

Annex 1: the planning contravention notice

Introduction

1.1 Sections 171 C and 171 D of the Town and Country Planning Act 1990, as amended, ("the 1990 Act") provide, respectively, for:

- the local planning authority (LPA) to require information about activities on land by serving a "planning contravention notice"; and
- penalties for non-compliance with a planning contravention notice.

1.2 These provisions are intended to supplement, for planning enforcement purposes, the LPA's more limited powers, in section 330 of the 1990 Act and section 16 of the Local Government (Miscellaneous Provisions) Act 1976, to require information about interests in land. LPAs may still use the earlier versions to require information, if they prefer. These powers to obtain information may also be used when the LPA contemplate making a discontinuance order, under section 102 of the 1990 Act. The planning contravention notice is not available for use in respect of suspected breaches of listed building or conservation area control, hazardous substances control or control of protected trees.

An optional procedure

1.3 Section 171 C(7) of the 1990 Act provides that "the service of a planning contravention notice does not affect any other power exercisable in respect of any breach of planning control". This emphasises the fact that the service of a planning contravention notice is entirely optional. The LPA need not serve a planning contravention notice before considering whether it is expedient to issue an enforcement notice, or to take any other appropriate enforcement action. Service of a planning contravention notice does not constitute "taking enforcement action" as defined in section 171A(2) of the 1990 Act. The recipient of an enforcement notice need not be given the opportunity, provided by section 171C(4), to make personal representations before the LPA decide whether to issue an enforcement notice. Where the LPA already have information they regard as adequate about the activities taking place on land in breach of planning control, and they consider it expedient to initiate any enforcement action, their enforcement decision should not be open to challenge on the ground that it was unreasonable to proceed with enforcement action without first serving a planning contravention notice and considering the recipient's response to it. Nor should a LPA's enforcement decision, when reasonably taken in the circumstances, put the authority at risk of an award of appeal costs against them because they decided not to serve a planning contravention notice.

1.4 A planning contravention notice may only be served when it appears to the LPA that a breach of planning control may have occurred - *R v Teignbridge District Council ex parte Teignmouth Quay Co Ltd* [1995] JPL 828.

1.5 There is no requirement to enter a planning contravention notice in the LPA's register of enforcement notices, stop notices and breach of condition notices. The notice is not a legal charge on the land.

The recipient of a notice

1.6 Section 171C(1) provides that the recipient of a planning contravention notice is to be:

- anyone who is the owner or 'occupier of the land to which the notice relates, or has any other interest in it; or
- anyone who is carrying out operations on the land, or is using it for any purpose.

1.7 When serving planning contravention notices on persons who have an interest in the land, the LPA should try to ensure, so far as practicable, that any known mortgagees of the land are served with the relevant notice. In cases where the owner of the land is a defaulting mortgagor, it may not be possible to locate him or her, and the mortgagee-in-possession will need to be made aware of the situation.

What a notice may require of the recipient

1.8 The LPA may require the recipient of a planning contravention notice to provide any information they want for enforcement purposes about activities on land. Section 171 C(2) describes the information as relating to

"any operations being carried out on the land, any use of the land and any other activities being carried out on the land; and

any matter relating to the conditions or limitations subject to which any planning permission in respect of the land has been granted."

At this preliminary stage of obtaining information, the LPA need not state their opinion on the "planning unit", or whether the activity to which the notice relates is subordinate or ancillary to some main use of the land.

1.9 Without prejudice to the generality of section 171 C(2), section 171 C(3) specifies in more detail what information a planning contravention notice may require its recipient to give to the LPA, so far as he or she is able to do so. The matters are specified as

"to state whether or not the land is being used for any purpose specified in the notice or any operations or activities specified in the notice are being or have been carried out on the land;

to state when any use, operations or activities began;

to give the name and address of any person known to him to use or have used the land for any purpose or to be carrying out, or have carried out, any operations or activities on the land;

to give any information he holds as to any planning permission for any use or operations or any reason for planning permission not being required for any use or operation;

to state the nature of his interest (if any) in the land and the name and address of any other person known to him to have an interest in the land."

The opportunity to make representations in response to the notice

1.10 Section 171 C(4) also enables the LPA to give the recipient of a notice the opportunity to make a constructive response to the matters with which the notice is concerned, and to make any representations about the notice he or she may wish. The purpose of these provisions is to facilitate discussion, between the LPA and the recipient of a notice, about how any suspected breach of control may be remedied. The provisions are intended particularly for use in circumstances where the LPA consider that formal enforcement action could be avoided if the recipient of the notice would agree to apply for a conditional planning permission to regularise the activities taking place on the land; or to cease any operations or activities; or to carry out any remedial works. The opportunity to make representations in person, at a specified time and place, is intended especially for use where the LPA consider that face-to-face discussion with the recipient of the notice could be helpful. Someone who has proved uncooperative in the absence of any requirement to negotiate could be asked to a discussion of the problem.

1.11 The LPA may consider that no useful purpose would be served by face-to-face discussion with the recipient of the notice. If so, the LPA would be justified in using the notice for the limited purpose of obtaining relevant information they require to decide whether to initiate formal enforcement action. There is nothing to prevent the recipient of a planning contravention notice seeking to discuss a suspected breach of planning control with the LPA's development control officers.

