

**PLANNING GUIDANCE (WALES)
TECHNICAL ADVICE NOTE (WALES) 9**

ENFORCEMENT OF PLANNING CONTROL



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This document is one of a series of Technical Advice Notes (Wales) (TANs) which supplement "Planning Guidance (Wales): Planning Policy".

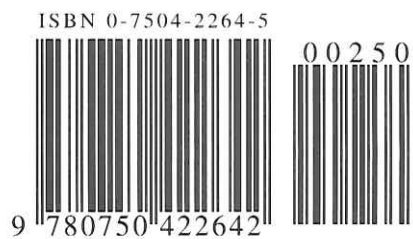
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Introduction

1. This Technical Advice Note (Wales) (TAN) should be read in conjunction with 'Planning Guidance (Wales): Planning Policy'. Planning Guidance, Technical Advice Notes and circulars should be taken into account by local planning authorities in Wales in the preparation of development plans. They may be material to decisions on individual planning applications and will be taken into account by the Secretary of State and his Inspectors in the determination of appeals and called-in planning applications.
2. Documents listed in the Reference column in the margin of this TAN provide information which should be read in conjunction with the TAN.
3. This TAN supplements the policy guidance provided in 'Planning Guidance (Wales): Planning Policy' and is not intended to provide detailed procedural guidance on the use of the various powers available to local planning authorities for the enforcement of planning control. That guidance is provided in Welsh Office Circular 24/97 Enforcing Planning Control: Legislative Provisions and Procedural Requirements. (Advice on the enforcement of listed building and conservation area controls is provided in Welsh Office Circular 61/96 Planning and the Historic Environment: Historic Buildings and Conservation Areas).

'Planning Guidance (Wales): Planning Policy', 1996, paragraphs 26 and 27

General

4. The town and country planning system regulates the development and use of land in the **public interest**. Responsibility for determining whether proposed development should be granted planning permission rests initially with the local planning authority; as does the decision on whether unauthorised development (development carried out without the necessary planning permission or development carried out in contravention of a condition or limitation attached to a planning permission) should be allowed to continue or should be enforced against. A private citizen cannot initiate enforcement action, but may advise the local planning authority of a breach of planning control he or she may believe has occurred.
5. Although it is not a criminal offence to carry out development without first obtaining any necessary planning permission, such action is to be discouraged. The fact that enforcement action is discretionary and should be used as a last resort and only when it is expedient, should not be taken as condoning the wilful breach of planning controls. Powers are available to local planning authorities to bring unauthorised development under planning control, and it is for them to decide which power, or combination of powers, to use.
6. In considering enforcement action, the decisive issue for the local planning authority should be whether the breach of planning control would unacceptably affect public amenity or the existing use of land and buildings meriting protection in the public interest. Enforcement action should be commensurate with the breach of planning control to which it relates; it is usually inappropriate to take formal enforcement action against a trivial or technical breach of control which causes no harm to public amenity. The intention should be to remedy the effects of the breach of planning control, not to punish the person(s) carrying out the breach. Nor should enforcement action be taken simply to regularise development for which permission had not been sought, but which is otherwise acceptable.
7. Before any person, or persons, carry out development of land, it is advisable that they should discuss with the local planning authority whether, in the authority's opinion, planning permission would be necessary for the development proposed. Some breaches of planning control are deliberate but, in some cases, unauthorised development has been carried out in good faith because the developer believed that planning permission was not needed. While that latter factor is not relevant in determining whether or not to take enforcement action, the cost to the developer of responding to enforcement action may represent a substantial financial burden and this should be taken into account by the

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local planning authority when deciding how to handle a particular case. It should not, however, prevent action being taken when it is clearly necessary to do so.

8. The initial aim should be to explore, in discussion with the owner or occupier of the land, what steps, if any, could be taken to reduce any adverse effects on public amenity to an acceptable level. However, local planning authorities should bear in mind the statutory time limits for taking enforcement action and that prompt initiation of enforcement action may be necessary to prevent an unacceptable breach of planning control from becoming well established and more difficult to remedy.

Where acceptable, but unauthorised, development has been carried out

9. Where the local planning authority's assessment is that it is likely that unconditional planning permission would be granted for development which has already taken place, the correct approach is to suggest to the person responsible for the unauthorised development that they should promptly submit a retrospective application for planning permission.

