

Planning Enforcement – legal update

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18 April 2024



Levelling Up and Regeneration Act 2023

- Royal Assent on 26 October 2023
- pdf file of 538 pages!
- Largely introduces amendments into the existing Planning Acts
- Being brought into effect gradually by Regulations
- Enforcement measures in Chapter 5 of Part 3 of LURA
- On 2 April Regulations published bringing in changes on 25 April 2024 in England (not Wales).

Time Limits for taking Enforcement Action

- s171B(1) and (2) amended to extend the time for taking enforcement action from 4 years to 10 years.
- Ability for action to be taken beyond these limits in cases of ‘concealment’ unchanged (s171BA).
- Extended periods do not apply to operational development / m.c.o.u. to single dwellinghouse “substantially completed” before 25 April 2024.
- Good news or some unintended consequences?
 - Some enforcement action may be delayed? Resources?
 - Could encourage breaches.
 - Evidence as to the position on 25 April 2024

Temporary Stop Notices

- Amends s171E
- TSN can have effect for up to 56 days
- More time for investigation
- No effect on a TSN issued and not withdrawn before 25 April 2024
- No change to PPG on when / how to use
- No change to rules on 2nd TSN

NEW - Enforcement Warning Notice

- Inserts new s172ZA
- There has been a breach of planning control BUT there is a “reasonable prospect” planning permission would be granted.
- EWN to state that unless planning application made within a specified period further enforcement action may be taken.
- Service – on owner / anyone whose interest would be materially affected by enforcement action.
- EWN placed on the register.
- Stops the time limit clock.
- No change to PPG (yet)

Enforcement Warning Notices

Contents - The [Levelling-up and Regeneration Act 2023 \(Consequential Amendments\) \(No. 2\) \(England\) Regulations 2024](#)

- (a) the address of the land
- (b) the name of the issuing authority;
- (c) the date of the notice;
- (d) the “date of service” of copies of the notice;
- (e) a statement or summary of the breach and
- (f) the deadline for a planning application.

Further Limits on Ground (a) Appeals

- No ground (a) appeal allowed if “the enforcement notice was issued at a time after the making of an application for planning permission that was related to the enforcement notice.
- “related to” = matters specified as breach of planning control.
- Ignore applications which were declined to be determined under s70A, s70B or s70C
- Does not apply after 2 year period dating from appeal or right to appeal.
- Does not apply to appeals against EN issued before 25 April 2025.

Appellant Causing Undue Delay

- New power for SoS (or an inspector) in EN and LD appeals to:
 - Warn appellants they are causing undue delay – take steps in the appeal by a deadline.
 - Dismiss the appeal if the steps are not taken.
- Provide information
- Submit documents
- LPA could ‘prompt’ use if the powers?
- Does not apply to appeals made before 25 April 2024

Maximum Fines Increase

- BoCN and s215 'Tidy-up' Notice
- Offences committed after 25 April 2024
- New position in either Magistrates' Court or Crown Court
- Breach of Enforcement Notice – unlimited
- Breach of Condition Notice – unlimited
- S216 prosecution:
 - Unlimited
 - Daily penalty for continuing to be in breach after prosecution increases to £500

Heritage matters

- Listed building TSN
 - Works without LB consent
 - Works in breach of condition on LB consent
- Stop works for up to 56 days from display
 - Specify works in question
 - Prohibit works
 - Serve on the owner / occupier / person carrying out the works
- Display the notice on the building AND the notice must state the date on which it was first displayed.
- Restriction on issuing a further TSN unless taken other enforcement action including application for an injunction.

Building Preservation Notices

- Listed Buildings Act amended
- LPA must consult Historic England before issuing a BPN
- Removes right to compensation for BPNs
 - Only applies to BPNs coming into effect on/after 25 July 2024.

