



Llywodraeth Cymru  
Welsh Government

Chief Planning Officers  
Heads of Development Management  
Technical and administrative contacts

17 October 2018

Dear colleague

## **TIMELY USE OF ENFORCEMENT POWERS**

An effective development management system requires proportionate and timely enforcement action to maintain public confidence in the planning system but also to prevent development that would undermine the delivery of development plan objectives.

The Welsh Government enforcement review concluded, whilst the system is fundamentally sound, it can struggle to secure prompt, meaningful action against breaches of planning control. The system can also be confusing and frustrating for complainants, particularly as informed offenders can intentionally delay enforcement action by exploiting loopholes in the existing process.

The Planning (Wales) Act 2015 made changes, intended to reduce the scope for delaying tactics, to complement the existing suite of enforcement powers available to Local Planning Authorities to manage unauthorised development and deliver your Local Development Plans.

Section 3.6 of Planning Policy Wales is clear; enforcement action needs to be effective and timely. This means that Local Planning Authorities should look at all means available to them to achieve the desired result. In all cases there should be dialogue with the owner or occupier of land, which could result in an accommodation which means enforcement action is unnecessary.

I want to draw your attention to the guidance in Section 14.2 of the Development Management Manual which deals with how this policy should be implemented. Paragraph 14.2.5 is particularly useful in that it explains how the dialogue with the owner or occupier is one aspect of dealing with an enforcement case but it should not be a source of delay or indecision. When investigating whether development is unauthorised the aim should be to

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

make an early decision both on the need for planning permission, and if required, on whether the development is acceptable.

If unauthorised development could be made acceptable, Enforcement Warning Notices (EWN) should be used alongside dialogue with owners and occupiers. Before issuing an EWN, a formal decision should be made to proceed with the service of an Enforcement Notice or other formal action in the event a retrospective planning application is not received within the specified timescale. The Manual's Section 14 Annex – Enforcement Tools provides further guidance on the use of EWNs.

## **MONITORING ENFORCEMENT IN THE PLANNING PERFORMANCE FRAMEWORK**

The effectiveness and timeliness of enforcement action by Local Planning Authorities is monitored in the Development Management Quarterly Survey, and reported on in the Planning Performance Framework. We agreed to the introduction of a new performance indicator for enforcement, developed by the Planning Officers Society for Wales (POSW), in June 2017. This new indicator measures the average time taken, in days, to undertake “positive enforcement action”, during the reporting period.

Following the introduction of the new indicator we have received anecdotal feedback, identifying inconsistency in the way this information is being reported. For the purposes of clarity, we have again engaged with the POSW to further clarify the interpretation of this important performance indicator. A revised definition has been provided by POSW colleagues – it is attached as an annex to this letter, and has been incorporated into our wider [Performance Framework indicators and targets guidance](#).

## **BROADER CHANGES TO THE PLANNING PERFORMANCE FRAMEWORK**

At the Meeting between POSW and Welsh Government officials in June 2017, changes to the suite of Planning Performance Framework indicators and targets were agreed, in principle, including those relating to enforcement, subject to final approval by the Cabinet Secretary for Energy, Planning and Rural Affairs.

I would like to take this opportunity to make you aware of these revisions to indicators and targets, which have been agreed by the Cabinet Secretary, and have already been implemented into the Planning Performance Framework. Local Planning Authorities' performance is already being measured against these changed indicators, and you should be prepared to report on your performance against them in your 2018-19 Annual Performance Reports, due for submission in October 2019.

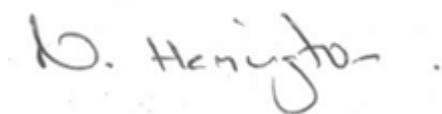
You do not need to do any additional work to collect information for these revisions, as sufficient data is already submitted to Welsh Government. The changes are summarised in the below table.

Indicator	Change	Targets
LDP Review – time between triggering Regulation 41 and the submission of a Delivery Agreement, in months	New indicator and targets	Good – less than 12 months
		Fair – between 12 and 18 months
		Improve – more than 18 months
LDP Revision – Delay on progress against key dates set out in the original agreed Delivery Agreement, in months	New indicator and targets	Good – less than 3 months
		Improve – more than 3 months
Percentage of Listed Building Consent applications determined “on time”	New targets	Good – more than 80%
		Fair – between 70 and 80%
		Improve – less than 70%
Percentage of enforcement cases investigated in 84 days	New definition (see Annex A), existing targets apply	Good – more than 80%
		Fair – between 70 and 80%
		Improve – less than 70%
Time taken to pursue “positive enforcement action”	New definition (see Annex A)	No targets set

Detailed technical interpretation of all of the Planning Performance Framework indicators and targets, and how they should be measured, is set out [on our website](#).

