

# The Planning Series: 7 - Enforcement

Quick Guide

May 2011

## What is enforcement

The town and country planning system in Wales regulates the use and development of all land and buildings.

Local Planning Authorities may need to consider taking enforcement action against unauthorised development or a breach of any conditions imposed as part of a planning permission.

Although in itself it is not a criminal offence to carry out an unauthorised development or make a change in land use, powers are available to Local Planning Authorities to bring unauthorised development under planning control. Failure to comply with a court order, or enforcement action taken under it, may be an offence.

## When can enforcement action take place?

Under Part VII of the *Town and Country Planning Act 1990*, Local Planning Authorities have a range of enforcement powers to address breaches of planning control.

These powers are discretionary. When deciding on whether to take enforcement action, Local Planning Authorities are required to consider each case individually and whether the breaches could be resolved without taking such action.

According to *Planning Policy Wales*, the document that sets out the land use policies of the Welsh Government:

3.8.1 An effective development management process requires local planning authorities to be prepared to take **enforcement action** in appropriate circumstances. The decisive issue for the authority is whether the breach of planning control would unacceptably affect public amenity or the existing use of land and buildings meriting protection in the public interest.

3.8.2 Enforcement action taken by an authority to prevent or remedy breaches of planning control needs to be effective and timely. This means that local planning authorities should look at all means available to them to achieve the desired result. In all cases there should be dialogue with the owner or occupier of land and in some cases mediation may also be an agreed way forward. In many cases this dialogue could result in an accommodation which means that enforcement action is unnecessary. Such early dialogue or mediation would avoid enforcement action coming as a surprise to the owner or occupier.

Local Planning Authorities should also consider the gravity of the breach when deciding on the course of action (if any) it considers appropriate to resolve the problem.

## What types of enforcement action can be taken?

A private citizen cannot take enforcement action, but can inform the Local Planning Authority if they consider there has been a breach of planning control.

Enforcement actions that can be taken by Local Planning Authorities include the following:

### Enforcement Notice

An authority may issue an Enforcement Notice where planning controls appear to have been breached. It sets out the remedial action that needs to be taken to correct the breach. Once served, there is a 28 day period before the notice comes into effect.

Once the notice comes into effect, there is a further period of time to allow for compliance. The length of time depends on the nature of the breach. Failure to comply with an enforcement notice is a criminal offence and can lead to a fine of up to £20,000.

### Breach of Condition Notice

This is served where conditions attached to a planning permission have not been followed. Failure to comply can lead to a fine of up to £1,000.

### Stop notice

This is issued by the Local Planning Authority to stop a development or an activity. It can only be issued after an Enforcement Notice has been served. Failure to comply with a Stop Notice can lead to a substantial fine.

### Injunction

If an authority considers that a breach of planning control is sufficiently serious, it may apply to the Courts for a restraint injunction. Those in breach of an injunction can be imprisoned.

### Others

Other types of actions include those that can be taken against unauthorised advertisements and failure to comply with regulations made about listed buildings and conservation areas.

In England, if a Local Planning Authority considers that there has been a breach of planning control and that the activity should be stopped immediately, it may issue a **Temporary Stop Notice**. This differs from a Stop Notice, in that it does not require an Enforcement Notice to be issued first. A temporary notice applies for a maximum of 28 days and cannot be used against dwellings. A similar power exists in Wales but has not yet been introduced. The Welsh Government announced in December 2009<sup>1</sup> that it would be carrying out research to establish whether or not the introduction of Temporary Stop Notices in Wales would be justified.

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<sup>1</sup> *Planning Enforcement System Review, Conclusions of the Welsh Assembly Government*, December 2009

## Is the issue of a Completion Notice a type of enforcement?

Local Planning Authorities have the power to issue Completion Notices to encourage developers to complete development for which planning permission has been obtained. The penalty for failure to comply with a valid notice – within the specified period of twelve months, or more – is that planning permission will be deemed to have expired.

However issuing a Completion Notice is not a form of enforcement action. Issuing such a notice does not guarantee the completion of uncompleted or unfinished development: enforcement action will still be required to deal with development for which planning permission has expired because a Completion Notice has not been complied with.

## Are there time limits for enforcement action?

Local Planning Authorities must take action within specified time limits.

For most types of 'operational' development, plus the change of use of a building to a single dwelling house, the time limit is **four years** after the development is completed. For any other breach of planning control the time limit is **ten years** after completion.

The Welsh Government announced in December 2009<sup>2</sup> that it would be carrying out research to establish whether or not the four year and ten year time limits should be changed.

## Can the Welsh Government take enforcement action?

Local Planning Authorities are responsible for the enforcement of planning control. However if it appears to the Welsh Ministers that in any particular case an enforcement notice should be issued, it may issue such a notice, but not without first consulting the relevant Local Planning Authority. An enforcement notice issued by the Welsh Ministers has the same effect as a notice issued by the Local Planning Authority.

## Is there a right of appeal against enforcement action?

There is a right of appeal against an **Enforcement Notice**, but not against a Breach of Condition Notice or a Stop Notice. An appeal against a notice may be made to the Welsh Government during the 28 day period before it comes into effect. The grounds for appeal include that planning permission ought to be granted for the activities cited in the enforcement notice or that the implied breach of planning control has not taken place.

The Planning Inspectorate, which is agency of the Welsh Government, handles appeals against Enforcement Notices.<sup>3</sup>

<sup>2</sup> *Planning Enforcement System Review, Conclusions of the Welsh Assembly Government*, December 2009

<sup>3</sup> Further details are contained in **Quick guide: Appeals**

## Further information

### Planning portal

The **Planning portal** is the UK Government's planning and building regulations resource. It includes information on the planning system in Wales, although some of the content only applies to England. There is information about how to make an enforcement appeal on the **website**.

### Welsh Government

The **planning section** of the Welsh Government website provides information including:

- **Planning Policy Wales**: the principal statement of planning policy for Wales; and
- **Circular 07/2003: Planning (and analogous) appeals and call – in procedures**.

### Planning Aid Wales

**Planning Aid Wales** is a charitable organisation helping **eligible** individuals and communities to participate more effectively in the planning system. It provides advisory services, including a helpline.

Other planning quick guides produced by the Research Service:

- **National planning policy**;
- **Local planning policy**;
- **Developments that don't need planning permission**;
- **Planning permission**;
- **Call-in of planning applications**
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For further information on Planning Enforcement, please contact **Graham Winter**, Research Service ([Graham.Winter@wales.gov.uk](mailto:Graham.Winter@wales.gov.uk)).

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