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Research into the Review of the Planning Enforcement System in Wales

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Research into the Review of the Planning Enforcement System in Wales

Final Report

This research was prepared for Planning Division
of the Welsh Government by Arup and Fortismere Associates in May 2013

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1 Introduction

The Welsh Government commissioned Arup with Fortismere Associates to undertake research to inform the review of the planning enforcement system in Wales. The aim of the research was to provide a robust evidence base, a clear understanding of the operation of the existing enforcement system in Wales, and to make recommendations on the introduction of possible measures and improvements to ensure that the Welsh enforcement system operates as effectively and efficiently as possible in the future.

In exploring possible measures and improvements, to inform the review of the enforcement system in Wales, the objectives of the research were to:

- gather evidence on possible measures, which can be made to improve the effectiveness and efficiency of the enforcement system within the current and future legislative context (Phase 1);
- present a selection of appropriate case studies with which to test the possible measures (Phase 2); and
- provide clear recommendations on a future enforcement system in Wales in order to deliver a more efficient and effective process (Phase 3).

A report was prepared for each of the three phases of the research. This document is the Phase 3 report, which builds upon the Phase 1 and 2 assessments of case study examples and draws together the conclusions and recommendations of the research.

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We are grateful for the support and feedback of the members of the Steering Group who are listed within Appendix A.

1.1 Background to the study

The Welsh Government is committed to the continuous improvement of the land use planning system in Wales and has new powers to make laws specifically for Wales. The Legislative Statement (2011-16) includes a commitment to consolidate existing planning legislation to make it more transparent and accessible.

The Welsh Government plans to introduce a Planning Bill before 2016. A Welsh Planning Bill will provide an opportunity to reconsider roles and responsibilities, which will help to ensure that Wales has a planning system that can deliver the outcomes that it requires.

This research forms part of a wider review of the Welsh planning system to assist the Welsh Government in developing an evidence base to inform a Welsh Planning Bill. The White Paper and draft Planning Reform Bill is scheduled for Winter 2013.

1.1.1 Report of the Independent Advisory Group

The first stage of reconsidering the role of the planning system in Wales was the establishment of an Independent Advisory Group (IAG) in October 2011 to *"consider options on how to deliver the planning system in the future"*, which will form part of the evidence base for a Planning White Paper due to be published in 2013. The IAG report was published in June 2012 and made 97 recommendations to improve the delivery of planning in Wales, including enforcement[1].

Paragraph 6.2 of the IAG report noted that the Call for Evidence did not produce a significant body of comment on enforcement. Nevertheless, it noted that the enforcement process is a very important in maintaining public confidence in the planning system. The IAG report made a number of recommendations (Numbers 82, 92 and 93) on enforcement, some of which the Welsh Government has included for consideration in this research.

1.1.2 Previous planning enforcement research

The Welsh Government's commitment to review the planning enforcement system was originally set out in the Planning: Delivering for Wales (PdW) (2002) programme. PdW described the current planning enforcement system as *"somewhat cumbersome and ineffective"*. In response, an initial consultation (Stage 1) into the review of the planning enforcement system was published in July 2004. Responses to the questionnaire were then used to form the basis of a more focused consultation paper, issued as Stage 2 of the review. The Welsh Government's response to the Stage 2 consultation was published in December 2009[2].

In general, and in contrast to the comments in PdW, responses to the Stage 2 consultation expressed a consensus that the existing enforcement regime was effective, did not need radical change, and that the range of powers available to enforcing bodies were appropriate and generally sufficient for them to enforce planning control. However, a number of recommendations were raised, together with areas where further research would be of benefit.

1.2 Potential enforcement measures

The list of potential enforcement measures, which are considered in this research are listed in Table 1.