The consequences of failing to respond to a notice

1.12 Section 171 C(5) provides that a planning contravention notice must inform the recipient about the likely consequences of failure to respond to the notice (in particular, that formal enforcement action may be taken by the LPA). It must also refer to the effect of the provisions of section 186(5)(b) of the 1990 Act (which are that no financial compensation shall be payable, in consequence of a stop notice, to a claimant who was required to provide information under section 171C, in respect of any loss or damage which could have been avoided if the claimant had provided the information or cooperated when responding to the notice). This warning might best be included as part of the text of a planning contravention notice, as in the model notice appended to this Annex.

1.13 Someone who is served with a planning contravention notice cannot reasonably be expected to provide information he or she do not possess or could not reasonably find out. Any factual information given in reply to a notice will be part of the relevant information the LPA will have to examine in deciding whether a breach of control has occurred; and, if so, what action may be appropriate to deal with it. The information may support a decision that enforcement action is appropriate; or it may reveal a different use or activity from what had been suspected; or it may show that there is no breach of control on the land. If the reply to a notice creates doubt about the use of the land, or any activity taking place on it, a site-inspection will usually be essential to resolve the doubt and ensure that any subsequent enforcement decision is well-founded.

Non-compliance with a planning contravention notice

1.14 Section 171D provides that non-compliance with any requirement of a notice, after 21 days, is an offence. The maximum penalty, on summary conviction, of this offence is "level 3" on the standard scale, currently £1,000, as provided by the Criminal Justice Act 1991. The same penalty applies when there is a continuing failure to provide the required information. It is a defence for anyone charged with this offence to prove that he or she had a reasonable excuse for failing to comply with the requirement of a notice.

False or misleading statements

1.15 It is also an offence if anyone makes any statement purporting to comply with a requirement of a planning contravention notice which is knowingly false or misleading in a material particular; or recklessly makes such a statement which is false or misleading in a material particular. The maximum summary penalty for this offence is "level 5" on the standard scale, currently £5,000, as provided by the Criminal Justice Act 1991.

Cautioning alleged offenders

1.16 When investigating the facts, prior to initiating any proceedings, LPAs should have regard to the provisions of sections 66 and 67(9) of the Police and Criminal Evidence Act 1984 with regard to cautioning alleged offenders.

Model notice

1.17 A model planning contravention notice is appended to this Annex.

Appendix to Annex 1: Model Planning Contravention Notice

Important - This Communication Affects Your Property

Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991)

Planning Contravention Notice

Served by: [name of Council]

To: [Name[s] of those thought to be owner[s] or occupier[s] of land or person[s] having any other interest in it]
[Name[s] of person[s] thought to be responsible for a possible breach of planning control]

1. This Notice is served by the Council because it appears to them that there may have been a breach of planning control, within section 171 A(1) of the above Act, at the land described below. It is served on you as a person who appears to be the owner or occupier of the land or has another interest in it, or who is carrying out operations in, on, over or under the land or is using it for any purpose. The Council require you, in exercise of their powers under section 171C(2) and (3), so far as you are able, to provide certain information about interest in, and activities on, the land.

2. The Land to Which the Notice Relates

Land at [address or description of land], shown edged red on the attached plan].

3. The Matters Which Appear to Constitute the Breach of Planning Control

[Without planning permission]
[Specify the suspected breach of planning control]
[The failure to comply with a condition or limitation]

4. What You Are Required to Do

Provide in writing, the following information:

(1)

[Specify the information required, having regard to the terms of section 171C(2) and (3)]

(2)

(3)

Time within which the information must be provided: *within twenty-one days*, beginning with the day on which this notice is served on you:

5. Opportunity to Make Representations in Response to Notice

If you wish to make an offer to apply for planning permission, or to refrain from carrying out any operations or activities, or to undertake remedial works; or to make any representations about this notice, the Council, or representatives of the Council, will consider them on [date and time] at [address where the person served with the notice may be heard] where you will be able to make any such offer or representations in person at that time and place.

6. Warning

It is an offence to fail, without reasonable excuse, to comply with any requirements of this notice within twenty-one days beginning with the day on which it was served on you. The maximum penalty on conviction of this offence is a fine of £1,000. Continuing failure to comply following a conviction will constitute a further offence. It is also an offence knowingly or recklessly to give information, in response to this notice, which is false or misleading in a material particular. The maximum penalty on conviction of this offence is a fine of £5,000.

7. Additional Information

If you fail to respond to this notice, the Council may take further action in respect of the suspected breach of planning control. In particular, they may issue an enforcement notice, under section 172 of the 1990 Act, requiring the breach, or any injury to amenity caused by it, to be remedied. [Add any other "likely consequences", in accordance with section 171C(5)(a), if appropriate.]

If the Council serve a stop notice, under section 183 of the 1990 Act, section 186(5)(b) of the 1990 Act provides that should you otherwise become entitled (under section 186) to compensation for loss or damage attributable to that notice, no such compensation will be payable in respect of any loss or damage which could have been avoided had you given the Council the information required by this notice, or had you otherwise co-operated with the Council when responding to it.

Dated: *[date of notice]*

Signed: *[Council's authorised officer]*

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