



*Review of The Planning
Enforcement System
in England*

Final Regulatory Impact Assessment (RIA)



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On 5th May 2006 the responsibilities of the Office of the Deputy Prime Minister (ODPM) transferred to the Department for Communities and Local Government (DCLG)

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Purpose and intended effects of measure

Objective

The outcome of the planning enforcement review seeks to make planning enforcement more effective at preventing harmful developments and better able to play its part in ensuring that people have confidence in the planning system as a whole

Background

The planning system exists to control the development and use of land in the public interest. Ignoring planning controls allows firms to gain an unfair competitive advantage, and undermines public confidence in the system as a whole. In some cases unauthorised development can be dangerous or damaging to the environment or the Government's social objectives, for example, in greenbelt areas or on listed buildings where restrictions to development apply.

Improved planning enforcement powers were introduced in legislation in the Town and Country Planning Act 1990, as amended by the Planning and Compensation Act 1991 – their operation was last reviewed in 1995. Towards the end of 2002 we published a consultation paper “Review of the Planning Enforcement System in England”. We sought views on what, if anything, is wrong with the current enforcement system in England and what might be done to improve it and make it work better. Devolved administrations operate their own enforcement systems and would not be affected by the outcome of this consultation.

Rationale for Intervention

The planning system exists to control the development and use of land in the public interest, and enforcement is a fundamental part of the development control framework. The effective use of enforcement powers is central to ensuring a fair and transparent development control system that protects against the harmful effects of unauthorised development. Disregard of the rules by a minority has the potential to undermine the efficiency and integrity of the planning system.

The enforcement system needs to be as effective, simple and quick as it can be. It must be adequately resourced and properly prioritised. Where there are problems or weaknesses we need to see whether these can be addressed, and if so how.

Better, faster and more effective enforcement will help to engender confidence and trust in the planning system. Where unauthorised development is causing real harm to amenity, prompt and effective enforcement action by local authorities will enable that harm to be remedied in the interests of the community. It will help to improve neighbourhoods and the wider environment. And it will act as a disincentive to those who might seek to deliberately ignore planning controls, and give local authorities the confidence to take appropriate action.

Consultation

Within Government

We consulted with the following Government agencies and Departments: Lord Chancellor's Department, the Home Office, Department for Culture Media and Sport, English Heritage, HM Treasury.

Public Consultation

We received around 500 responses to the 2002 Review of Planning Enforcement. They supported our belief that the existing system of planning enforcement is basically sound, and does not need to be re-invented. Nevertheless we received a wide range of ideas and proposals on how to make planning enforcement more effective and better able to play its part in ensuring that people have confidence in the planning system as a whole. Our options are based on the Government's response to the ideas raised in consultation.

We have already taken forward two measures as a result of the consultation. We have given local planning authorities temporary stop notices, an extra enforcement tool to deal with the range of planning breaches. Local planning authorities can issue a temporary stop notice when unauthorised development commences, to require the immediate cessation of a breach of planning control for a limited period of 28 days. We are also making arrangements for the whole of the deemed application fee to be paid to local authorities – at present it is paid in part to the Planning Inspectorate.

We propose to consult further on some of the responses received:

- i) proposal to abolish the ten-year time limit for taking enforcement action;
- ii) proposals for an unlawful development notice or planning contravention notice;
- iii) proposal for compliance and monitoring charges.

Options

This RIA considers the following options:

1. develop benchmark for enforcement;
2. good practice guidance for Magistrates;
3. good practice guidance for local planning authorities.

For each of these options we have also considered the “do nothing” option.

Risk assessment

Proposal

Option 1 Develop benchmark for enforcement

Because enforcement is a discretionary activity, practice and procedures vary between authorities. We propose to research and develop a possible benchmark, or series of benchmarks, for good practice in enforcement. This would draw on the existing activities that are carried out in authorities – for example, how complaints are dealt with, officer caseload and throughput, publication of policy – and set out some ‘golden rules’ for a good enforcement service that other authorities could make use of if they choose to do so but this will not be a best value performance indicator.

Benefits

Option 1a: Do Nothing

Economic

Authorities would continue enforcement activities as before. There would be no perceived benefits.

