

OFFICE OF THE DEPUTY PRIME MINISTER

ODPM Circular 02/2005
Office of the Deputy Prime Minister
Eland House, Bressenden Place, London SW1E 5DU

7 March 2005

TEMPORARY STOP NOTICE

1. This Circular gives guidance on the temporary stop notice provisions in Part 4 of the Planning and Compulsory Purchase Act 2004 which inserted sections 171E to 171H to the Town and Country Planning Act 1990. It should be kept in mind that though the guidance reflects the Office's current considered views, interpretation of the law is ultimately for the Courts.

SUBORDINATE LEGISLATION

2. The Town and Country Planning (Temporary Stop Notice) (England) Regulations 2005 (S.I. 2005 No. 206) specify activity not prohibited by a temporary stop notice.

THE POWER TO SERVE A TEMPORARY STOP NOTICE

3. Where the local planning authority consider that there has been a breach of planning control and it is necessary in order to safeguard the amenity of the area that the activity that amounts to the breach should stop immediately, section 171E enables the local planning authority to issue a temporary stop notice. This differs from the normal stop notice powers because the temporary stop notice does not have to wait for an enforcement notice to be issued. In addition the effect of a temporary stop notice will be immediate, it will not be necessary to wait three days before the temporary stop notice takes effect or give reasons why the temporary stop notice will take effect immediately.
4. The temporary stop notice must be in writing and must set out the activity that the local planning authority thinks is a breach of planning control. It must prohibit the carrying on of the activity and set out the local planning authority's reasons for issuing the temporary stop notice.
5. The temporary stop notice may be served upon any person who appears to be carrying out the activity prohibited by the temporary stop notice, anyone who seems to be an occupier of the land to which the notice relates, or anybody who appears to have an interest in the land. It is for the local planning authority to decide which is the appropriate person or persons. In cases where such persons cannot immediately be

located, or refuse service of the temporary stop notice, a copy of the notice on the site will suffice.

PUBLIC NOTIFICATION OF SERVICE OF A TEMPORARY STOP NOTICE

6. The local planning authority must also display a copy of the temporary stop notice on the site with a statement that the temporary stop notice has been served and failure to comply with the temporary stop notice is an offence. The site notice extends the effect of the temporary stop notice to any person contravening it.
7. The site notice publicising the temporary stop notice must state the date that the temporary stop notice has been served, the activity that has to cease and that any person contravening the temporary stop notice may be prosecuted for an offence under section 171G. The temporary stop notice takes effect on the day that the site notice is displayed.

CESSATION OF THE EFFECT OF A TEMPORARY STOP NOTICE

8. The temporary stop notice expires 28 days after the display of the notice on the site, or any shorter period set out in the temporary stop notice, or if it is withdrawn by the local planning authority. The maximum length of time that the temporary stop notice will have effect is for a period of 28 days. During this period the local planning authority must decide whether it is appropriate to take enforcement action. At the end of the 28 days there is the risk of the activity resuming if an enforcement notice is not issued and a stop notice served.

SCOPE OF THE PROHIBITION IN A TEMPORARY STOP NOTICE

9. The activities that a temporary stop notice may prohibit include: a use of the land which is ancillary, or incidental to the unauthorised main use of the land; or a particular activity taking place only on part of the land; or an activity which takes place on the land intermittently or seasonally.
10. Therefore the activity need not be taking place on the entire site. It might be confined to a specific area of the site, e.g. a particular building from which noise, fumes and dust are being emitted; or a part of the site where open storage of scrap materials is unacceptable because of the height at which the scrap is piled. In deciding whether to limit the temporary stop notice to only part of the site, the local planning authority will need to consider whether the activity to be prohibited is capable of readily being moved around to any other part of the site, e.g. open storage of pallets. If so, it will usually be prudent to make the temporary stop notice apply to the entire site to prevent the prohibited activity from being carried out on another part of the site.
11. An “activity” which the temporary stop notice may prohibit is defined in section 171E(1) of the 1990 Act as “the activity (or any part of the activity) which amounts to the breach.” Because a temporary stop notice is prohibitory, it is not appropriate for use in any circumstances which require some positive action to be taken in response to it. A temporary stop notice can only require an activity to cease, or reduce or minimise the level of an activity. The “immediate” cessation of activities should allow for the shutting down or making safe any activity. Where building operations are stopped allowance should be made for any work necessary to make the site safe. A temporary

stop notice may prohibit an unauthorised activity which is ancillary or incidental to the change of use of land.