[1] Towards a Welsh Planning Act: Ensuring the Planning System Delivers. Report to the Welsh Government by the Independent Advisory Group, June 2012.
[2] Planning Enforcement System Review, Conclusions of the Welsh Assembly Government, December 2009

Table 1: List of Potential enforcement measures

No.	List of Potential Enforcement Measures
1A	Where existing time limits (i.e. 4 and 10 years) have prevented LPAs from taking appropriate enforcement action. The potential benefits and limitations of introducing different time limits for immunity from enforcement action. The effect of making changes to the 4 and 10 year rules, including extending, reducing or doing away with timescales. The potential benefits and limitations of introducing possible exemptions to gaining immunity from enforcement action.
1B	The potential benefits and limitations of introducing a provision to enable the serving of temporary stop notices in Wales. Where the threat of compensation has hindered the serving of Stop Notices.
1C	The effective use of completion notices. Whether existing provisions under the Town and Country Planning Act (1990) have hindered LPAs taking appropriate action against partially completed development. The potential benefits and limitations of making changes to existing provisions to enable appropriate action to be taken.
1D	Whether the levels of fines levied by the Courts to resolve a breach of planning control have been an incentive or disincentive for LPAs to take enforcement action / further action.
1E	The potential benefits and limitations of introducing a power through legislation to attach conditions on existing unauthorised development in addition to powers under Section 102 of the Town and Country Planning Act (1990). The possible benefits of introducing a provision to enable LPAs to serve a notice requiring an application to be submitted, enabling conditions to be attached to a permission to control unauthorised development (as introduced by Section 33A of the TCP Act 1997 (Scotland)).
1F	The potential benefits and limitations of LPAs dealing with enforcement offences by means of serving a fixed penalty notice (as introduced in Scotland).
1G	The potential benefits and limitations of introducing a provision for LPAs to enter on the planning register that an enforcement notice has been complied with to the satisfaction of the LPA.
1H	The potential benefits and limitations of introducing a provision for the cancellation of Enforcement Notices that have been complied with to the satisfaction of an LPA.
1I	The potential benefits and limitations of: 1. Ground (a), of the grounds of appeal against an enforcement notice under Section 174 of the TCP Act 1990, becoming the only route to obtaining planning permission once a notice has been issued and eliminating the 'deemed planning application'. 2. Ground (a) being unable to be pleaded when previous refusals for the same development have been upheld on appeal.
1J	The potential benefits and limitations of LPAs declining to accept retrospective applications for development the subject of an enforcement notice (as introduced by Section 123 of the Localism Act 2011).
1K	The potential benefits and limitations of changes to the Section 217 right of appeal, requiring that such an appeal is made to the Welsh Government instead of the Magistrates' Court.

1.3 Summary of the study approach

Phase 1 concentrated on drawing out a wide range of examples and practices to evidence the potential measures to be assessed by the study. Phase 2 examined these in more detail to consider, through a number of detailed case studies, how the issues underpinning the potential measures have arisen, and how these compared to a wider context in terms of experiences elsewhere and in terms of good practice. Finally, Phase 3 condensed the stakeholder comments, case studies and assessments sourced during Phases 1 and 2 and provided a coherent set of recommendations on the possible future shape and operation of the planning enforcement system in Wales. The research project has been undertaken over a six month period, concluding in April 2013.

This was an iterative study, which was systematic in gathering evidence. As such, a survey of all LPAs was undertaken to gather some 'global' baseline information around enforcement views, practices, processes and resources. This survey has been used to gather some top-level strategic intelligence on the operation of the enforcement system and has gathered information on the use of existing enforcement tools available to officers. It has helped identify staff resources and the route for delivery relevant to enforcement action. It supports a call for evidence, gathering enforcement case study examples and helped to inform Phase 3 of this research.

In the preparation of this Final Report, the following stages were undertaken:

- **Steering Group established**: A project Steering Group was created in Autumn 2012 to provide guidance, assistance and advice to the Arup team during the course of the commission. Members include representatives from the Welsh Government, the Planning Inspectorate, the Network for Planning Enforcement in Wales (NAPE) and LPAs. A full list of members is available at Appendix A.
- **Inception meeting**: An inception meeting was held with the Steering Group on 8 November 2012 to finalise the methodology, agree the programme, set meeting dates and progress reporting, and to discuss the selection and assessment of enforcement cases.
- **Progress meeting**: A meeting to present the findings of the Phase 1 research was held with the Steering Group on 24 January 2013. Comments received on the Phase 1 report have been incorporated into this document.
- **Stakeholder interviews undertaken**: A series of face-to-face and telephone interviews were undertaken to explore enforcement practices. Interviews were used to test potential measures that could help to improve the enforcement system in Wales, whilst participants were also encouraged to share examples of best or poor practice and experiences as case studies. Interviews were undertaken with Welsh Government officers, local authority planning and enforcement officers, and a range of (Wales & UK) industry and professional bodies. A full list of participants is listed within Appendix B.
- **LPA survey prepared and issued**: A survey was prepared and issued to all Welsh LPAs in order to establish how they carry out enforcement. The survey also provided an additional opportunity to invite case studies for consideration by the project team. A copy of the survey is provided within Appendix C.

