



The Planning Inspectorate
Yr Arolygiaeth Gynllunio

Enforcement, Listed Building Enforcement & Lawful Development Certificate Appeals



1. Who makes sure that development is in accordance with permission?

- 1.1. If planning permission is granted, by the local planning authority at application stage, by the Inspector on appeal or the Welsh Ministers on an application that has been called-in the local planning authority has the sole responsibility for monitoring the implementation of the permission and ensuring that it is in accordance with the plans and any conditions.
- 1.2. If the local planning authority considers that development does not comply with the permission it has the power to take enforcement action.

2. Why has the local planning authority issued an enforcement notice?

- 2.1. A local planning authority has discretion on whether to issue an enforcement notice. A local planning authority will issue an enforcement notice because it considers that what is being done or has been done is a breach of planning control because it is development that is not authorised by a planning permission or is a breach of condition(s) attached to a planning permission.
- 2.2. Further guidance on the circumstances in which a local planning authority may consider issuing an enforcement notice is in [Chapter 3 – Making and Enforcing Planning Decisions of Planning Policy Wales \(PPW\)](#).

3. Responsibilities of the appellant, the local planning authority and other parties

- 3.1. When issuing an enforcement notice the local planning authority should consider carefully whether it has a sufficiently strong case, on the basis of the available evidence. The reasons for issuing an enforcement notice should be clear and comprehensive and if the elected members' decision on whether to issue an enforcement notice differs from that recommended by its officers it is essential that its reasons for doing so are similarly clear and comprehensive.
- 3.2. The local authority's reasons for issuing the enforcement notice have to be included on that notice. Potential appellants should consider these carefully when deciding whether to make an appeal.
- 3.3. Appellants should be confident at the time they make their appeal that they have a clear case.

4. The importance of continued discussion about an alleged breach of planning control

- 4.1. The local authority should have constructive discussions with people whom it considers to have breached planning control.
- 4.2. Clear reasons for issuing the enforcement notice will help continued discussions and may mean that agreement can be reached and the enforcement notice withdrawn.

5. Who can make an appeal against an enforcement notice?

- 5.1. Any person having an interest in the land, or who is a relevant occupier of the land, to which an enforcement notice relates may appeal to the Welsh Ministers against the notice. Please see [Annexe 01](#) for time limit to appeal.
- 5.2. The terms “a person” and “a relevant occupier” includes a limited company or unincorporated body. If this is the case the appeal must be made in the name of the company. A director or shareholder, or in the case of an unincorporated body their authorised representative, does not have the right of appeal on the company’s behalf, although they can act as agent to the appellant company.
- 5.3. “Interest in the land” in this context has a special significance. It means either a legal or equitable interest in the land. It includes owners, lessees, some tenants and Official Receivers. Mortgagees or other lenders also have an interest in the land (as security for the loan they have advanced to the borrower).
- 5.4. A person who has an interest in the land may appeal against an enforcement notice (irrespective of his/her standing when the notice was served).
- 5.5. A “relevant occupier” means a person who:
- (a) On the date on which the enforcement notice is issued occupies the land to which the notice relates by virtue of a licence (the consent of the owner whether oral, written or implied); and
 - (b) Continues so to occupy the land when the appeal is brought.
- 5.6. A person who does not have an interest in the land or is not a relevant occupier does not have a right of appeal – even if the local planning authority serves a copy of the enforcement notice on them.
- 5.7. Sometimes, more than one person may have a legal interest in the land to which an enforcement notice relates and their different interests may conflict with each other. For example, the owner of the land may wish the enforcement notice to be upheld, while the occupier of the land may wish to continue with the present use and/or retain the works. In these circumstances, it is up to each person with a legal interest to decide how his or her interests will best be served once an enforcement notice has been issued.
- 5.8. If the owner of the land does not appeal against an enforcement notice but someone else does, in law they will have the status of an ‘interested person’. This does not entitle them to receive a copy of all the representations made by the appellant and other interested people (though they would be able to see such representations at the LPA’s offices).

- 5.9. However, in those circumstances, the owner may wish to request to be considered as an 'interested owner'. This status is given at our discretion. It means that we will give them similar treatment to an appellant. The owner will be able to attend any hearing or local inquiry, or be present when the Inspector visits the site. They will also be able to see and comment on any written representations made by the appellant, the LPA, and any other interested people, during the progress of the appeal. It is important that the owner requests the status of "interested owner" at the earliest opportunity.