Other Enforcement Issues

- Pressures in DM leading to issues for enforcement?
 - Wording of conditions
- Drafting of Enforcement Notices:
 - Corrections & Validity
 - Nullity
- Drafting of PCNs
- BNG monitoring and enforcement
- Resourcing and Recruitment – NAPE Report Nov 2022
 - DLUHC and RTPI response – The Brochure
 - Circulating the conclusions & managing expectations
- LA structure – where the enforcement team sits

East Midlands Councils CPD

18th April 2024

Effective Planning Enforcement 'Playing the Game'



Midlands: Sherwood Business Park
Nottingham

Oxford: Parkway Court
Oxford

London: 5 St John's Lane
London

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Introduction to P&DG

- Practice of 9 Planners a 3 Urban Designers
- Mix of private and public sector clients
- Wides range of sectors – residential, commercial, education, heritage

The Planning Consultant's Role

- Advocate for the client
- Advice and reassurance
- Expertise, experience and logistics
- Negotiation, arbitration and interpretation
- Accountability
- **Strategy and Tactics**
- Planning support and submissions

Strategy and Tactics

- ‘The better part of valor is discretion’
- Delay
- Obfuscation
- The Charm Offensive
- The burden of proof
- Pedantry / Semantics – the letter of the law
- Doing the bare minimum
- The ‘carpet bomb’ appeal
- See you in Court!

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The Counter Offensive

- PC'N Harmony
- Where's the harm? – Expediency and Public Interest
- If it looks like a duck
- Know your process
- Think like your enemy
- Planning expertise and Legal access
- Polite cynicism
- MAP - Meticulous, Assiduous, Perspicuous



Thank You

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ENFORCEMENT ACTION- DERELICT LISTED BUILDING

12 YEARS AND COUNTING

- Grade II Listed Building located in the Shardlow Conservation Area
- Article 4 Direction
- Adjacent to the Trent and Mersey Canal - which is also within the Conservation Area.
- The case has been ongoing since 2012



CASE SUMMARY

- Initial complaint in 2012 regarding the state of the building and grounds
- Findings at that time - shared family ownership
- Empty building - interior stripped and ransacked
- Exterior - overgrown, rubbish and detritus within the outbuildings
- Photos taken and Land Registry search carried out

Enforcement options

- Do nothing
- S215 of the TCPA 1990
- Listed Building Enforcement Notice
- Listed Building Repairs Notice

Actions taken over the years.....and ongoing

- Numerous site visits to gather evidence
- Communication with known landowners and agents
- Updated Councillors, Parish Council and residents
- Following internal discussion - S215 preferred route
- S215 drafted in 2014 - due to probate SDDC Legal recommended we didn't pursue formal action at the time.
- Several changes in ownership, but with one constant who we targeted as the decision maker



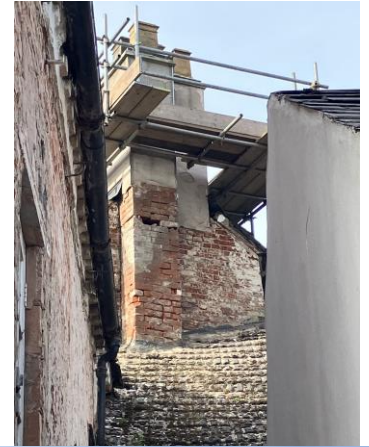
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LEGAL SANCTIONS

- 2019 - S215 Notice served - 25 steps required (just to remedy the exterior)
- Again - numerous site visits, communications, questioning under Caution
- Promises of action from the landowner
- Over 8 different planning agents during the time I've been dealing with this case
- LPA activity constantly reviewed for reasonable and proportionate approach

RECENT ACTIVITY

- Prosecution for non-compliance with S215 Notice
- Plea changed to guilty the day before the Court hearing
- 28 November 2023 - Fined £900 (the maximum in this case), ordered to pay a victim surcharge of £90 and pay the Council's costs of £1450.
- Yet another Planning Agent instructed following the Court appearance..... Since then





SHARDLOW LODGE .