10. In such circumstances, it should be pointed out to the owner or occupier that if, for instance, they subsequently wish to dispose of their interest in the land and have no evidence of any permission having been granted for its development, this may be reflected in the valuation and give rise to uncertainty about the rights they have over the land.

11. It will generally be regarded as unreasonable for a local planning authority to issue an enforcement notice solely to remedy the absence of a valid planning permission. If, on appeal to the Secretary of State, it is concluded that there is no significant planning objection to the breach of planning control as alleged in the enforcement notice, such action by a local planning authority could result in an award of costs being made against it.

*Welsh Office
Circular 23/93
Awards of Costs
incurred in
Planning and
Other (including
Compulsory
Purchase Order)
Proceedings*

Where unauthorised development could be made acceptable through imposition of conditions

12. Where a local planning authority considers that an unauthorised development could be made acceptable by the imposition of planning conditions it should invite the owner or occupier of the land to submit an application for planning permission. It should be made clear to the person concerned that the local planning authority does not wish the development to cease, but that it has a public duty to safeguard amenity by ensuring that development is carried out, or continued, within acceptable limits, having regard to local circumstances and relevant planning policies.

13. If, after a formal invitation to do so, the owner or occupier of the land refuses to submit a planning application which would enable the local planning authority to grant conditional planning permission, the local planning authority would be justified in issuing an enforcement notice if, in its view, the unauthorised development has resulted in any unacceptable injury to public amenity, or damage to a statutorily designated site, which can only be satisfactorily removed or alleviated by imposing conditions on a grant of planning permission for the development.

14. When an enforcement notice is issued to enable the local planning authority to grant conditional planning permission, it should explain clearly in its statement of reasons for issuing the notice, what unacceptable injury to public amenity, or damage to the site, has been caused by the unauthorised development and how the conditional grant of permission will effectively remedy it. The owner or occupier will then have no doubt about the purpose of the enforcement action, or what they are required to do in order to remove or alleviate the perceived injury to public amenity.

Where unauthorised development would be acceptable on alternative sites

15. It is not the local planning authority's responsibility, nor a requirement on it under the enforcement provisions, to identify, or provide, alternative sites to which unauthorised development might be relocated. Nevertheless, if, as part of its economic development functions, the authority is aware of an alternative site, it will usually be helpful to suggest it and to encourage the removal of the unauthorised development to it.

16. If an alternative site has been suggested, it should be made clear that the local planning authority expects the unauthorised development to relocate to that alternative site, or some other site acceptable to the local planning authority. The local planning authority should set a reasonable time limit within which relocation should be completed. What is reasonable will depend on the particular circumstances, including the nature and extent of the unauthorised development; the time needed to negotiate for, and secure an interest in the relocation site; and the need to avoid unacceptable disruption during the relocation process.

17. Where an agreed timetable for relocation is ignored, it will usually be expedient for the local planning authority to issue an enforcement notice. In that event, the period for compliance with the requirements of the enforcement notice should reflect what the local planning authority regards as a reasonable period to complete the relocation.

18. Where a small business or self-employed person is involved, the local planning authority should be aware of the need to minimise disruption to the business and, if possible, avoid any permanent loss of employment as a result of the relocation. Local planning authorities should also bear in mind that, once an enforcement notice has taken effect, they have the power to withdraw the notice or to waive or relax any requirement in it, including the period for compliance. A reasonable period for compliance, or an extension of the initial period, may make the difference between enabling a small business or self-employed person to continue operating, or compelling them to cease trading.

19. The Government remains committed to fostering business enterprise, provided that the necessary development can take place without unacceptable harm to public amenity. Local planning authorities should bear this in mind when considering how best to deal with unauthorised development by small businesses. Nevertheless, effective enforcement action is likely to be the only appropriate remedy if the business activity is causing unacceptable harm.

Where unauthorised development is unacceptable and relocation is not feasible

20. Where the local planning authority considers unacceptable unauthorised development has been carried out, and there is no realistic prospect of its being relocated to a more suitable site - either because such a site is not available or the owner or occupier refuses to relocate - the owner or occupier of the land should be informed that the local planning authority is not prepared to allow the operation or activity to continue at its present level of activity or, if that is the case, at all.