Finally I’d like to offer my thanks to the Members of the POSW Working Group which has assisted us in developing, implementing and maintaining the Planning Performance Framework. The Framework continues to demonstrate the efforts by the planning service across Wales to deliver high quality placemaking outcomes, despite challenging financial circumstances, and I look forward to receiving more evidence of this in your Annual Performance Reports, which should be submitted by 31 October.

Yours sincerely



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## ANNEX A

### REVISED DEFINITIONS OF PLANNING PERFORMANCE FRAMEWORK ENFORCEMENT INDICATORS

The following revised definitions to Planning Performance Framework indicators for Enforcement investigations, and positive enforcement action, were proposed by the Planning Officers Society for Wales Development Management Subgroup in July 2018, and approved by the Cabinet Secretary for Energy, Planning and Rural Affairs.

#### INDICATOR 18. Percentage of enforcement cases investigated within 84 days



45. The purpose of this indicator is to measure “The Investigation Phase” of all types of enforcement cases, including proactive cases, monitoring cases, internal cases (i.e. from another department of the Authority), Councillor or Community/Town Council complaints or complaints from a member of the public, whether or not they are anonymous. It follows advice contained within the Development Management Manual in connection with making “an early decision both on the need for planning permission, and if required, on whether the development is acceptable” (paragraph 14.2.5). The same early decision making approach is equally applicable to enforcement cases relating to, for example, untidy land, illegally displayed advertisements or unauthorised works to Listed Buildings. Formal enforcement action of any sort is no longer to be viewed as a last resort. The recent introduction of new Enforcement Tools (e.g. Temporary Stop Notices and Enforcement Warning Notices) is intended to assist Enforcement officers in reaching a prompt resolution to enforcement cases. Paragraph 14.2.6 of the Development Management Manual endorses this approach and states:

“Prompt enforcement action means unacceptable unauthorised development is less likely to become well established and difficult to remedy. Also the statutory time limits for taking enforcement action will be adhered to”.

46. The indicator is intended to measure the percentage of all cases that are investigated within a set timescale in order to encourage a swift progression of all enforcement cases and to ensure that the public are aware of the outcomes of investigations and the actions that the Local Planning Authority will be taking to resolve a breach of planning control where one is identified.

47. For the purposes of this indicator the following definitions are provided:

- Enforcement case: An enforcement case is:
  - i. any number of complaints relating to a single alleged breach of planning control brought to the attention of the Local Planning Authority by any party (i.e. member of the public, Councillor, Community Council or any other party from outside the Council) by whatever means of communication, including anonymous complaints, if indeed such cases are investigated by the Local Planning Authority; and
  - ii. any pro-active planning enforcement investigation undertaken by the Local Planning Authority that has not resulted from a complaint having been made, including cases resulting from other internal departments of the Authority.
- Investigated: The Local Planning Authority has considered the matter that is subject of the enforcement case, has concluded that one of the following outcomes has occurred and has notified any complainant of this outcome in writing (electronic or letter).
- Investigation Outcomes:
  - i. no breach of planning control has occurred or the breach has been removed;
  - ii. a breach has occurred but the Local Planning Authority has formally determined that planning enforcement action is not expedient;
  - iii. a breach has occurred, planning enforcement action is expedient and a formal decision has been made by the Local Planning Authority to issue an Enforcement Notice (including an Enforcement Warning Notice, Breach of Condition Notice, Listed Building Enforcement Notice or Notice Requiring the Proper Maintenance of Land) or bring a prosecution against an offender in cases where unauthorised works are an offence (e.g. advertisements, works to a listed building, works to protected trees, etc.); or
  - iv. The receipt of a valid planning application (including NMA, Discharge of Condition, Certificate of Lawfulness, Advertisement and Listed Building applications) proposing retention of the development or the regularisation of the breach at the site.
- Breach: A breach includes untidy land and any works carried out without the necessary permission, consent or notification procedures having been followed. Essentially, it is taken to mean any planning enforcement matters that come within the ambit of the Town and Country Planning Act (1990), the Planning (Listed Buildings and Conservation Areas) Act 1990 and the Town and Country Planning (Control of Advertisements) Regulations 1992.
- Determination of expediency: Where a decision has been made in the case of outcome ii or iii above with regard to the expediency of pursuing enforcement action, such a decision must be the formal decision of the Local Planning Authority, in accordance with its scheme of delegation/constitution. This should not be the informal decision of the investigating enforcement officer, if such a decision has not been delegated to them.

