LPA to take enforcement action where the breach comprises either operational development (the carrying out of unauthorised building, engineering, mining or other operations) or change of use to use as a single dwellinghouse.
- Ten years is the time allowed for all other breaches of planning control.

In both instances, enforcement action can be completed after that date, provided that it was started before it.

1.5 Can the LPA require demolition?

If a building has been erected without planning permission, the authorities may require it to be demolished. That is not common, but it does happen. (An enforcement notice can require the demolition of a building erected without planning permission but a stop notice cannot do so).

For some reported examples of LPAs pursuing demolition, see

- [“Walthamstow house built without planning permission is knocked down by council”](#), *Evening Standard*, 25 November 2013
- [“Council wins injunction requiring demolition of house built behind straw bales”](#), *Public Law Today*, 23 June 2014
- [“Bungalow in Three Rivers District demolished”](#), *Watford Observer*, 23 April 2018
- [“Council orders Frodsham house to be demolished because it doesn't have planning permission”](#), *Cheshire Live*, 25 April 2018
- [“The owner of this house is regretting not applying for planning permission”](#), *Examiner Live*, 8 April 2019

In another example, the time limits were important to someone trying to build a house in the countryside without planning consent:

An illegally-built house which was hidden inside a barn to avoid planning rules has been demolished. Officials found an occupied

⁸ MHCLG, [Planning applications in England: January to March 2019](#), 27 June 2019

⁹ MHCLG, [Planning applications in England: January to March 2019](#), 27 June 2019

two-storey stone house with a lounge, kitchen, bedroom and bathroom behind a façade of corrugated iron and wood. (...)

The council's head of planning services Paul Wilson added: "We suspect the owner of this property intended to occupy his house inside the barn for four years and then remove the shield thinking he had successfully side-stepped the need for planning permission. Unfortunately for him, this would not have been the case, as the High Court has recently ruled that the four-year period for planning exemption only starts when any shielding construction has been removed." ¹⁰

In another case, though, a farmer was granted planning consent for a barn. In breach of that consent he built a house and lived in it for four years. The Court of Appeal noted the dishonesty involved, but decided that he was entitled to a certificate of lawful use, because the time limit for enforcement had passed.¹¹ The Supreme Court later overruled that decision.¹²

Listed building enforcement provisions

Listed building enforcement provisions are in sections 38 to 46 of the [Planning \(Listed Buildings and Conservation Areas\) Act 1990](#). There are no time limits for issuing listed building enforcement notices or for when enforcement action may be taken in relation to a breach of planning control with respect to relevant demolition. According to the Planning Practice Guidance, though, the length of time that has elapsed since the apparent breach "may be a relevant consideration when considering whether it is expedient to issue a listed building enforcement notice."¹³

1.6 Complaints about lack of enforcement action

In certain circumstances it is possible to complain to the [Local Government and Social Care Ombudsman](#) that the LPA has failed to take enforcement action, although this step can only be taken once the LPA's own complaints procedures have been completed. The Ombudsman's website provides guidance to people who may be considering making a complaint.¹⁴ The planning decision is not overturned, but compensation may be payable if the LPA is found guilty of maladministration.

¹⁰ "[Map clue leads to concealed house](#)", *BBC News Online*, 7 November 2008

¹¹ "Certificate must be issued after four years of use," *Law Report: Times*, 9 February 2010

¹² "Deception invalidates lawful planning use", *Times Law Report*, 8 April 2011

¹³ MHCLG, [Guidance: Ensuring effective enforcement](#), Paragraph: 057 Reference ID: 17b-057-20140306, revised 6 March 2014

¹⁴ Local Government and Social Care Ombudsman, [Planning enforcement](#), April 2019

2. Do people get away with flouting planning controls?

A letter to the specialist publication *Planning* in 2009 set out the concerns of many critics, arguing that it took years for the 'overstretched enforcement system' to decide whether it was expedient to act against planning breaches and, where it did not, the unapproved development became valid by default.¹⁵

More recently, an [article in *Planning*](#), examining MHCLG's enforcement data for 2018/19, has discussed the apparent wide variation in how often LPAs use their enforcement powers:

London boroughs issued more than one in three enforcement notices in England during the year and accounted for eight of the top ten most active authorities by this measure. At the other end of the scale, more than one in ten councils - including Exeter, Oxford, and Swindon - issued no enforcement notices at all.