6. Grounds of appeal

6.1. General advice

- Appellants should ensure that, at the time they make their appeal, they make clear what grounds they are pleading and provide full statement of facts to support each of these. If information on a ground is not supplied then it is possible that ground may not be considered by the Inspector.
- The facts should be clear, precise and provide disclosure of their case and the arguments being put forward. This will ensure:
- that we will be able to make an informed decision on the appeal procedure; and
- all other participants (including interested people) viewing the appeal documents will be aware of the arguments and issues from the start and will be able to make informed comment by the 6 week deadline.
- Grounds of appeal should:
- if ground (a) has been pleaded **and** the fee paid within the deadline;
- give full statement of facts in support of each chosen ground of appeal. You should think carefully about the facts on which you will rely;
- cover the planning merits of the case;
- include reference to any planning obligation under section 106 of the Town and Country Planning Act 1990;
- explain clearly why the appellant disagrees with each of the reasons for issuing the enforcement notice;
- explain why the alleged development would either satisfy the local and or national planning policy or why they are not relevant;
- include the full report reference if any case law is cited.

- 6.2 There are seven different grounds, in section 174(2) of the Act, on which you can make your appeal. You may wish to appeal on one ground only or on several grounds. The following is information about the different grounds and advice on what to include in your grounds of appeal.

- **Ground (a)** - that planning permission should be granted (or that the condition or limitation referred to in the enforcement notice should be removed). If you appeal on ground (a) you should set out in detail why you think that permission should be granted.
- **You do not have to pay a fee to appeal against the enforcement notice. However, if you want your appeal to be considered under ground (a) you must pay a fee.** The full fee must be paid to the LPA. Information about fees is given in The Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) Regulations 2015³⁸; this contains the current fees payable. We will tell you the fee that is payable when the appeal is started.
- If you **only** put ground **(a)** forward and you do not pay the fee, your appeal will lapse. This means that your appeal will end.
- If you decide to pay the fee, but do not want to give any information to support ground (a), the Inspector will still consider the planning merits of the development.
- You cannot withdraw ground (a). But, you can advise us **and the LPA** that you will not be providing evidence on this ground to prevent any abortive work taking place. It will be at the Inspector's discretion whether to consider the planning merits or not.
- In these circumstances, you will not be able to have your fee refunded. The only way you could get a refund at this stage would be to withdraw the whole appeal at least 21 days before the site visit, hearing, or inquiry take place.
- If you plead ground (a):
 - You should set out all your grounds of appeal clearly and concisely and focus upon the planning merits of the development. You should avoid repetition and information that does not relate to the issues involved. The grounds of appeal should be clear and concise and we would not expect them to exceed 3,000 words.
 - You should include a clear explanation of why you disagree with each of the LPA's reasons for issuing the enforcement notice. It is not enough to say that you do not accept them – that will not help the Inspector decide your appeal.
 - The enforcement notice will refer to policies in the Development Plan and/or supplementary planning documents. You do not need to describe any local policies in full. Simply give the number and the name of the relevant development plan or supplementary planning document. The LPA will provide these to the Inspector so you do not need to. However, before submitting your appeal you should read the policies referred to. You should include in your grounds of

³⁸ As amended by The Town and Country planning (Fees for applications, Deemed Applications and Site Visits) (Wales) (Amendment) Regulations 2017

appeal why you think that any policy referred to in the notice is not relevant or why the development complies with it.