- **LPA interviews undertaken**: Interviews were undertaken with six LPAs in North and South Wales. The LPAs were selected to provide a good geographical distribution and to reflect both urban and rural planning enforcement issues. The LPAs selected to participate in the research are:

  - Carmarthenshire County Council;
  - Denbighshire County Council;
  - Newport City Council;
  - Rhondda Cynon Taf County Borough Council;
  - Snowdonia National Park Authority; and
  - Vale of Glamorgan Council.

  We are grateful to these local planning authorities for their participation in and co-operation with this study.

- **Case studies received**: Five of the six of the LPAs interviewed, as part of the Phase 1 research, provided case study examples. In addition, two further LPAs – the Brecon Beacons National Park Authority and the Pembrokeshire Coast National Park – also provided case studies. Where they were useful and relevant, case studies were included to illustrate experience from the rest of the UK. Case studies were sourced for each of the proposed measures as far as practicable. However, for some measures practical examples have not been available other than anecdotal evidence provided by officers and stakeholders in the interview sessions.

- **Discussion seminars held**: Discussion seminars were held with LPA enforcement officers on 26 and 27 March 2013. The seminars comprised a presentation on the research and discussion sessions on the measures and the overall shape of the enforcement system. The seminars were well attended and were invaluable in finalising the recommendations of the report. A list of the LPAs who attended the seminar events is provided in Appendix D. We are grateful to the seminar attendees for their attendance and participation in the seminar discussions.

1.4 Structure of this report

The structure of the remainder of this report as follows:

- Chapter 2 outlines the current characteristics of the enforcement system in terms of stakeholder views;
- Chapter 3 outlines the current characteristics of the enforcement system in terms of the views of LPA Officers and Members;
- Chapter 4 provides a summary of the LPA survey to date;
- Chapter 5 provides an assessment of data provided by the Planning Inspectorate (PINS) on enforcement appeals in Wales;
- Chapters 6 to 18 describe and discuss the opportunities and constraints of the proposed measures;
- Chapter 19 considers the overall shape of the enforcement system;
- Chapter 20 covers the implementation of the proposed changes; and

- Chapter 21 summarises the recommendations that have emerged from the research.

2 Stakeholder Interviews

2.1 Introduction

A series of face-to-face and telephone interviews have been undertaken with stakeholders who have an interest in planning enforcement in Wales. A full list of interviewees is provided in Appendix B.

Interviews explored professional practices and perceptions on the use of existing planning enforcement tools. Interviews were used to sound responses on the potential measures that could help improve the enforcement system in Wales. Participants were also encouraged to share examples of best or poor practice and experiences as case studies.

A summary of common themes identified by stakeholders during the interviews is outlined below. These represent the views of the stakeholder organisations who took part in the study rather than the views of individuals.

2.2 A reactive approach

The stakeholders agreed that many LPAs act in a reactive, rather than a proactive manner to enforcement, but acknowledge that they are often constrained by staffing and other resource limitations. In summary:

- Planning enforcement is a function that is often not prioritised by LPAs. It was noted that enforcement is a discretionary function and that development management often takes priority;
- Some LPAs operate on a reactive basis and rely on public complaints to identify potential breaches of planning control. LPAs should take a more proactive approach to enforcement, but this may be difficult to resource in the current climate. Comments were also made that a lack of resources could inhibit effective enforcement action. The financial and political environment can also act as a barrier and/or risk, particularly with the potential threat of an appeal or compensation claim following enforcement action.