21. If the unauthorised development provides valued local employment, the owner or occupier should be advised of the length of time the local planning authority is prepared to wait before the operation or activity must stop. If agreement can be reached between the operator and the local planning authority about this period and the agreement is honoured, formal enforcement action may be avoided.

22. Local planning authorities should bear in mind the possibility of intensification of the development amounting to a material change of use after the expiry of the statutory period for taking enforcement action. If no agreement can be reached, the issue of an enforcement notice will usually be justified, allowing a realistic period for the

Reference

unauthorised operation or activity to cease or its scale to be reduced to an acceptable level. Any difficulty with relocation will not normally be a sufficient reason for delaying formal enforcement action to remedy unacceptable unauthorised development.

Where unacceptable unauthorised development warrants immediate action

23. Where a local planning authority considers that an unauthorised development is causing unacceptable harm to public amenity, and there is little likelihood of the matter being resolved through negotiations or voluntarily, they should take vigorous enforcement action to remedy the breach urgently, or prevent further serious harm to public amenity.

Unauthorised development by private householders

24. Where the householder appears to have relied on permitted development rights as authorisation for the development, but a specified limitation has been exceeded in carrying it out, in considering whether it is expedient to take enforcement action, the local planning authority should have full regard to what would have been permitted if the development had been carried out in strict accordance with the relevant provisions. Local planning authorities should not normally take enforcement action in order to remedy only a slight variation in excess of what would have been permitted by virtue of the GPDO provisions.

*The Town and
Country Planning
(General Permitted
Development)
Order 1995
(SI No 1995/418)*

Control over mineral working

25. Mineral planning control is well established as part of the general planning system and there are no separate enforcement powers for unauthorised mineral working. The general policies and principles applicable to enforcement apply equally to mineral cases.

26. Unauthorised mineral working sometimes poses particular enforcement problems, both in terms of the occasionally irremediable nature of the working and the speed at which damage can be caused as well as the fact that they will have no arrangements for restoration and aftercare of the land or even an agreed after use. (Care also needs to be taken to ensure that, with authorised works, restoration and aftercare is carried out fully in accordance with the terms of the agreed schemes.) While the powers available to local planning authorities are helpful in preventing damage which would otherwise be virtually or totally irremediable, either to the site itself or to its surroundings (and those powers would enable enforcement action to be taken quickly should the need arise), it is clearly preferable for there to be effective liaison and contacts between local planning authorities and minerals operators, which would avoid contraventions of planning conditions and enable any problems to be resolved through discussion and co-operation.

Control over waste disposal

27. The advice in paragraph 26 above applies equally to waste disposal and landfill sites.

Organisation within local planning authorities

28. It is for each local planning authority to decide how to organise the enforcement of planning control in its area. The organisation should correspond to the volume and complexity of enforcement casework in each local planning authority area and be sufficiently flexible to adapt to any short term increases in the demand for enforcement. All authorities should ensure that there is a close and co-operative working relationship between the Planning and Legal departments and other departments e.g. building control and environmental health. Although those other departments may be concerned with the enforcement of controls outside the planning regime, they could have information which

Reference

could be relevant to the identification of possible, or actual, contraventions of planning control.

29. Without such effective working relationships, formal enforcement action (which depends for its success upon speed of assessment and process) may be hampered by poor communications and misunderstandings. Public criticism is then likely, especially if statutory time limits for taking enforcement action are allowed to expire because of administrative delay. All local planning authorities should regularly review the effectiveness of their procedural arrangements for planning enforcement; and, where necessary, introduce revised arrangements.

30. When complaints about alleged breaches of planning control are received, they should always be properly recorded and investigated. The Commissioner for Local Administration has held, in a number of cases, that there had been maladministration where the local planning authority had failed to take effective enforcement action which was plainly necessary, and has occasionally recommended a compensatory payment to the complainant for the consequent injustice. While this does not mean that enforcement action should be taken automatically following a complaint, if the local planning authority decide to exercise its discretion not to take enforcement action where a complaint is made, it should be prepared to explain its reasons to any organisation or person who has asked for an alleged breach of planning control to be investigated.