- If you think there are other relevant policies, not referred to in the LPA's enforcement notice, but on which you intend to rely, you should attach the relevant extracts and include them with your appeal, indicating their status, i.e. whether they have been adopted by the LPA and/or have been saved by a direction of the Welsh Ministers and form part of the development plan.
- There is no need to set out national policy (such as PPW or TAN's³⁹) as Inspectors have these documents. However, you should refer to any paragraphs by number that you think are relevant.
- It will be helpful to attach previous decisions by the LPA or on appeal if they are directly relevant but you should indicate why you consider them to be so. You may include details of similar developments in the immediate area if you think these are relevant to what you have done. You should identify them on a street map and supply their addresses and, where possible, photographs of them. Where you are aware of the history of any such development you should set it out briefly in your grounds of appeal or in a separate annexe.
- Where the effect on the neighbours is mentioned in the notice, if you dispute this you should include measurements of the distances between your and your neighbours' properties, particularly the distances to any of their windows.
- You may use photographs (preferably in colour) to illustrate your grounds of appeal – for example to show the site and its relationship to its neighbours. If you submit photographs you must give details of where they were taken, on a map showing the viewpoints, and when and what they show. If you take photographs in public places please take reasonable care to respect the privacy of individuals whose images you may inadvertently capture. We are unable to return photographs.
- .Note: The Inspector will look at the planning merits of your development afresh and so there is no need to give a detailed history of discussions with LPA officers.
- **The following grounds (b), (c), (d) and (e) are often referred to as "the legal grounds". If you are pleading any of these grounds it is your responsibility to provide evidence to prove what you are saying.**
- **Ground (b)** - That the breach of control alleged in the enforcement notice has not occurred as a matter of fact.

³⁹ Planning Policy Wales (PPW) or Technical Advice Notes (TAN's)

- If you plead ground (b) you are saying that whatever is alleged in the notice has not taken place (i.e. that the alleged use is not occurring or that the alleged structure has not been erected). You should provide facts to support this. You may wish to show the difference between the actual use (or lack of it) and what is alleged in the notice.
- If you wish to argue that planning permission is not needed, do not do that under Ground (b). You should do that under Ground (c).
- **Ground (c)** - That there has not been a breach of planning control.
- You may wish to claim that: -
 - the operations alleged in the notice do not amount to development, under s55 of the Act, or that the change of use is not a material one (i.e. it is not subject to the requirements of planning control);
 - the development that has taken place is permitted by the Town and Country Planning (General Permitted Development) Order 1995 (as amended), or that the change of use is within the terms of the Town and Country Planning (Use Classes) Order 1987;
 what has been done, or built, is within the terms of a planning permission, or that the relevant condition on a permission has been complied with.
- Note: - Appellants and agents often confuse ground (b) with ground (c) and vice versa. Put simply, ground (b) is that you did not do it, and ground (c) is that you did, but planning permission is not needed.
- **If your appeal succeeds on Ground (c) the Inspector may grant a certificate of lawful use or development if you have specifically asked him or her to do so. However, this only applies where you have paid the fee.**
- **Ground (d)** – That at the time the enforcement notice was issued it was too late to take enforcement action against the matters stated in the notice.
- The time limits are as follows:
 - S171B(1) of the Act gives a time limit of 4 years for notices alleging operational development such as building, mining or engineering works.
 - S171B(2) gives a 4 year limit for change of use from a building/part of a building to a single dwellinghouse. This time limit applies either where the change to use as a single dwellinghouse involves development without planning permission, or where it involves a failure to comply with a condition or limitation subject to which planning permission has been granted.

- S171B(3) states that any other change is subject to a limit of 10 years from the date of the breach. This applies to changes of use and to breaches of any conditions attached to previous planning permissions.
- These time limits are set out in s171B of the Act and are confirmed in Annex 2 of WO Circular 24/97 Enforcing planning control: legislative provisions and procedural requirements.
- It is not enough to say “the breach of planning control occurred more than ten years ago”, or “The building was finished more than four years before the notice was issued”. You need to be able to provide evidence to establish this. You could say, for example: “The present use was started by the late George Smith in the summer of 1997. He continued it until his death in 2005. Then I bought the premises and have carried on the same use continuously until now” or, “The builder dug foundations of the building in March 2003 but he was only working part-time. Then during the summer he was able to work full time. The roof was tiled by the end of September and we started using the building in mid-October as it was very nearly finished.”
- **If your appeal succeeds on Ground (d) the Inspector may grant a certificate of lawful use or development if you have specifically asked him or her to do so. However, this only applies where you have paid the fee.**

