

8. What happens when a breach is found?

Once the initial investigations have been carried out and it appears to the Authority that a breach of planning control may have occurred, there are a number of options available:

No Action

It may not always be expedient or possible to take enforcement action, for example, if the harm is insignificant or there is evidence that the time limit for enforcement has passed. The Authority, in deciding whether or not to take formal action, must consider if it is expedient to do so. This means, as set out in section 4 of this plan, that a judgment has to be made in each case as to the seriousness of the breach and the level of any harm caused. In making this decision we must take into account our own planning policies and the policy guidance published by the Government. If the breach is relatively minor, the level of harm caused is low and there is no significant conflict with planning policies, the Authority will not normally take action.

Where there is a breach, however, land may be difficult to sell, mortgage or its value may be reduced even if the Authority takes no or limited action.

Voluntary Compliance

The Authority will normally encourage those responsible for a breach to resolve the problem voluntarily rather than through formal enforcement action.

The person responsible for the breach will normally be written to with an explanation of the breach and, as appropriate, required by a stated date to:

- start to remedy the breach; and/or
- provide the Authority with a written proposal and/or timetable by which the breach will be remedied;
- submit a retrospective planning application.

The obligation to remedy the breach lies with those responsible for it, although the Authority is prepared to offer advice.

The Authority will not allow protracted negotiations to prevent the taking of prompt and effective formal enforcement action where this is necessary. It reserves the right to serve any notice during the course of negotiations, or in the event of a retrospective planning application being made, in order to avoid undue delay. This may also be necessary where there is a possibility that a development may become immune from enforcement action through the passage of time.

Retrospective Planning Applications

In cases where the unauthorised development appears to be acceptable the Authority will normally ask for a retrospective planning application to regularise the breach of planning control and it is usually in the interests of the landowner to do so as it will help to avoid problems when and if the property is put up for sale.

A retrospective planning application can take the form of a full planning application, a minor material amendment application, a non-material amendment application or a discharge of conditions application.

Further information on these different types of applications is available through the following link:

<http://planningguidance.planningportal.gov.uk/blog/guidance/flexible-options/>

Information on how such an application can be made is available on the Authority's website:

<http://www.peakdistrict.gov.uk/planning/your-application/how-to-apply>

Although the submission of retrospective planning applications will be discouraged where a development is clearly unacceptable, the Authority is obliged to deal with such applications even where the unauthorised development is clearly contrary to Authority policies and guidance and is unlikely to be approved.

Power to Decline to Determine Retrospective Planning Applications

The Localism Act 2011 did, however, insert new sections into the 1990 Act which give the Authority the power to decline to consider a retrospective application where an enforcement notice is in place. Further details of this measure can be accessed via the following link:

<http://www.legislation.gov.uk/ukpga/2011/20/section/123/enacted>



Formal Action

Where informal negotiations have been unsuccessful and where the Authority considers the breach has significant harmful effects enforcement action will usually be taken. Most decisions to take enforcement action are made jointly by the Director of Planning and the Head of Law, in accordance with the Authority's scheme of delegation, but sometimes the decision is made by the Planning Committee, where, for example, there is a significant public interest.

Below is the link to the Authority's scheme of delegation:

<http://www.peakdistrict.gov.uk/planning/planning-search/delegated-powers>

Enforcement Notices

An Enforcement Notice is the most common form of notice used to deal with unauthorised development, such as building works or changes of use of buildings or land. A Listed Building Enforcement Notice may be issued when unauthorised works are carried out to listed buildings and where the demolition of unlisted buildings within a Conservation Area occurs without consent a Conservation Area Enforcement Notice may be issued. .

An Enforcement Notice will specify what the alleged breach is, the steps that must be taken to remedy it and a time period in which to carry out those steps. An Enforcement Notice cannot come into effect until at least 28 days after it is served.

Prior to the date that the notice comes into effect the recipient of the notice has a right of appeal to the Secretary of State for Communities and Local Government through the Planning Inspectorate. The Inspectorate will allocate an Inspector to determine the appeal and, in effect, he or she acts as an independent arbitrator between the Authority and the appellant. If a valid appeal is made, the requirements of the Enforcement Notice are suspended until the appeal has been determined or is withdrawn.

Below is a link to the Planning Inspectorate enforcement appeals page which contains more information on appeals:

<https://www.gov.uk/appeal-enforcement-notice>

If any person is later found to be in breach of an enforcement notice that has come into effect, the Authority will consider whether to prosecute in court. Failure to comply with an enforcement notice may be an offence subject to an unlimited fine.