2.3 Resource constraints

There was a general consensus that LPA resources are subject to cut backs in the current economic climate and that this has a limiting effect on the level of enforcement service that can be provided. In summary:

- LPAs do not have the resources to proactively check the large number of conditions that are commonly placed on planning permissions for compliance;
- There are not enough enforcement officers available within LPAs;
- Any fines and fees generated by planning enforcement cases should be recycled back into the enforcement and development management service to support their continuing efficient operation. This would also promote transparency in the system. As there is no direct income from enforcement, there less incentive for LPAs to prioritise enforcement activity;

- The risk of compensation/costs, associated with the use of some enforcement measures, limits the scope to which certain tools are willingly utilised by LPAs, regardless of their potential effectiveness.

2.4 Variations in quality of service

Stakeholders perceived that the quality of the enforcement service provided by LPAs is variable. In summary:

- The quality of enforcement activity varies considerably between LPAs. Those that do it well tend to prioritise enforcement highly as part of their planning service and establish specialist teams accordingly. LPAs that leave enforcement operations to non-specialised development management officers tend to demonstrate poorer practices;
- The approach to enforcement, in terms of processes, varies between LPAs and not all follow best practice procedures. This can lead to inconsistency in the system;
- Planning conditions can often be inappropriately applied. Poorly drafted conditions can leave them open to challenge or disregarded. Many LPAs use standard conditions, which are outdated, or do not use conditions that are recommended by the Planning Inspectorate. They often do not comply with recent case law and can be interpreted subjectively;
- LPAs need to better understand permitted development rights, which are often complicated and inaccurately applied/explained, to the confusion of the lay person. Welsh Government guidance on this subject is limited and insufficient.

2.5 Training

Stakeholders suggested that enforcement officers should be given improved training in order to improve the quality of service being provided. In summary:

- Enforcement is a specialist professional area and appropriate training should be provided to those responsible for undertaking it. There is a large body of case law on enforcement, which can be difficult to follow and to keep up to date on new cases;
- There is no real academic training for university students relevant to planning enforcement, although planning law is studied to some degree. High quality training on the job is therefore important, which in the current economic climate is often challenging to provide. The level of training and knowledge in LPAs is variable;
- Inspectors involved in enforcement are provided with training and are given strong support in their specialist role. This should be replicated in LPAs;
- It is noticeable from the Welsh appeal cases and statistics for recent years that very basic and serious errors continue to arise. A lack of understanding of enforcement legislation, poor legal drafting and errors on notices can lead to under enforcement and notices being withdrawn or quashed on appeal;
- NAPE has helped to raise standards of enforcement and provide sufficient support and/or training. Disseminating best practice was considered to be key to helping improve standards in enforcement.

2.6 Delegation of responsibilities

There is general agreement between stakeholders that planning enforcement officers should have full delegated powers, but that Planning Committees should retain a regulatory role. In summary:

- LPAs should provide maximum delegated powers to officers, who are considered to be the specialist professionals able to make informed and accountable decisions;
- The approach to enforcement action by enforcement officers is usually fair, with officers seeing formal action as the last resort. However, there is a perception that Planning Committee Members use enforcement control powers as punishment for non-compliance, particularly when they consider that a person subject to enforcement action might have intentionally disregarded planning controls;
- Planning Committees should operate with a role of monitoring and scrutiny of enforcement only. Responsibilities for decision making should be delegated to officers, who have specialist experience in undertaking enforcement control;
- Planning Committees play an important role in monitoring activity and holding officers to account. They should be provided with appropriate training to better understand enforcement, planning law and the issues facing officers. A more regulated and systemised approach to reporting information to Committee could also be useful.

