

# Enforcement: quality control in planning

Poor and non-existent enforcement of planning controls damages the environment and people's quality of life and undermines public faith in the planning system.

Government proposals to reform the planning system present a welcome opportunity to strengthen environmental protection and increase public confidence through improved enforcement. It is an opportunity which should be firmly grasped in the Planning and Compulsory Purchase Bill, currently before Parliament.

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## Introduction

**‘We must ensure that it is a system which people trust. Deliberate abuse of the planning system is unfair to others and brings the system into disrepute.’** (*Planning Green Paper: Planning: delivering a fundamental change, para 5.67, December 2001*)

Planning is the unsung hero of environmental protection. For more than fifty years, it has enabled communities to reconcile and integrate a range of different – and often competing – interests.

The success of the existing system, however, depends largely on the willingness of all parties to ‘play by the rules’. For those not imbued with a spirit of fair play, current policy and practice offer plenty of opportunities to ignore – and, worse still, to profit from ignoring – planning controls. This has some very serious consequences: for the planning system, for the countryside and for the wider community.

This briefing examines the problems with enforcement of planning controls, the impact of those problems and opportunities for reform.

## The importance of enforcement

**‘Without effective enforcement, confidence in the system is undermined.’** (*Planning Green Paper, para 2.7*)

Enforcement is the basis for quality control in the planning system. Proper enforcement is crucial to the credibility of planning. Its neglect undermines public confidence in the whole planning system, and can result in significant harm to the environment and people’s quality of life. Yet enforcement action is in steady decline and is at its lowest since records began (*ODPM Statistics*).

Sadly, the explanation for this decline does not appear to be a reduction in breaches of planning control but rather a retreat from action by local authorities. So why is such a crucial service falling into disuse? CPRE believes that there is a spiral of decline fuelled by factors which include:

- the complexity of the system;
- perverse incentives which make planning breaches financially worthwhile for offenders;
- a bias in the system which favours abusers and leaves local authorities vulnerable to compensation claims;
- a lack of local authority resources;
- extensive opportunities for offenders to evade and delay enforcement, draining local authority resources;
- the deterrent effect on local authorities of all of the above; and
- local authorities’ discretion not to take enforcement action.

## The paperchase

The odds are stacked in favour of those who would defy planning controls. If an enforcement notice is served, the recipient may then apply for planning permission – no matter how inappropriate the development. When permission is refused, applicants may delay nearly six months<sup>1</sup> to appeal and the appeal process itself buys them more time. Meanwhile, enforcement action is suspended. If that appeal is lost, applicants may seek judicial review. If that is refused,

<sup>1</sup> *CPRE welcomes the Government’s proposal to reduce the period for lodging an appeal from six to three months.*

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‘...it can be difficult and expensive for local authorities to take effective action against those deliberately evading the system...’ (*Planning Green Paper, para 5.68*).

an appeal against enforcement may be lodged. Only when that has failed – and any judicial review of that decision – does the period for compliance with the enforcement notice start. The guidance requires that period to be at least 28 days. If compliance is not achieved, then the local authority must take the matter to court...

In 2001-02, appeals were lodged against **over 78%** of enforcement notices. In the same period, 30% of those appeals were subsequently withdrawn (*ODPM Statistics*). It is unclear how many of these appeals were merely delaying tactics.

Thus, even when local authorities are investing significant amounts of time and effort in enforcement action, it can appear to the uninformed observer that nothing is being done. Stop Notices and injunctions may be sought in very serious cases – at further cost – but they cannot require damage to be repaired.

The current system exhausts public funds, local authorities’ resources and the patience of the individuals and communities affected, while offering a lucrative option for the unscrupulous. Offenders have everything to gain from embarking on an enforcement paperpurchase – and communities have much to lose.

## Planning’s ‘get out of jail free’ cards

‘We need more effective sanctions against those trying to cheat the system.’ (*Planning Green Paper, para 5.67*)

The current system not only fails to prevent cheating, it offers incentives:

- **Lawful Development Certificates** as currently used actually encourage deliberate concealment of breaches of planning controls by legitimising inappropriate development purely on the basis that detection or enforcement has not occurred within a prescribed period;
- **expediency** considerations mean that some developers are never required to apply for planning permission, nor to comply with planning conditions; and
- the ability to apply without penalty for **retrospective permission** removes the incentive to seek permission before commencing development.

## Prevention is better than cure

‘...the primary aim of enforcement procedures must be to encourage and enforce compliance with the requirements of planning control.’ (*Stevens Committee, para 11.29*).

It is essential that the reformed system of enforcement should be designed to discourage and prevent breaches of planning control. This would:

- be much more effective than trying to repair the damage resulting from breaches;
- deter abuse;
- reduce the need for enforcement action; and
- represent a much more efficient use of resources.

## A duty to enforce

**'If the Law requires planning permission then someone who takes the trouble to obtain permission and pay a fee can reasonably expect that others should be made to do the same.'**  
*Robert Carnwath, QC, Enforcing Planning Control (1989)*

Local authorities have no duty to enforce and they give priority to funding services which carry a statutory duty. Enforcement is commonly under-funded and many authorities fail adequately to monitor the conditions placed on planning permissions. Even when the most flagrant breaches of control are reported, members of the public cannot require action to be taken nor be confident that the breach will be remedied. One local authority told a complainant simply that it: '...does not do any enforcement.'

A statutory duty to enforce would lead to better resourcing, increased public confidence and would encourage compliance.

## The virtues of simplicity

**'The current enforcement system is unduly complex and cumbersome.'**  
*(Planning Green Paper, para 5.68)*

The complexity of the existing system works in favour of those who would abuse it. CPRE believes that a reformed system should:

- remove the benefits of breaches;
- minimise opportunities for delay and prevarication;
- reduce opportunities for blatant disregard of planning conditions and requirements; and
- impose stricter requirements and penalties regarding the need for permission to be sought before development takes place.

## Solutions

**'...existing sanctions do not act as a deterrent and they may be insignificant in proportion to the value of the unauthorised development or the income derived from it'**  
*(Planning Green Paper, para 5.69).*

The following reforms would address abuses and meet the challenges outlined above:

- making the notification of an alleged breach a deemed application for planning permission, dealt with in the normal way;
- charging much higher than standard fees for applications for development which has started without permission;
- criminalising unauthorised development which causes irrevocable damage;
- relating fines to any increased profit resulting from a breach;
- removing time-limited immunity from enforcement;
- limiting appeals against enforcement to whether the alleged breach has taken place;
- charging local authorities' enforcement costs to the guilty developer; and
- placing a duty on local authorities to take enforcement action.

## Conclusion

CPRE strongly supports the Government's view that 'Effective action needs to be taken against those who try wilfully to avoid planning controls.' (*Planning Green Paper, para 2.7*). To this end, we commend the reforms outlined in this Briefing.