Copies of all formal notices served are kept on the Enforcement Register which is available for inspection at the Authority's offices.

Further information on enforcement notices is available via the following link:

<https://www.gov.uk/guidance/ensuring-effective-enforcement#Enforcement-Notice>

Section 215 (Untidy Land) Notice

Where the condition of buildings or land causes serious harm to the amenity of an area, the Authority may serve on the owner and occupier a Notice under Section 215 of The 1990 Act. Such a notice would require steps for remedying the condition of the land or buildings and specify the time for doing so.

The Notice can be appealed at a magistrates hearing. Failure to comply with a Section 215 Notice may be an offence subject to a maximum fine of £1,000.

Further information on Section 215 Notices is contained in a guidance note, accessed online via the following link:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/11491/319798.pdf

Breach of Condition Notice

This type of notice can only be used where planning permission has been granted subject to conditions and one or more of the conditions has been breached. The Authority can issue a Breach of Condition Notice (BCN) to ensure full or part compliance with the planning conditions.

A BCN would state the breach and the steps required to remedy the breach. The Notice will allow a minimum of 28 days in which to comply with the requirements. There are no rights of appeal against a BCN. Failure to comply with a BCN may be an offence subject to a maximum fine of £2500.

Further information on Breach of Condition Notices can be accessed via the following link:

<http://planningguidance.planningportal.gov.uk/blog/guidance/ensuring-effective-enforcement/breach-of-condition-notice/>

Stop Notice and Temporary Stop Notice

The Authority has the power to issue a Stop Notice to require the immediate cessation of unauthorised works or the unauthorised use of land or buildings. A Stop Notice must be issued at the same time as an Enforcement Notice or before an Enforcement Notice comes into effect.

Alternatively a Temporary Stop Notice may be served. This is similar to a Stop Notice but can be issued without an accompanying Enforcement Notice. Temporary Stop Notices are effective immediately after they are served but are only effective for up to 28 days. Within that period the Authority must consider whether to take any further enforcement action

Stop Notices and Temporary Stop Notices are most commonly used to deal with breaches of planning control that are seriously affecting the amenity of nearby residents or to prevent serious or irreversible harm to the environment.

There are limitations on the service of these types of notice and in some circumstances compensation may be payable by the Authority if a recipient makes a successful challenge. Stop Notices and Temporary Stop Notices are therefore used selectively and only in the most serious cases.

Further information on Stop Notices and Temporary Stop Notices can be found via the following links:

<http://planningguidance.planningportal.gov.uk/blog/guidance/ensuring-effective-enforcement/stop-notice/>

<http://planningguidance.planningportal.gov.uk/blog/guidance/ensuring-effective-enforcement/temporary-stop-notice/>

Direct Action

Failure to comply with the requirements of an enforcement notice, breach of condition notice or a Section 215 notice may result in the Authority carrying out works required by that notice. Any costs and expenditure incurred in carrying out such works can be recovered from the landowner and where costs and expenditure are not recovered they can be registered as a charge on the land.

Injunctions

Legal powers (contained in s. 187B of The 1990 Act) are available for the Authority to apply to the courts for an injunction to stop an actual or alleged breach of planning control. Injunctions are a discretionary order. They can be used to require someone to stop doing something or to require them to carry out something. They are usually only used where there is urgency, where the breach is serious or where other legal processes have not led to the breach being rectified. Failure to comply with an injunction can lead to an unlimited fine and/or imprisonment.

Further information on injunctions can be accessed via the following link:

<http://planningguidance.planningportal.gov.uk/blog/guidance/ensuring-effective-enforcement/injunction/>

Prosecution

A breach of planning control is not a criminal offence. However, non-compliance with the requirements of a formal notice to remedy a breach may be a criminal offence and on conviction the person served with the notice may be subject to a fine.

Where a contravener has failed to comply with a formal notice the Authority will normally instigate prosecution proceedings if there is a realistic prospect of conviction and it is considered to be in the public interest to do so.



At the time the Authority secures a conviction it may seek a confiscation order against the defendant under powers set out in the Proceeds of Crime Act 2002. In summary, these powers allow for financial benefit in excess of £5000 arising from criminal offences to be recovered. In deciding the amount to be recovered the court can also take into account property held by the defendant or transferred to the defendant in the preceding six years and expenditure incurred by the defendant in the preceding six years, as it would normally be assumed that those benefits have been obtained as a result of general criminal conduct.