2.7 A need for clarity, timeliness and fairness

Stakeholders share the view that the enforcement system should be fair to all, although greater clarity should be provided to make the decision making process as transparent as possible. It was felt that the existing system provides too much opportunity for delay and unfair practice by those subject to enforcement action. In summary:

- There is a consensus between stakeholders that there are two types of defendants subject to enforcement action:
    1. Offenders who are honest people ‘caught out’ by a complicated, confusing planning system; and
    2. Offenders who intentionally disregard the system for their own personal gain.
- The current enforcement system can be out-manoeuvred and/or delayed by a knowledgeable developer or agent;
- Prosecutions often involve a very long and time consuming procedure, which is open to manipulation by those subject to enforcement action;
- It is important that any system remains discretionary, and enforcement action is applied as a last resort rather than as a ‘punishment’;
- The current system can be confusing for members of the public and there are many steps and stages of the process, with different types of notices and implications. Members of the public perceive the system to be frustrating and

find it difficult to understand why it can take LPAs a long time to take action and why LPAs may decide that it is not expedient to take any action at all;

- People do not always clearly understand their rights, which course of action should or could be taken and what costs they might face;
- Record keeping is variable, which can cause problems at appeal;
- Grounds of appeal are often unclear, confusing and lengthy;
- The existing enforcement process can be effective, but it should be made clearer and less confusing;
- Fines are often perceived as derisory, which do not deter non-compliance, particularly when a breach of planning control provides benefits to the offender that outweigh any financial penalty imposed on them in a magistrate's court.

2.8 Collaborative working and information sharing

Stakeholders suggest that, within LPAs, planning enforcement does not engage as fully as it should with other regulatory functions such as building control and environmental health. In summary:

- There is an acknowledgement that the level of collaborative working and information sharing varies largely between LPAs;
- Joined-up working between enforcement and other regulatory services varies between LPAs, but it is important that they work together. Information sharing should be best practice as it can lead to reduced duplication, more effective use of resources and a more informed enforcement system;
- It is common for the planning enforcement team to be incorporated into the development management team structure, which can benefit informal liaison and co-operation. However, stakeholders perceive that working practices between enforcement officers and other in-house Local Authority functions operate independently, with limited and ad hoc information sharing;
- Inexperienced development management case officers often attach planning conditions (particularly pre-commencement conditions) that are not always enforceable in practice. A more joined-up system, where enforcement officers support development management officers, in drafting specialist planning conditions could help to ensure that conditions are applied appropriately;
- Whilst statutory environmental bodies co-operate closely with LPAs on commenting on applications and development plan consultations, they do not always get involved with planning enforcement matters. Statutory environment bodies tend to pursue breaches of control on the environment through their own environmental powers, outside of the planning system. It was acknowledged that there may be an opportunity for the future single environmental body to work with planning enforcement teams in prosecution cases, where illegal activity affects the environment. The powers and penalties available to environmental protection agencies are greater than those afforded to planning enforcement and these could be utilised more effectively if prosecution services were joined-up;

- Lesson learning and best practice sharing between organisations responsible for enforcement should be encouraged. For example, the Environment Agency (EA) (from 1 April 2013, the EA is part of Natural Resources Wales (NRW)) is able to control activities through environmental permits, which can be amended over time subject to changes of use or development activity levels. Similar practices and approaches could be usefully applied to enforcement;
- The Countryside Council for Wales (CCW) (from 1 April 2013, CCW is part of NRW) is occasionally consulted on the use of stop notices, but in some cases, multiple authorisations are needed, which makes taking action challenging. The former CCW considered that they should be consulted on all stop notices in designated environmentally protected areas, which would ensure the effective application of enforcement tools and aid communication and information sharing between those responsible for the protection of the built and natural environment. This raises the issue of the speed of consultation responses, which would require a quick turnaround for stop notices. Consideration may need to be given to providing extra training and the implications of resource availability in the new environmental body.

3 Local Authority Interviews

3.1 Introduction

A series of face-to-face and telephone interviews have been undertaken with development management officers, planning enforcement officers and Planning Committee Members. Participants were identified with the assistance of the Steering Group and included representatives from:

- Carmarthenshire County Council;
- Denbighshire County Council;
- Newport City Council;
- Rhondda Cynon Taf County Borough Council;
- Snowdonia National Park Authority; and
- Vale of Glamorgan Council.

A full list of interviewees is provided within Appendix B.

A summary of common themes identified during the interviews is outlined below. The views expressed represent those of the organisation, rather than the individual.