7 Lawful Development Certificates

- 7.1 Section 177(1) of the 1990 Act gives the Welsh Ministers certain discretionary powers on the determination of an enforcement notice appeal under section 174. Section 177(1)(c), enables him to determine whether, on the date the appeal was made, any existing use of the land was lawful, any operations which had been carried out were lawful, or any matter constituting a failure to comply with a condition or limitation subject to which planning permission was granted was lawful.
- 7.2 In exceptional circumstances the Inspector may issue a certificate of lawful use or development (usually referred to as a lawful development certificate (LDC)) when determining your appeal, if you have specifically asked him or her to do so. However, the LDC procedure is intended to be administered primarily by LPAs. They are usually best placed to identify all the relevant details about a use, operation or activity which may need to be specified in an LDC. These details, including suitable plans to attach to the certificate, may not be readily available to the Welsh Ministers or an Inspector, even at the decision stage of an enforcement notice appeal.
- 7.3 Therefore, except very rarely, where an enforcement appeal succeeds on grounds (c) or (d) in section 174(2), the notice will be

quashed with no grant of a LDC and the appellant advised that it is open to him or her to apply to the LPA for an LDC under section 191.

- 7.4 **This only applies where a fee has been paid.** If an LDC were, exceptionally, to be granted on your appeal, the “deemed application fee” would not be refunded.
- 7.5 **Ground (e)** – That the notice was not properly served on everyone with an interest in the land.
- 7.6 You will need show the copies of the notice were not served as required by Section 38(4):
- on the owner and on the occupier of the land to which it relates; and
 - on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.
- 7.7 The service of the notice shall take place:
- not more than twenty-eight days after its date of issue; and
 - not less than twenty-eight days before the date specified in it as the date which it is to take effect.
- 7.8 Note:- If the notice was not served as specified in section 38(4), this can be disregarded if no substantial prejudice has been caused to anyone’s interests. For example if the appellant or other person is present at the inquiry/hearing or submitted written representations it is likely that he or she has been given adequate notice.
- 7.9 You should be aware that even if you succeed in this ground of appeal, the Inspector or the Welsh Ministers might disregard the matter and will give reasons for doing so. It depends whether he or she thinks the failure to serve a copy of a notice on a person has caused that person some injustice. You should provide the details of anyone who has an interest in the land. You should indicate who received the notice and who did not.
- 7.10 **Ground (f)** - That steps required to comply with the requirements of the enforcement notice are excessive and lesser steps would overcome the objections.
- 7.11 You should say why you think that the steps are excessive and what lesser steps you consider would remedy the problem. You cannot argue that planning permission should be granted under this ground, if you wish the planning merits of the development to be considered you must argue that under ground (a).
- 7.12 **Ground (g)** – That the time given to comply with the notice is too short.

- 7.13 You should say what you consider to be a more reasonable period and why. If you intend to appeal solely on this ground you should consider negotiating the timescale with the LPA, as they may be willing to extend the period for compliance, removing the need for an appeal.

8 Grounds of appeal for a listed building enforcement notice

8.1 There are 11 different grounds of appeal set out in section 39(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 on which an appellant can make an appeal against a listed building enforcement notice. For information about how to address each ground please see our "How to complete your appeal form – Wales".

8.2 The grounds are:

- **Ground (a)** - that the building is not of special architectural or historic interest;
- **Ground (b)** – that the matters alleged to constitute a contravention of section 9(1) or (2) have not occurred;
- **Ground (c)** – that those matters (if they occurred) do not constitute such a contravention;
- **Ground (d)** - that the works to the building were urgently necessary in the interests of safety or health or for the preservation of the building, that it was not practicable to secure safety or health or, as the case may be, the preservation of the building by works of repair or works for affording temporary support or shelter, and that the works carried out were limited to the minimum measures immediately necessary;
- **Ground (e)** – that listed building consent ought to be granted for the works, or that any relevant condition of such consent which has been granted ought to be discharged, or different conditions substituted;
- **Ground (f)** – that copies of the notice were not served as required by section 38(4);
- **Ground (g)** – except in relation to such a requirement as is mentioned in section 38(2) (b) or (c), that the requirements of the notice exceed what is necessary for restoring the building to its condition before the works were carried out;
- **Ground (h)** – that the period specified in the notice as the period within which any step required by the notice is to be taken falls short of what should reasonably be allowed;
- **Ground (i)** – that the steps required by the notice for the purpose of restoring the character of the building to its former state would not serve that purpose;
- **Ground (j)** - that the steps required to be taken by virtue of section 38(2)(b) exceed what is necessary to alleviate the effect of the works executed to the building;
- **Ground (k)** – that steps required to be taken by virtue of section 38(2)(c) exceed what is necessary to bring the building to the state in which it would have been if the terms and conditions of the listed building consent had been complied with.