12. A temporary stop notice may be served in cases where planning permission has been granted subject to conditions which if not complied with can result in serious harm and those conditions have not been complied with. Examples of these types of conditions include: archaeological surveys required before works commence on the site; tree protection required before works commence on the site; tree surveys indicating trees to be retained before works commence on the site; and wheel washing equipment for vehicles on the site.

TEMPORARY STOP NOTICE RESTRICTIONS

13. The primary legislation makes clear that a temporary stop notice may not prohibit the use of a building as a dwelling house.
14. The Town and Country Planning (Temporary Stop Notice) Regulations 2005 further make clear that a temporary stop notice may not prohibit the continued stationing of a caravan on land where the caravan is the main place of residence of the occupier of the caravan, subject to the qualifications referred to below.
15. The Town and Country (General Permitted Development) Order 1995 in part 5, Class A of Schedule 2 links a permitted development right to land use for a caravan to the situations, set out in Schedule 1 to the Caravan Sites and Control of Development Act 1960, where there is no need to obtain a caravan site licence. Therefore this permitted development right covers the following:
 - a) use of land by a person travelling with a caravan for one or two nights, subject to an annual limit of 28 days of such use on that land or adjoining land;
 - b) use of up to three caravans for up to 28 days a year on holdings of not less than 5 acres;
 - c) use of any land for up to five touring caravans at once by members of the Caravan Club, the Camping and Caravanning Club and other recognised recreational organisations, provided the site has an exemption certificate from Defra;
 - d) stationing a caravan on agricultural land to accommodate a person or persons employed in farming operations 'during a particular season' (this can cause uncertainty and controversy where season follows season, and workers' caravans remain most, or all, of the year);
 - e) use of land as a caravan site for the accommodation of workers employed in carrying out building or engineering operations; and
 - f) use of land as a caravan site by a travelling showman who is a member of an organisation of travelling showmen which holds a certificate and who is travelling for the purpose of his business.

These permitted development rights apply whether or not land has been sub-divided, though the right under (b) above would not apply to plots of less than 5 acres.

16. There are no permitted development rights specifically for Gypsies.
17. Temporary stop notices may be used in cases where there are no permitted development rights and where the local planning authority considers that the risk of harm to a compelling public interest arising from the stationing of the caravan is so serious so as to outweigh any benefit, to the occupier of the caravan, in the stationing of the caravan for the period for which the temporary stop notice has effect.
18. Some examples of locations where the unauthorised stationing of a caravan would normally be unacceptable are:
 - Sites of Special Scientific Interest (SSSI) where an encampment endangers a sensitive environment or wildlife;
 - Grounds of ancient monuments or listed buildings, battlefields or sites of potential archaeological interest;
 - A site where pollution from vehicles, or dumping, or from poor sanitation could damage ground water or water courses;
 - A derelict area with toxic waste or other serious ground pollution;
 - The verge of a busy road where fast traffic is a danger to unauthorised campers;
 - Where the site is exposed to unacceptable levels of air pollution;
 - Where there is an immediate negative impact on the health of the occupiers of the caravans.
19. A temporary stop notice may be used to prohibit the stationing of any additional caravans on land, on which a caravan is already stationed. A single temporary stop notice may apply to the whole of the site (planning unit) in circumstances where a field is subdivided into plots, irrespective of the fact that the field may not be in single ownership. The temporary stop notice may also be used to stop other development associated with using the site for further caravans and any further work developing the site. Local planning authorities should ensure at least minimum standards of health, hygiene and public health are maintained before taking action and, for existing caravans, should allow basic temporary facilities including some form of temporary foul waste disposal which prevents nuisance or risk to anyone's health.
20. A temporary stop notice may not prohibit the carrying out of any activity which has been carried out (whether continuously or not) for a period of more than four years ending with the day on which a copy of the notice is first displayed. (For this purpose, no account is to be taken of any period during which the activity was authorised by planning permission.)
21. A temporary stop notice may be used to prohibit "operational development" - activity consisting of, or incidental to building, engineering, mining or other operations, or the deposit of refuse or waste materials, or the change of use to operational development.