Social and Environmental

Authorities would continue enforcement activities as before. There would be no perceived benefits.

Option 1b:

Economic

There may be economic benefits to developers and applicants if better enforcement action is taken as a result of using the benchmark and this results in better prevention of breaches of development control.

Social and Environmental

If authorities used the benchmark it would be highly likely to enable them to reconsider their enforcement practice and procedures and to make improvements to these. This in turn could lead to better enforcement, or a reduction in the need for enforcement. As a result, the community would benefit from a reduction in unauthorised development.

Costs

Option 1a: Do Nothing

Economic

There is unlikely to be any increase in the costs to planning authorities, who would continue to enforce as before.

Social and Environmental

There may be a cost to the community and the environment of continuing unauthorised development where authorities are not carrying out the improved preventative and enforcement measures that the benchmark is intended to address.

Option 1b:

Economic

There would be a starting cost of around £20,000 to the Government to research and develop the benchmark.

There may be increased costs incurred by developers and applicants if better enforcement action is taken as a result of using the benchmark. However, these may also decrease if the result of using the benchmark is better prevention of breaches of development control.

Social and Environmental

Costs to the community and environment are not expected to increase as a result of introducing the benchmark, and may well decrease as less unauthorised development takes place.

Proposal

Option 2 Good practice guidance for magistrates

There have been criticisms levelled at the Courts in relation to their role in enforcing planning controls. Magistrates have little or no up-to-date guidance specifically to help them with the complexities of planning cases. We consider that there should be better guidance for magistrates to assist them when faced with planning enforcement cases. We will work with the DCA the Sentencing Guidelines Council and the Magistrates' Association on the options for advising magistrates, including the possibility of commissioning research to produce a good practice guide to assist magistrates when dealing with planning enforcement cases.

The levels of fines which the Courts may impose for different offences relating to planning enforcement are set out in the Planning and Compensation Act 1991. Some refer to 'standard scale' fines – these scales are reviewed periodically. Others set a monetary maximum – these amounts have remained fixed since 1991. The maximum penalty on conviction for an enforcement notice offence in the Magistrates' Court is £20,000. Our concern is that the level of fines do not properly reflect the benefit that can accrue from a breach of planning control.

Benefits

Option 2a: Do Nothing

Economic

There would be no good practice guide and no economic benefits. Magistrates hearing planning enforcement cases would rely on any existing guidance, previous cases and their own experience.

Social and Environmental

There would be no good practice guide and no social and environmental benefits.

Option 2b:

Economic

A good practice guide would be produced to assist Magistrates. Guidance would include advice on the level of fines to reflect any benefits gained by the breach, its seriousness and repeated offences. Advice on deferment when reducing the scope to successfully seek deferment would lead to quicker rectification of the breach. Where cases are deferred the effect is that the breach in question continues. Guidance would also provide case studies showing where high levels of fines have been used appropriately.

Social and Environmental

If guidance was provided for magistrates, this could result in more successful prosecutions. There would be a reduction in cases that the authority brought that were not successful. This in turn would bring social and environmental benefits.

Costs

Option 2a: Do Nothing

Economic

There would be no additional costs.

Social and Environmental

Any costs will remain as they are at present and any negative impact on the environment and public amenity through any lack of successful enforcement action will continue.

Option 2b:

Economic

There would be initial business costs to Government of an estimated £20,000 for research and publication of the advice to magistrates.

There could be additional costs to developers and applicants if the improved advice led to magistrates imposing more or higher fines.

Social and Environmental

Any costs will remain as they are at present but the negative impact on the environment and public amenity would be less if the advice to magistrates results in successful enforcement action.

Proposal

Option 3 Good Practice Guidance for Local Planning Authorities

The Government has announced that Planning Policy Guidance Notes (PPGs) are to be replaced by Planning Policy Statements (PPSs). PPG18 “Enforcing Planning Control” is part of that change to reflect the policy objective. It was published in 1991 following the changes to enforcement legislation made by the Planning and Compensation Act 1991, and needs to be updated. The advice in Circular 10/97 “Enforcing Planning Control: Legislative Provisions and Procedural Requirements” needs to be revised and updated. The parts of Circular 10/97 offering advice on enforcement appeals has been amended and is included in Circular 2/02 “Enforcement Appeals: Procedures”. The Good Practice Guide “Enforcing Planning Control: Good Practice Guide for Local Planning Authorities”, published in 1997 needs to be expanded and updated.