3.2 Approach to enforcement

Generally, LPAs agree that the existing enforcement system is a good system, but it could be better. There is a consensus that enforcement needs more 'teeth'. In summary:

- Some LPAs have a formal enforcement policy document, whilst others provide a short guide to enforcement. Some LPAs, whose officers have no formal guidance on enforcement, follow the relevant Planning Officer Society for Wales (POSW) guidance. It has been noted that formal guidance on enforcement can be regarded as being too rigid, with the potential for LPAs being subject to challenge if their actions depart from any published guidance;
- For most LPAs, complaints can be lodged online, or recorded following telephone calls. Anonymous complaints are often accepted for investigation;
- The enforcement service is a largely reactive process, with resource constraints limiting the extent to which LPAs are proactive. However, there is a consensus that LPAs would like to be more proactive in their approach, particularly in checking the compliance of approved developments and discharge of conditions;
- Some LPAs are more proactive than others. Some LPAs actively sample a number of approved developments to check and monitor compliance. This is linked to building control information and monitoring. Some LPAs often monitor known problem sites or developers, whilst others commission aerial shots in order to try and identify breaches in planning control;

- Generally, either the LPA's enforcement policy or other guidance sets out when an officer should investigate a breach of planning control. If a breach of control has occurred, further information is sought with a view to enforcement action being taken if necessary. Most LPAs prefer to negotiate improvements or seek a planning application to regularise the development in the first instance. If this is not forthcoming, enforcement action will be taken. If there is no breach of planning control or it is not expedient to do so, the case is not pursued. The decision may or may not be recorded formally, depending on the LPA;
- Complaints, which are the result of neighbour disputes, are common and often occupy a disproportionate amount of officer time;
- There is no standard approach to prioritising enforcement cases or addressing a complaint. Most LPAs have a system to allocate and prioritise cases. Generally, it is common practice for LPA officers to visit a site within 1-5 working days following a complaint, depending on the severity of the complaint;
- Inspectors expect to see detailed records of a case when enforcement appeals are heard. Most LPAs keep a file with notes to record the progress of an enforcement case. Some utilise ICT systems to record and share important information and dates relevant to a case.

3.3 Resources

All of the LPAs interviewed suggested that resources are becoming more constrained. As a result, it is inevitable that enforcement will become increasingly reactive. In summary:

- Some LPAs do not have dedicated enforcement officers as a result of resource constraints;
- There is a perception that LPAs prioritise development management, in order to meet target determination timescales, rather than enforcement, which does not attract a fee;
- At a time of Local Authority budget cuts, enforcement is often seen as an easy target for reducing costs as enforcement is discretionary. Some LPAs are now at their absolute minimum levels in terms of available resources;
- There is too much focus on financial expediency when deciding what course of enforcement action will achieve the most satisfactory outcome compared to planning considerations because budgets are under scrutiny;
- There is often not enough capacity or time to deal with cases effectively and cost savings are likely to exacerbate this issue further in the future.

3.4 Training

There is a consensus between LPAs that enforcement officers do not initially have the relevant skills needed to undertake enforcement activity to a high quality, but that this is developed through training on the job. It was noted that on the job training can provide good quality experience for officers as many enforcement cases encompass both planning and other regulatory services. In summary:

- Officers can make errors on planning decision notices that have unintended consequences for planning enforcement. LPAs have to make sure that the appropriate wording is correctly applied to planning conditions so that they are enforceable;
- Enforcement officers need to work closely with the LPA's legal team in order to ensure that notices are drafted correctly. Some legal officers reported that enforcement officers are confident in preparing notices. In these situations, a draft notice is simply sent to the legal department for approval. However, in some cases, notices can be poorly drafted and need to go back and for between the legal and enforcement departments for amendment, which can lead to delays;
- There is an extensive body of case law on enforcement, which can be hard to monitor and understand without legal advice;
- At officer level there is usually a requirement for a qualification to degree level in a relevant field or experience in enforcement;
- The NAPE network is a useful source of advice. Resources are also available for training and the dissemination of best practice through the Planning Improvement Fund;
- In some cases, Members have served on the Planning Committee for a number of years and there is generally a good body of experience among those established Members in dealing with breaches of planning control;
- Member training for those on Planning Committees is not currently mandatory in all LPAs. However, there is a general belief that appropriate training should be provided to ensure that decisions are made correctly. Training would also help Members in understanding the challenges of enforcement and appreciate the decisions that officers make;
- Some LPAs provide regular training for Members, although this may not always address enforcement. Training, particularly in the context of budget cuts, is often specific, for example, on the use of the Proceeds of Crime Act (POCA).

