

Is Enforcement Working – Consultation Questions

1. We feel that it is important that the decision whether or not to take enforcement action remains at the discretion of the local planning authority. But there are arguments for and against.
2. We would be grateful for views, from local authorities in particular, on resourcing planning enforcement and whether this presents a barrier to its effectiveness. Is identifying and retaining suitable staff to undertake enforcement work a problem? Is there a need to raise the profile of planning enforcement and for local authorities to accord it a higher priority?
3. The Government believes that criminalisation would be an inappropriate and disproportionate response. Criminalisation seems too draconian a penalty given the minor and often unwitting nature of the vast majority of breaches of planning control.
4. We believe that retrospective applications continue to have a role to play in legitimising unauthorised development against which enforcement action is inappropriate.
5. Where a retrospective application is not submitted, should the local planning authority be able to require a fee to be paid with non-payment being an offence?
6. We believe that higher fees for retrospective planning applications would be counterproductive, acting as a further disincentive to applying. The ability to apply retrospectively does not in itself encourage unauthorised development.
7. We believe that the range of enforcement powers currently available gives local authorities the right tools to be able to effectively enforce planning control. However we would welcome views on whether all the powers available are necessary, or indeed whether more are needed.
8. We do not believe that local planning authorities are reluctant to take enforcement action because of the risks of failure, but we would welcome authorities' views on this.
9. Why is the use of formal enforcement powers declining and do steps need to be taken to regain public confidence in the system?
10. We would welcome views on the usefulness of the existing Good Practice Guide and any suggestions for amendments or additions.
11. Does the risk of compensation liability acts as a deterrent to the use of stop notices?
12. Should provision be made in legislation to enable a stop notice to be issued at the start of unauthorised development and before an enforcement notice is served?
13. We do not see any need to introduce a right of appeal against a breach of condition notice.
14. Views are sought on the practicalities of introducing and operating a requirement to have a notice on the site indicating when the work commenced. Should there be a sanction for failing to display such a notice? A possible alternative would be a requirement for the developer to notify the planning department when works are about to commence.
15. Would a self-certification process to confirm that a development accords with the planning permission be workable?

16. Should the provisions of the planning contravention notice be extended to provide for a power to require the submission of a planning application?
17. We invite views on the abolition of the 10 year rule and on whether there should be a transitional period, of say 3 years, before abolition of the ten year limit to give time for obtaining lawful development certificates for all existing development which did not have planning permission.
18. We invite views on the practicalities of serving enforcement notices soon after retrospective planning permission is refused.
19. Should local authorities have the right to decline to determine applications for lawful development certificates or planning permission once an enforcement notice has been served which relates to that development?
20. We consider that the right to appeal against an enforcement notice should remain in its current form.
21. We believe that all the grounds of appeal should remain in their current form. (If the ten-year rule was to be abolished (para. 17 above) an amendment to ground (d) would be required).
22. Should the whole of the 'double deemed fee' go to the local planning authority to help to pay towards the cost of enforcement? Local authorities would be expected to take on the responsibility for administering the administrative fee system, including initial calculation of the deemed application fee.
23. We invite views on the practicalities of authorities joining forces to identify cases which have reached a similar stage and which can be brought to Court together.
24. We invite views on the merits and practicalities of skills sharing and joint working between local authorities on enforcement cases, and on sharing legal representation.
25. Is there a need for more or better guidance for Magistrates?
26. Is the level of fines which Magistrates are able to impose adequate? Should local authorities more frequently invite Magistrates to decline jurisdiction in cases where the fine is likely to be more than £20,000 so that these cases would instead be heard in the Crown Courts where a higher fine can be imposed?
27. Is deferment a real problem and might bundling cases together for hearing reduce the scope for deferment?
28. Views are invited on the suggestion that when local planning authorities are seeking an injunction in order to establish "harm" the judge should be invited to visit the appeal site to see first hand the exact nature and effects of the breach of planning control.
29. Would a formal mediation process for enforcement result in quicker and more effective resolution of breaches of planning control?