Benefits

Option 3a: Do Nothing

Economic

Enforcement activities would continue as before. There would be no discernible additional economic benefits beyond familiarity with the current system.

Social and Environmental

There would be no social or environmental benefits. The existing familiar out of date guidance would continue to be used.

Option 3b

Economic

The three documents would be targeted, user friendly and updated. PPS18 would give a basic overview of how enforcement is carried out in general terms, focusing on the policy objective. The revised Circular would include technical guidance on how to use enforcement powers. The Good Practice Guide would include advice, case law, examples of best practice and how to use all the enforcement powers successfully.

There would be a reduction in unauthorised development, as the measures intended would allow authorities and users of the system to be better informed about how enforcement operates. There would therefore also be a likely reduction in the number of enforcement actions taken as a result.

Social and Environmental

The reduction in unauthorised development would be socially and environmentally beneficial.

Costs

Option 3a: Do Nothing

Economic

There is unlikely to be any increase in the cost of enforcement activities carried out by local authorities if no changes are introduced. In 2004/5, there were 5,022 enforcement notices served, 159 stop notices, 1,112 breach of condition notices, 5,155 planning contravention notices, and 82 enforcement injunctions granted by the courts.

Figures carried out into the costs of enforcement activities in authorities found that around £80m was spent in 2002/3 on enforcement activities and monitoring and compliance.

Costs to individuals would depend on the extent of enforcement activity taken. The penalty on conviction for an enforcement notice offence is set at a maximum £20,000 in a magistrates' court, but is not limited in a crown court.

Social and Environmental

It is likely that many developments without planning consent would continue to take place because of stretched enforcement resources, and these may have a negative impact on the environment and public amenity, especially where they contravened adopted plan policies which had set out e.g. maximum development levels on green field sites, ceilings on industrial development near to residential areas, or where conditions on applications designed to improve the amenity of development were not adhered to.

Option 3b

Economic

There would be initial business costs to Government of an estimated £40-£50,000 for research and publication of the good practice guide, circular, and updated PPS.

Costs to developers and applicants may decrease if they received better advice on enforcement that prevented development that was later the subject of enforcement notices.

Local planning authorities are likely to experience increased start-up costs of implementing and disseminating new advice from Government. However, these may be balanced by a reduction in the need to carry out enforcement activities if applicants are better advised and more preventative measures are adopted.

Social and Environmental

A better functioning enforcement system should help ensure that no firm is able to gain an unfair advantage by exploiting the planning system. It should also ensure that the development of land better reflects the social costs and benefits of that land and the development.

Improved enforcement against unauthorised developments means that fewer developments harmful to the environment will be permitted. Improved enforcement means that the planning system has better control over development. If greater control is exercised then development will more closely match the Government's social policies.

All Options

It should be stressed in all these options that enforcement remains a discretionary activity of local authorities and there are no plans to make it mandatory. Analyses of costs and benefits cannot therefore be exact as the level of activity depends on the authority. In some authorities it may be that preventative measures come to supplant the number of formal actions, whilst other authorities prefer to take up more actions. The proposals are intended to increase the options available to authorities within the existing framework, not replace one system with another which can be costed on a like-for-like basis.

Business sectors affected

Changes to the enforcement system have the potential to impact on all sectors of society, including large industry and small businesses, householders and voluntary organisations in two ways. If they are engaged directly in the planning process, in development that is not permitted, then they are more likely to be recipients of enforcement action. In general, if the changes are introduced there should be more awareness that types of development require planning permission or are not permitted.

Consultation with small business

We consulted a number of small businesses and took advice from the Small Business Service. The responses from small businesses and representatives that we consulted were very similar to those from other respondents. All agreed that enforcement powers should remain discretionary and that there should be no criminalisation. There was universal support for maintaining retrospective planning permissions and not introducing higher fees for retrospective permissions.

Business and industry in general supported these measures, but small business groups were especially in favour because of the disproportionate impact of financial and legal penalties were likely to have on them. One group remarked that the reported decline in the use of formal enforcement powers should be regarded as a positive outcome, as it showed that the planning system was working well, but the majority supported proposals for change and improvement and did not regard these as prejudicial to small businesses.