22. The local planning authority may not issue a further temporary stop notice upon the expiry of a temporary stop notice. The local planning authority will only be able to issue a temporary stop notice for the same activity if it has taken some form of enforcement action (including obtaining an injunction under section 187B) against the activity set out in the original temporary stop notice. Therefore, where a temporary stop notice is issued stopping a specified activity and an enforcement notice is issued and this is complied with but some time later the same activity commences again, the local planning authority would be able to issue a further temporary stop notice against the same activity.

PENALTIES FOR CONTRAVENTION OF A TEMPORARY STOP NOTICE

23. Section 171G provides that, when a person contravenes a temporary stop notice after a site notice has been displayed or the temporary stop notice has been served on them, they shall be guilty of an offence. The offence may be charged by reference to any day or longer period of time and a person may be convicted of a second, or subsequent offence by reference to any period of time following the preceding conviction for such an offence. A person guilty of this offence is liable, on summary conviction, to a fine not exceeding £20,000; and, on conviction on indictment, to an unlimited fine. In determining the amount of any fine to be imposed, the Court is to have regard to any financial benefit which has accrued, or appears likely to accrue, in consequence of the offence.
24. It is a defence for any person prosecuted for an offence under section 171G to prove that the temporary stop notice was not served on them and that they did not know, and could not reasonably have been expected to know, of its existence.

CHALLENGING THE PROHIBITION IN A TEMPORARY STOP NOTICE

25. Any person affected by a temporary stop notice will be able to make representations to the local planning authority. The local planning authority should include the name, address and telephone number of their nominated officer in the temporary stop notice. There is no right of appeal to the Secretary of State against the prohibition in a temporary stop notice. The validity of a temporary stop notice, and the propriety of the local planning authority's decision to issue a temporary stop notice, may be challenged by judicial review. To do so the person affected by a temporary stop notice will need to seek leave from the court.
26. The temporary stop notice continues to apply (for a maximum of 28 days) even when a person served with a temporary stop notice has challenged it under section 171G(5) or by way of judicial review.
27. If the developer has not already got planning permission, he still has the right to make an application for a lawful development certificate, or for planning permission. Only if a lawful development certificate is granted will there be any right to compensation for any financial loss the recipient may have incurred as a consequence of the temporary stop notice. The temporary stop notice will have a similar effect to an interim injunction. An enforcement notice can be issued before the temporary stop notice expires, with the onus on the developer to prove that the development is not in breach of planning control. Alternatively a planning application can be submitted although this will not affect the temporary stop notice which will continue to take effect. The

existing powers to serve a stop notice under section 183 may have to be used following the issue of an enforcement notice in order to prevent any further works or use taking place unless and until planning permission is granted either by the local planning authority or by the Secretary of State on appeal. If the application is refused, or any resulting appeal is also unsuccessful, enforcement action can be taken to remove any unauthorised works. This approach will apply only to work in progress; if the development is complete then an enforcement notice should be issued in the usual way.

