

NEW PLANNING ENFORCEMENT POWERS

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Temporary Stop Notices

Under the 1997 Act a stop notice could not be served without also serving an enforcement notice. However the 2006 Act amended the 1997 Act to allow a temporary stop notice to be issued, without the need for an accompanying enforcement notice.

The maximum period of time that may be stipulated within a temporary stop notice is 28 days, but may be issued for a shorter period of time. Unlike conventional stop notices, temporary stop notices do not require the three day notice period for compliance. Accordingly any breaches must be ceased with immediate effect.

There is no statutory appeal process. The only method of appeal would be to seek judicial review of the decision to issue the temporary stop notice. However two matters should be borne in mind. First the Court is unlikely to quash the temporary stop notice unless the decision to serve the notice was wholly unreasonable. Secondly, given the relatively brief operation of a temporary stop notice, there is no realistic hope of a decision being issued within the 28 days. Accordingly for a judicial review to have any teeth it would necessary to convince the court to grant interim suspension of the temporary stop notice.

Limited provisions for compensation exist, including where the activity complained of has planning permission or a certificate of lawful use applies to the activity.

Fixed Penalty Notices

The 2006 Act introduced into the 1997 Act fixed penalty notices as an alternative to prosecution. Fixed penalty notices may be issued where there has been a failure to comply with an enforcement notice or breach of condition notice.

The authority must issue a notice within six months of the compliance period contained within the enforcement, or breach of condition, notice. As the fixed penalty notice is an alternative to prosecution, the planning authority cannot seek to both prosecute and issue a fixed penalty notice. However the planning authority may seek to prosecute where the fixed penalty notice is not paid.

The amount of the penalty is fixed at £2000 for breach of an enforcement notice, and £300 for a breach of condition notice. A discount of 25% is applied if the penalty is paid within 15 days. It should be noted carefully that each breach allows a separate fixed penalty notice to be issued. Accordingly if an enforcement notice contained, for example, six activities to be ceased or steps to be taken, the planning authority may issue six individual fixed penalty notices. Consequently the financial penalties are potentially significant.

The Act and accompanying Regulations do not provide for appealing against a fixed penalty notice. Unlike prosecution, the planning authority retains all sums recovered from the penalty notices. It is therefore possible that planning enforcement in the future could become, to an extent, self-funding which may be attractive in the present economic climate.