Competition assessment

The Competition Assessment was carried out and a detailed assessment is not necessary. It is unlikely that the proposed changes would have a disproportionate impact on any particular sector

The changes are unlikely to have a major impact on competition because all firms will be incentivised to comply with the planning regulations. Enforcement extends beyond firms, since individuals (and their builders) will also be persuaded to comply with planning rules if there is better enforcement. The main beneficiaries are likely to be planners (better able to enforce existing law) and the public (protected from poor buildings because of better enforcement).

Enforcement and sanctions

Local planning authorities will enforce the proposals. There will be the right of appeal to the Secretary of State against an enforcement notice. The Courts will enforce the legislation. There will be no criminal sanctions for non-compliance. Any changes introduced will be designed specifically to improve compliance with arrangements for controlling development. Some of the changes would require legislation, for example to enable the whole of the deemed application fee to be paid to local authorities. Others would be delivered through improved working practices and updated guidance

Impact on race, health and rural

Race Equality Impact Assessments, Health Impact Assessments and Rural proofing have been carried out, and we consider that there are no significant disproportionate impacts on race, health and rural affairs.

Implementation and delivery plan

2006-2008

Task/Objective
Develop possible benchmark for enforcement
Good practice for magistrates
Update ODPM Good practice guidance
Update Circular 10/97 (25)
Revise PPG 18
Further work on compliance and monitoring charges

Monitoring and post-implementation review

Enforcement action taken by local planning authorities is monitored. The new measures will be reviewed after five years to see their effects and if necessary, Government will reconsider proposals following study of their effectiveness in improving enforcement. See Annexed ‘Implementation and Delivery Plan’.

Summary and recommendation

We propose to research and develop a benchmark, or series of benchmarks, for good practice in enforcement. This would draw on the existing activities that are carried out in authorities – for example, how complaints are dealt with, officer caseload and throughput, publication of policy – and set out some ‘golden rules’ for a good enforcement service that other authorities could make use of.

Magistrates have little or no up-to-date guidance specifically to help them with the complexities of planning cases. We consider that there should be better guidance for magistrates to assist them when faced with planning enforcement cases. We will work on the options for advising magistrates, including the possibility of commissioning research to produce a good practice guide to assist magistrates when dealing with planning enforcement cases.

We will revise and update the available guidance for local planning authorities. Planning Policy Guidance Note 18 (PPG18) “Enforcing Planning Control” will be replaced by Planning Policy Statement 18 (PPS 18). The advice in Circular 10/97 “Enforcing Planning Control: Legislative Provisions and Procedural Requirements” will be revised and updated. The Good Practice Guide “Enforcing Planning Control: Good Practice Guide for Local Planning Authorities”, published in 1997 will be expanded and updated.

Many Local planning authorities do not routinely monitor whether works are being or have been carried out in accordance with the planning permission granted and any conditions attached. What is needed is a procedure to enable better monitoring to ascertain whether works are being or have been carried out in accordance with the planning permission granted and any conditions attached and whether a charge should be made for this monitoring. We intend to commission further research to look at the practicality of a regime for charging for compliance and monitoring.

Option	Benefit (annual)	Cost (annual)
1a, 2a, 3a	No change but users have familiarity with current system	No change
1b, 2b, 3b	Better advice to users of system, authorities and magistrates, likely reduction in unnecessary enforcement actions and fewer harmful developments. More rounded enforcement system provides better prevention, intervention, staff development and focus on enforcement, with further resources and performance benchmark. Leads to a better planning system with fewer unauthorised developments.	£40,000 – £50,000 Govt Increased costs to applicants (more enforcement) Authority start up costs of updating advice £40,000 – £50,000 Govt Increased costs to applicants (more enforcement) Authority start up costs of updating advice Costs may increase (more actions, court cases) but should be offset by decreases as better education leads to more prevention.

Recommended Option

Option 1b, 2b, 3b.

Ministerial Declaration

“I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs”

Signed

Parliamentary Under Secretary of State

Department for Communities and Local Government

Contact Point for enquiries and comments

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