COMPENSATION

28. A person who at the time the temporary stop notice is served has an interest in the land to which the temporary stop notice relates may be entitled to be compensated by the local planning authority for any loss or damage directly attributable to the prohibition effected by the temporary stop notice. Compensation is only payable if:
 - a) the activity specified in the temporary stop notice was the subject of an existing planning permission and any conditions attached to that planning permission have been complied with ;
 - b) permitted development under the Town and Country Planning (General Permitted Development) Order 1995 or permitted under a local development order (a new provision introduced by the Planning and Compulsory Purchase Act 2004);
 - c) the local planning authority later issue a lawful development certificate confirming that the development was lawful;
 - d) the local planning authority withdraws the temporary stop notice for some reason other than because it has granted planning permission for the activity specified in the temporary stop notice after the issue of the temporary stop notice.
29. Even if the local planning authority incurs a liability to pay compensation for one of these four reasons, that liability may be reduced or eliminated in any case where the claimant was required, by a planning contravention notice or other formal requisition for information, to provide information to the local planning authority and did not provide it or otherwise co-operate with the local planning authority when responding to the notice. This is the same as the compensation provisions for the stop notice under section 186 of the 1990 Act. The purpose of these provisions is to ensure that someone who fails to provide the local planning authority with required information, or pursues a course of non-co-operation with the local planning authority, should not be able to obtain any compensation for loss or damage which could have been avoided if he or she had provided the required information or co-operated with the local planning authority.
30. Compensation is not payable where the local planning authority grant retrospective planning permission for the activity specified in the temporary stop notice (paragraph 28(c) above).
31. There is a 12 month time limit running from the date the temporary stop notice ceased to have effect, or the date it was withdrawn, for claiming compensation for loss or damage due to a temporary stop notice. The usual approach, if liability is admitted, is for the local planning authority and the claimant to agree on the amount of any

compensation which may be payable. If agreement on the amount payable cannot be reached, the dispute is normally referred to the Lands Tribunal for decision.

ADMINISTRATIVE PROCEDURES FOR DEALING WITH TEMPORARY STOP NOTICES

32. It is essential for local planning authorities to act quickly to spot the breach of planning control and decide that a temporary stop notice is required. Many breaches of planning control occur outside normal working hours and at weekends. Therefore it would be appropriate for planning enforcement to have the same emergency cover as other environmental and public health protection services.
33. It is important to draft the terms of the temporary stop notice with clarity and precision. There is no opportunity for any drafting deficiency to be corrected after it has been issued. The temporary stop notice should prohibit all the activities comprised in the alleged breach of control, or certain of the specified activities at which the local planning authority has decided to direct the notice. In the event of a subsequent contravention of a temporary stop notice, the local planning authority may need to initiate proceedings under section 171G of the 1990 Act, which would require the local planning authority to prove “beyond reasonable doubt” (the criminal standard of proof) that the prohibition had been contravened by the defendant. The terms of the notice must provide the basis for any such prosecution. It is because it is an offence that drafting must be clear and there must be a clear case that there is an offence before a conviction.
34. Once the local planning authority has decided to issue a temporary stop notice, it is essential to implement the decision speedily and effectively. There should always be a clear understanding (preferably stated in administrative instructions) about the respective responsibilities of the local authority’s Planning Department and Legal Department for the necessary preparatory work, the formulation of the terms of the temporary stop notice, the arrangements for issuing and/or serving it and how its practical effect will be assessed (including the need to bring a prosecution quickly if the notice is contravened). Since issuing a temporary stop notice is likely to be relatively infrequent for many local planning authorities, it will usually be best to maintain the essential knowledge and experience of temporary stop notice procedures in the small group of planning and legal officers that are already familiar with stop notice procedures.
35. It is important to obtain proper authorisation for issuing a temporary stop notice, from the Council’s officer to whom authority to issue temporary stop notices has been delegated. Although there is no right of appeal to the Secretary of State against a temporary stop notice, it can be defended on the grounds in section 171G(5) of the 1990 Act; that it was not properly authorised, or that the decision to issue it was unreasonable. A challenge may be brought by seeking leave, in the High Court, to bring judicial review proceedings.

USE OF POWERS TO ISSUE A TEMPORARY STOP NOTICE

36. The effect of issuing a temporary stop notice will be to halt the breach of control, or the specified activity immediately. This can have immediate serious consequences on a business. Local planning authorities should therefore ensure that a quick but adequate

assessment of the likely consequences of issuing a temporary stop notice is available to the officer who will authorise issue of the notice. It should not be necessary to carry out a detailed cost/benefit assessment but the assessment should examine the foreseeable costs to the company, operator or landowner against whose activities the stop notice is directed, and the benefit to amenity in the vicinity of the site which is likely to result from a temporary stop notice.

