
Report of Chief Planning Officer

Report to Joint Plans Panel

Date: 11th September 2014

Subject: Planning Enforcement - Stop Notices and Temporary Stop Notices

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	☐ Yes	☒ No
Are there implications for equality and diversity and cohesion and integration?	☐ Yes	☒ No
Is the decision eligible for Call-In?	☐ Yes	☒ No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	☐ Yes	☒ No

Summary of main issues

1. This report outlines a summary of the powers available to issue Temporary Stop Notices and Stop Notices in relation to planning enforcement matters and the scope of those powers and how they have been used in Leeds..
2. The report is brought to Joint Plans Panel following a request from North and East Plans Panel on 15th May 2014.

Recommendations

1. Members are asked to note the contents of this report and comment on the report as they feel appropriate.

3 Purpose of this report

- 3.1 To inform Joint Plans Panel of the scope and powers available through the use of Temporary Stop Notices and Stop Notices and the implications of their use in planning enforcement.

4 Background information

- 4.1 Following a discussion at North and East Panel on 15th May 2014, a request was made for a report to Joint Plans Panel for discussion that addresses the issue of stop notices and temporary stop notices, to outline the powers that exist, the scope of their use and the implications of using them.

5 Types of Stop Notices

- 5.1 There are two types of stop notice that can be used in planning enforcement matters. Temporary Stop notices and Stop Notices . Both can prohibit works or operations but cannot specify remedial works that may be required.
- 5.2 Temporary Stop notices take effect immediately once served and last for a period of 28 days. Stop Notices can only be served at the same time as an enforcement notice and are effective 3 days after service until the enforcement notice comes into effect.

Stop Notice Powers

- 5.3 A person commits an offence if an enforcement notice is in effect and they have not completed the steps required in the enforcement notice within the compliance period specified in the notice.
- 5.4 Therefore when the Council first serve an enforcement notice the person served upon can continue the activity enforced against until the enforcement notice has taken effect and any specified compliance period has expired. The minimum period in which an enforcement notice takes effect is 28 days. If an appeal is made against the enforcement notice during that period the effect of the enforcement notice is suspended until the outcome of the appeal. Any compliance period specified in the notice/appeal decision is additional to these periods.
- 5.5 It can be seen, therefore, that there can be a considerable amount of time following service of the enforcement notice where the activity enforced against could continue, especially where an appeal is made.
- 5.6 If the Council considers it expedient to stop the activity in the enforcement notice before this period of time has expired, a stop notice can be served. A stop notice can prohibit any or all of the activities which are cited as being breaches of planning control specified in an enforcement notice for a particular site before the enforcement notice takes effect and the period for compliance expires. A stop notice cannot be served without an associated enforcement notice. If a stop notice is contravened then the person contravening it may be prosecuted for an offence. (Section 183 Town and Country Planning Act 1990). The punishment is a

fine of up to £20,000 or for more serious cases the fine is unlimited. The court takes into account the financial benefit accruing to the person convicted in setting the fine. The date a stop notice can become effective is at least 3 days from serving the notice (and associated enforcement notice) unless there are exceptional reasons.

- 5.7 There are restrictions on the use of a stop notice. It cannot, for example, prohibit the use of a building as a dwellinghouse nor can it prohibit activity that started more than 4 years ago.
- 5.8 The power to serve a stop notice is discretionary and the authority must be satisfied that it is expedient that any activity is stopped in advance of the period of compliance specified in the associated enforcement notice. It is necessary to ensure that a full assessment (a cost / benefit analysis) of the likely consequences is undertaken prior to the serving of a notice. It is for the authority to ensure that the 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. It is recommended through Planning Practice Guidance that whenever practicable discussion should take place with the person carrying out the activity as to whether there is any alternative means of production or operation which would overcome the objections in an environmentally and legally acceptable way.
- 5.9 The Stop notice remains in effect until the period for compliance with the enforcement notice expires. . There is no right of appeal against a stop notice although there is a right of appeal against the associated enforcement notice. A stop notice can, however, be challenged through the courts.
- 5.10 It is important to note that with a stop notice compensation can be awarded if the following occurs;
- The stop notice or associated enforcement notice is withdrawn;
 - The enforcement notice is quashed or varied at appeal (other than quashed or varied as a result of planning permission being granted at appeal)
- 5.11 The amount of compensation payable is that which can be directly attributable to the prohibition in the stop notice that is withdrawn, quashed or varied.

6 Temporary Stop Notice Powers

- 6.1 Temporary stop notices were therefore subsequently introduced to give LPAs a tool to stop work straight away before an enforcement notice comes into effect. They are a powerful enforcement tool that allows local planning authorities to act very quickly to address some breaches of planning control where it is expedient to do so. A Temporary stop notice may prohibit a range of activities, including those that take place on the land intermittently or seasonally. Advice is given in the Planning Practice Guidance note about their scope and use which is summarised below.