The article quoted the chair of the National Association of Planning Enforcement (Neill Whittaker) who highlighted that there were good reasons for London boroughs to undertake more enforcement because of the issues they were faced with (in terms of housing demand and historic areas), and that they were better equipped to deal with them. The article also noted that:

In all, 41 councils issued no enforcement notices at all during 2018. Whittaker said this does not necessarily mean no enforcement action was being taken. "A lot of enforcement officers are very good at investigating enforcement breaches and coming to a negotiated agreement," he said. However, he also suspected lack of resources could be an issue in some areas.¹⁶

¹⁵ "Process drives developers to eschew approval route" Letter to *Planning*, 16 January 2009

¹⁶ "[Why there are big differences between council enforcement figures](#)", *Planning*, 25 April 2019 [Subscription required – Members and their staff may obtain copies of this article by ringing the Commons Library on 020 7219 3666]

3. Changes to the regime since 2012

3.1 *Localism Act 2011*

Section 123: Retrospective Planning Permission

This section sought to tackle some tactics that were seen as abuses. The aim was to strengthen the hand of the LPA and weaken the hand of the person who had undertaken development without planning consent. It removed from an applicant, in certain circumstances, the right to use two separate defences in a single case:

- appeal to the Secretary of State against an enforcement notice and
- application for retrospective planning consent.

Sub-section (2) grants LPAs the power to decline to determine retrospective applications after an enforcement notice has been issued. Sub-section (4) limits the right of appeal against an enforcement notice after a retrospective planning application has been submitted, but before the time for making a decision has expired.

There are several possible grounds for appeal against an enforcement notice, only one of which is that planning consent ought to be granted. Sub-section (5) means that a successful appeal on other grounds – for example that the enforcement notice was not served in the proper manner – would not result in the granting of planning consent.

Section 124: Time limits for enforcing concealed breaches of planning control

Section 124 allows an LPA that discovers an apparent breach of planning control to apply to a magistrate's court for a planning enforcement order, within six months of discovery. That order allows the LPA a year in which to take enforcement action, even after the time limits in section 171B of the *Town and County Planning Act 1990* have expired.

The passage relating to concealment now comes in section 171BC of the 1990 Act. The magistrate's court may make a planning enforcement order only if it is satisfied, on the balance of probabilities, that the "actions of a person or persons have resulted in, or contributed to, full or partial concealment of the apparent breach or any of the matters constituting the apparent breach". The court must also consider it just to make the order.

Section 125: Assurance as regards prosecution for person served with enforcement notice

This section allows an LPA to give an assurance to someone on whom an enforcement notice has been served that in the circumstances he will not be prosecuted in relation to section 179 of the *Town and County Planning Act 1990* in connection with the enforcement notice. Section

The *Localism Act 2011* made some changes to the enforcement regime. These provisions were brought into force on 6 April 2012.

179 covers the offence where the enforcement notice is not complied with.

Section 126: Planning offences: time limits and penalties

This section increased one penalty, for failure to comply with a breach of condition notice. In relation to damage to a protected tree or contravening advertisement control, the prosecution can be brought within six months of the prosecutor obtaining sufficient evidence, rather than within six months of the offence being committed.

Section 127: Powers in relation to unauthorised advertisements and defacement of premises

This section gave the LPA increased powers in relation to fly posting and graffiti.

3.2 Written Ministerial Statement in December 2015

More recently, in a [Written Ministerial Statement](#) on 17 December 2015, the then housing minister, Brandon Lewis, outlined the Government's concerns about the harm caused by unauthorised development:

The Government is concerned about the harm that is caused where the development of land has been undertaken in advance of obtaining planning permission. In such cases, there is no opportunity to appropriately limit or mitigate the harm that has already taken place. Such cases can involve local planning authorities having to take expensive and time-consuming enforcement action.

He announced a change to planning policy to make intentional unauthorised development a material consideration that would be weighed in the determination of planning applications (including retrospective applications) and appeals. The policy was put in place following concern about unauthorised development in the Green Belt, but it would apply equally to all unauthorised development. This new policy has applied to all new planning applications and appeals received since 31 August 2015.¹⁷

3.3 More change to come? Funding to support planning enforcement

As the landing page for the Commons Library briefing [Gypsies and Travellers: Planning Provisions](#) explains at more length, in April 2018, the Government [launched a consultation](#) on powers to deal with unauthorised encampments.^{18,19} The consultation observed that there

¹⁷ [HCWS423, 17 December 2015](#)

¹⁸ SN 07005, 28 March 2019

¹⁹ HM Government, [Consultation: Powers for dealing with unauthorised development and encampments](#), April 2018

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was considerable variation in how enforcement powers were used and invited views on what additional powers might be needed.

The [Government response to the consultation](#) was published in February 2019. One of the actions identified by the Government in that response was practical and financial support for local authorities, including new good practice guidance and funding for planning enforcement to support them in dealing with unauthorised encampments more effectively:

This package also includes a commitment to make up to £1.5m of funding available to local authorities to support planning enforcement through the next round of the Planning Delivery Fund, helping them deal with unauthorised development. This funding could be used to help a range of enforcement activities, from preparing injunctions, to preparing a new enforcement plan. The Ministry of Housing, Communities and Local Government will publish details of the fund and how to bid shortly.²⁰

In answer to a [PQ in June 2019](#), the housing minister, Kit Malthouse, said that further details of the £1.5 million fund for planning enforcement would be announced “over the summer”.²¹

²⁰ HM Government, [Government response to the consultation on powers for dealing with unauthorised development and encampments](#), February 2019: page 10

²¹ [PQ 263210, 20 June 2019](#)

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