COST/BENEFIT ASSESSMENT FOR TEMPORARY STOP NOTICES

37. The costs arising from issuing a temporary stop notice will usually be confined to the firm, operator or landowner who is thereby prevented from carrying on the activity prohibited by the notice. There may occasionally be some costs to the local economy. The costs to a firm may vary from having to modify a production process, at little or no additional cost (at one extreme), to the complete cessation of a business (at the other), with consequent loss of jobs, failure to complete contracts, or bankruptcy. Since a temporary stop notice can be directed at any activity, or any part of an activity, or any associated activity, the local planning authority should ensure that a temporary 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.
38. Before deciding to issue a temporary stop notice, the local planning authority's representative may choose to 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. If an acceptable alternative means of production or operation would require the grant of planning permission, in order to carry it on lawfully, the local planning authority should take the initiative in inviting a planning application. However, since the purpose of a temporary stop notice is to compel the activities specified in it to cease immediately, any delay should be minimised.
39. The benefits of issuing a temporary stop notice will usually be readily apparent as an improvement in amenity in the neighbourhood. The local planning authority should consider how many people are likely to benefit, and how adversely their amenities will be affected if a temporary stop notice is not issued (on the assumption that an enforcement notice will be issued and eventually take effect on expiry of the compliance period specified in it).

ENVIRONMENTAL IMPACT ASSESSMENT

40. Planning authorities will wish to consider using temporary stop notices where the breach of planning control relates to failure to comply with environmental impact assessment requirements, particularly where continuing with the breach could lead to adverse environmental effects.

HUMAN RIGHTS

41. The temporary stop notice provision may not lawfully be used in a way that contravenes Article 1 of the First Protocol and Article 14 of the European Convention on Human Rights. The temporary stop notice powers are subject to section 3 of the Human Rights Act 1998, and are compatible with the Convention rights. Before issuing a temporary

stop notice, the local planning authority must be satisfied that there has been a breach of planning control and that “it is expedient that the activity which amounts to the breach is stopped immediately”, see section 171E(1)(b). Section 171E(3) requires the local planning authority to give reasons for issuing the temporary stop notice on the face of the notice. The local planning authority must therefore be satisfied that immediate cessation of the activity is expedient in the circumstances and must set out its reasons for this decision on the face of the notice.

EFFECTIVE SERVICE OF A TEMPORARY STOP NOTICE

42. The validity of a temporary stop notice cannot be challenged on the ground that it has not been served on someone who ought to be served with it. Section 171E(4) enables the local planning authority to serve a temporary stop notice on any person who appears to them to have an interest in the land, or to be engaged in any activity prohibited by the notice. Thus, for example, when a temporary stop notice is directed at a breach of planning control involving operations to rebuild a derelict rural dwelling house, and the owner of the land cannot be contacted, the local planning authority may serve the temporary stop notice on anyone who is actually engaged in carrying out the building works prohibited by the notice. Normal administrative practice should be to trace any owner or occupier of the land and arrange for the temporary stop notice to be served on them also. But in cases where such persons cannot immediately be located a copy of the notice on the site will be sufficient.

PROSECUTION FOR AN OFFENCE

43. When a site notice has been displayed for a temporary stop notice, it is an immediate offence for anyone to contravene, or to cause or permit the contravention of, the prohibition in a temporary stop notice. When the temporary stop notice has been served on a person, it is an offence for that person to contravene, or to cause or permit the contravention of, the prohibition in the temporary stop notice immediately after the temporary stop notice has been served on them. It is also an offence to contravene a temporary stop notice if it has been placed on the site in accordance with section 171E(5) of the 1990 Act.
44. To emphasise the seriousness of contravening a temporary stop notice, the local planning authority should always consider a possible prosecution as soon as they have evidence of an offence. Prosecution for an offence under section 171G is usually in the Magistrates’ Court, but may take place in the Crown Court if the Magistrates decline jurisdiction because of the seriousness of the offence, or the defendant elects for jury trial. If there is likely to be a delay in hearing the case in the Magistrates’ Court or Crown Court, the local planning authority should emphasise the seriousness and urgency of the case to the Court’s administrators and ask for an “expedited” hearing.
45. Prosecuting authorities should always be ready to give details, if obtainable, about the proceeds resulting from the offence, so that the Court can take account of them in determining the amount of the fine.