- 6.2 Section 171(E) of the Town and Country Planning Act 1990 gives powers to authorities to issue Temporary Stop Notices when it requires that an activity which is a breach of planning control should stop immediately. If it is contravened then the person contravening it may be prosecuted for an offence. The punishment is a fine of up to £20,000 or for more serious cases the fine is unlimited. The court takes into account the financial benefit accruing to the person convicted in setting the fine.
- 6.3 In considering whether to serve 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”. Reasons for issuing the notice need to be clearly set out on the notice.
- 6.4 The effect of issuing a temporary stop notice will be to halt the breach of planning control immediately. In considering serving a notice it is necessary to undertake a quick but thorough assessment (simple cost / benefit analysis) of the likely consequences of issuing a notice. The assessment should examine the foreseeable costs to the company, operator, or landowner and the benefit to amenity in the vicinity of the site which is likely to result from a temporary stop notice. The advice in Planning Policy Guidance (March 2014) states that **“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.”** In other words it is necessary to demonstrate that harm is occurring rather than a control over unauthorised development per se.
- 6.5 The PPG goes on to advise that local authorities should discuss wherever practical whether there are any alternatives which would overcome concerns. A temporary stop notice becomes effective as soon as it is served.
- 6.6 Temporary stop notices expire 28 days after the display of the notice on site (or any shorter period specified). At the end of the 28 days there is the risk of the activity resuming if an enforcement notice is not issued and a full stop notice served. It is not possible to issue a further temporary stop notice for the same breach and alternative action must be taken. There are restrictions on what a temporary stop notice can prohibit. It may not prohibit the use of a building as a dwelling house. It can require an activity to cease or reduce but cannot in any circumstances require positive action to be taken. If this is required alternative action will be appropriate. A Temporary Stop notice cannot be appealed but could be challenged through the courts.
- 6.7 Compensation can be sought if the notice was served on development that is not a breach of planning control or the authority withdraws the notice. The principles applicable to the amount of compensation are the same as those for stop notices
- 7 Use of Powers** In practice Temporary Stop notices are most used to hold the position on sites whilst an Enforcement notice and Stop Notice are prepared, served and take effect or other action is taken (such as issuing an injunction). They are extremely useful in situations where communication with the landowner

has not resulted in a cessation of activity and the development is considered to be harmful. Neither Temporary Stop Notices or Stop Notices can specify remedial works and therefore their use is limited to preventing further works or cessation of use. Remedial steps to remedy any breach of planning control can only be specified in an enforcement notice.

- 7.2 In many cases when development is being undertaken that is considered unacceptable development ceases voluntarily following discussion and in these cases it is not considered necessary to serve a formal notice to cease and an enforcement notice on its own has been adequate or works are undertaken voluntarily to remedy the breach. In Leeds approximately 30% of cases received in the service are resolved in this way. Temporary Stop notices have also been used to temporarily put a halt to development which has commenced prematurely without discharging necessary planning conditions (for instance tree protection measures or materials on sensitive sites). In these cases the matter has often been resolved during the 28 day period so that further action has not been considered necessary.
- 7.3 Over the last 12 months 6 temporary stop notices have been served on matters relating to potential gypsy and traveller encampments, inadequate tree protection, listed building alterations, HMO conversions, pre commencement conditions and unacceptable householder development. Whilst the number is relatively low compared to the overall caseload it is much higher than comparable core cities, many of whom have not served any. Appendix 1 indicates numbers of notices served between September 2012 and September 2013 by other Core Cities and West Yorkshire Authorities. The table demonstrates that Leeds as an authority takes more formal action than other authorities.
- 7.4 Stop notices are on the whole lesser used. There has been only one recent example in Leeds relating to a site of a car wash in Pudsey where the queuing of traffic on the highway was causing significant highway safety concerns as well as noise issues to local residents. In this instance an enforcement notice and stop notice were served. The business relocated and the breach was resolved before the enforcement notice came into effect.
- 7.5 Overall whilst temporary stop notices can only be used to put a short term halt to ongoing unauthorised works (rather than remedy the breach) they have been found to be an extremely useful tool in bringing about prompt discussion with landowners / developers about the issues of concern at a site, in many cases without the need for a follow up enforcement notice. This is a valuable tool to the authority in maintaining confidence in the planning system when immediate action and/or time is required to engage in discussions which achieve an acceptable solution.

8.2 This is presented for information and there has not been the need for wider consultation.

8.3 **Equality and Diversity / Cohesion and Integration**

8.4 There are no specific equality considerations arising from this report.

8.5 **Council policies and City Priorities**

8.6 Effective enforcement is an important supporting function in developments being brought forward in the city and therefore plays a key part in the regeneration and growth agenda.

8.7 **Resources and value for money**

8.8 There are resource implications should greater emphasis be given to serving an increased number of Temporary Stop Notices and Stop Notices.

8.9 **Legal Implications, Access to Information and Call In**

8.10 No specific implications and it is not a key or major decision

8.11 **Risk Management**

8.12 No significant risks identified with the report itself but there are risks involved with serving stop notices given the potential for compensation claims.

9 Conclusions

9.1 Temporary Stop notices and Stop notices are useful and powerful enforcement tools in quickly halting harmful development that is taking place. They are currently used when informal requests to stop work have failed. They can only be used to halt development and cannot specify positive remedial steps for which an enforcement or other formal notice is required. There are risks that the Council might have to pay compensation if the activities prohibited are subsequently found to be lawful.

10 Recommendations

10.1 Members are asked to note the contents of the report and comment as they feel appropriate.

Appendix 1

Notices Served by Core Cities Sept 2012 - Sept 2013

LPA	Enf Notice Issued	Stop Notice Served	Temp Stop Notice Served	Breach of Condition Notice	Planning Contravention Notice
Leeds	81	1	3	15	145
Newcastle	5	0	0	0	19
Liverpool	34	0	3	16	135
Manchester	7	0	0	0	5
Sheffield	40	2	3	6	7
Nottingham	1	0	1	0	15
Birmingham	34	0	0	2	51
Bristol	42	0	0	9	3

Notices Served by West Yorkshire Authorities Sept 2012 – September 2013

LPA	Enforcement Notices	Stop Notices	Temp Stop Notices	Breach of Condition Notices	Planning Contravention Notices
Leeds	81	1	3	15	145
Bradford	61	2	0	4	0
Calderdale	22	0	2	5	26
Kirklees	11	1	1	6	15
Wakefield	19	0	0	3	16