48. With regard to the dates to be recorded for the purposes of this indicator, the clock starts on the (first working) day that a proactive case is opened or an enforcement complaint is received by the Local Planning Authority from the complainant or via a Councillor or another body/department/person. This could be by letter, email or telephone call, but Local Planning Authorities are encouraged to ensure consistency in the receipt of suspected breaches by allowing complaints to be submitted electronically. The clock stops for this 'investigation phase' when the Local Planning Authority has 'investigated' an enforcement case, as defined in paragraph 47 above.
49. As for reporting the Indicator, the 'Investigated' date should be used. As such, of the number of Enforcement Cases with an 'investigated' date within the period specified, the return should, firstly, report the number of cases investigated in less than 84 days and, secondly, the number of cases 'investigated' in 84 days or more.
50. Where there is no 'complainant' (i.e. a pro-active investigation or a report is received from a separate section of the Authority) the clock stops when the LPA has concluded one of the above outcomes (see paragraph 47) and recorded this information on the case file/record.
51. Where a Local Planning Authority concludes that either outcome i or ii has occurred, the decision shall not be reported (i.e. a date not recorded) for the purposes of Indicator 19 (Positive Action Indicator).
52. In cases where a planning application is received proposing retention of the development prior to the LPA coming to a conclusion on the investigation phase the investigation phase shall be treated as being closed on the date that a valid planning application has been received.
53. In cases where the breach of planning control is removed prior to the LPA coming to a conclusion on the investigation phase the investigation phase shall be treated as being closed on the date that the complainant has been informed in writing that the breach of planning control has been removed, or for proactive/anonymous cases, the date on which the LPA has established the breach of planning control is removed.
54. Where it has been determined that a breach of planning control is expedient under outcome iii or where an application for planning permission has been submitted under outcome iv, the clock will commence in relation to Indicator 19.

**INDICATOR 19. Average time taken to take positive enforcement action in the case of a confirmed breach of planning control**



55. The purpose of this indicator is to measure the time taken to pursue some form of action in an Enforcement Case where it has been determined that the breach is expedient or the time taken for a Local Planning Authority to determine an application submitted in an attempt to regularise a breach. 'Positive Action' follows the investigation phase of an enforcement case, but will only be recorded by Local Planning Authorities in the event of outcome (iii) and (iv) of paragraph 47. This indicator shall, therefore, only record those cases that have been determined as being 'expedient' in Indicator 18 under outcome (iii) of paragraph 47 or those cases where a planning application has been received prior to a decision being made (as per outcome (iv), paragraph 47 of Indicator 18).

56. For the purposes of this indicator the following definitions are provided:

- "Positive Action": The Local Planning Authority has concluded that one of the following outcomes has occurred and has notified any complainant of this outcome in writing (electronic or letter).
- "Positive Action Outcomes":
  - i. There has been a formal determination that a breach is expedient but informal negotiation subsequently removes the breach;
  - ii. An Enforcement Notice is issued. An Enforcement Notice includes a Stop Notice, Breach of Condition Notice, Enforcement Warning Notice, Untidy Land Notice (section 215 of the Town and Country Planning Act 1990), any type of Listed Building Enforcement Notice, Tree Replacement Notice, Hedgerow Replacement Notice or Completion Notice, but does not include a Planning Contravention Notice, Section 330 Notice (of the Town and Country Planning Act 1990), Temporary Stop Notice or Requisition for Information;
  - iii. Planning permission is subsequently granted through an application or enforcement appeal;
  - iv. A prosecution is brought (with the date that the case is first heard deemed as being the 'positive action' date); or
  - v. Direct action by the Authority removes the breach.

57. The Positive Action phase of an Enforcement case is measured from the date recorded at the end of the 'investigated' phase (see paragraph 47 above) to the date the case reaches one of the outcomes listed above (see paragraph 56).

58. The Local Planning Authority's average is calculated by adding the total number of days to take positive enforcement action for all enforcement cases that have a 'positive action' date that is within the reporting period, and dividing this by the total number of cases where it has been decided that enforcement action is expedient or where an application has been submitted in an attempt to regularise the breach.

59. The 'average time taken' for cases where positive action is pursued in any year is calculated by combining the four quarterly averages for this figure, and dividing the total by four. The figure published in the Performance Framework Table should be seen as indicative, and it is open to LPAs to provide a more accurate figure in their APRs by showing the total number of

cases deemed as being expedient per year, showing the overall time taken to pursue a positive action in those cases, and dividing the overall time by the overall number of cases.

60. Outcome i. relates to informal negotiation that takes place to remove a breach of planning control. This shall be used to measure those cases where a decision has already been taken that a case is 'Expedient' under Indicator 18 (as defined in paragraph 47) and negotiation between the LPA and the offender has resulted in removal of the breach of planning control without the need to serve an Enforcement Notice. This outcome shall not be used to measure those cases where informal negotiation takes place under Indicator 18 prior to a decision having been made that a case is expedient.