CAUTIONING ALLEGED OFFENDERS

46. When investigating the facts, prior to initiating any proceedings, local planning authorities should have regard to the provisions of sections 66 and 67(9) of the Police and Criminal Evidence Act 1984 in relation to cautioning alleged offenders.

MODEL STOP NOTICE

47. A model temporary stop notice is in the Annex.

JOHN STAMBOLLOUIAN
Head of Planning Development Control Division

Office of the Deputy Prime Minister

The Chief Executives of:

County Councils in England
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Unitary Authorities in England
London Borough Councils
Greater London Authority
Regional Planning Bodies
Regional Development Agencies
Council of the Isles of Scilly

The Town Clerk, City of London

The National Park Officer, National Park Authorities in England

The Chief Planning Officer, The Broads Authority

Office of the Deputy Prime Minister

ODPM Circular 02/2005 Temporary stop notice

CORRECTION

To pages 11, 12 & 13.

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ANNEX

MODEL TEMPORARY STOP NOTICE

IMPORTANT – THIS COMMUNICATION AFFECTS YOUR PROPERTY

TOWN AND COUNTRY PLANNING ACT 1990

(As amended by the Planning and Compensation Act 1991 and the Planning and Compulsory Purchase Act 2004)

TEMPORARY STOP NOTICE

SERVED BY: [name of Council] herein after referred to as “the Council”.

To: [name of intended recipient of the notice]

1. On [date], the Council has issued this temporary stop notice alleging that there has been a breach of planning control on the land described in paragraph 4 below.
2. This temporary stop notice is issued by the Council, in exercise of their power in section 171E of the 1990 Act, because they think that it is expedient that the activity specified in this notice should cease on the land described in paragraph 4 below. The Council now prohibits the carrying out of the activity specified in this notice. Important additional information is given in the Annex to this notice.

3. **THE REASONS FOR ISSUING THIS NOTICE**

[Briefly specify the reasons why the temporary stop notice has been issued. There is no requirement to outline specific policies from the Local Plan.]

4. **THE LAND TO WHICH THIS NOTICE RELATES**

Land at [address of land, or description of relevant part of the land to which the temporary stop notice relates], shown edged red on the attached plan.

5. **THE ACTIVITY TO WHICH THIS NOTICE RELATES**

[Specify the activity required by the temporary stop notice to cease, and any activity carried out as part of that activity, or associated with it.]

6. **WHAT YOU ARE REQUIRED TO DO**

Cease all the activity specified in this notice.

7. **WHEN THIS NOTICE TAKES EFFECT**

This notice takes effect on *[date]* when all the activity specified in this notice shall cease. This notice will cease to have effect on *[date 28 days after it takes effect]*.

Dated: *[date of notice]*

Signed: *[Council's authorised officer]*

On behalf of *[Council's name and address]*

Nominated Officer *[Name of contact officer]*

Telephone Number *[of Nominated Officer]*

ANNEX

WARNING

THIS NOTICE TAKES EFFECT ON THE DATE SPECIFIED IN PARAGRAPH 7.

THERE IS NO RIGHT OF APPEAL TO THE FIRST SECRETARY OF STATE AGAINST THIS NOTICE.

It is an offence to contravene a temporary stop notice after a site notice has been displayed or the temporary stop notice has been served on you. (Section 171G of the 1990 Act). If you then fail to comply with the temporary stop notice you will be at risk of **immediate prosecution** in the Magistrates' Court, for which the maximum penalty is £20,000 on summary conviction for a first offence and for any subsequent offence. The fine on conviction on indictment is unlimited. If you are in any doubt about what this notice requires you to do, you should get in touch **immediately** with *[Council's nominated officer to deal with enquiries, address and telephone number]*. If you need independent advice about this notice, you are advised to contact urgently a lawyer, planning consultant or other professional adviser specialising in planning matters. If you wish to contest the validity of the notice, you may only do so by an application to the High Court for judicial review.

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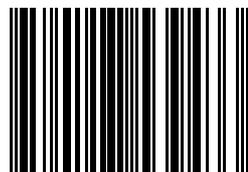
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