3.5 Delegation of responsibilities

The extent to which officers are afforded delegated powers varies considerably between LPAs. In summary:

- Some LPAs have 100% delegated powers on enforcement, whilst in some LPAs officers do not have any delegated powers in respect of enforcement at all;
- For some LPAs, all enforcement cases are reported to Committee and each step of the process is referred back to Committee for Members' approval. In other LPAs, it is common practice for officers to have delegated powers for all matters except issuing enforcement notices, listed building enforcement notices and stop notices. For the majority of LPAs, the operational manager, or equivalent, can sign off Section 215 notices, breach of condition notices, planning contravention notices and requisitions for information;

- Where enforcement decisions are made at Committee, Members are generally supportive of officer recommendations. There were very few cases where Members voted against the officers' recommendations.

3.6 Barriers to clarity, timeliness and fairness

There is a general agreement between LPAs that there are too many opportunities for offenders to cause delay in the system and that the threat of prosecution is often disregarded. In summary:

- The system is too slow and cumbersome, with too many opportunities for manipulating the system to delay the process. This means that a breach of planning control can cause adverse problems for a long period of time;
- Magistrates need more guidance as they often impose derisory fines in spite of the relatively high caps set in legislation. Fines range from being reasonable to too low, which does not deter offenders;
- Members are frustrated by retrospective planning applications and consider that a retrospective planning application fee should be double, to prevent cases of non-compliance in the first instance;
- Some officers are not provided with appropriate support, training or resources, which means that some cases can be delayed partly because of poor management;
- For complex cases, it can be difficult to understand the current legal position and relevant case law;
- There are too many conditions imposed on planning decisions, which makes it hard to check if they are being complied with or not. There is a general need to reduce the number of conditions. On appeal, Planning Inspectors regularly reduce or amend the conditions proposed by LPAs;
- There is limited guidance in plain English. It is acknowledged that the system is complex and that enforcement notices can be misunderstood or misinterpreted by officers and members of the public due to the use of legal language. Complainants often misunderstand the process and assume that if an LPA decides that no action is necessary, that their complaint has been ignored.

3.7 Measuring performance

The approach taken to measuring performance varies largely between LPAs. In summary:

- It is common practice for LPAs to report to Planning Committee either monthly or quarterly. Reports are usually presented, outlining current cases and their associated timescales;
- Performance indicators often vary in approach, with some LPAs setting an overarching target of complaints to be addressed within a time period (i.e. 80% of complaints should be addressed within 12 weeks), whilst others use the number of complaints they receive as a performance indicator;

- Some LPAs send questionnaires to complainants on an annual basis, to assess the service that they have received. This often helps feed into a wider review of enforcement practices/policies for some LPAs;
- Some LPAs suggest that the use of performance indicators does not help to improve the enforcement system. Rather, they can force officers to make poor decisions, such as closing a case in order to comply with targets.

3.8 Collaborative working and information sharing

The level of information sharing and collaborative working between different Local Authority functions, departments, officers and external stakeholders varies. In summary:

- The approach to information sharing and collaborative working varies between LPAs, with some taking a proactive approach to facilitating communication, and others seeing it as a result of organic team structures. For most LPAs, enforcement officers are integrated within the wider development management team and there is a strong working relationship with building control and environmental health. Those who suggest that communication levels are very good tend to benefit from departments sharing office space;
- LPAs suggest that building control officers are the 'eyes and ears' of enforcement. As such, a strong working relationship is often seen as beneficial to both departments;
- Best practice includes weekly team meetings to discuss planning applications, enforcement cases and other relevant issues. Each team can discuss issues openly with each other, which allows for other specialist disciplines to contribute. This approach can often help to decide how cases are prioritised and/or addressed;
- Information is often shared with other departments on an informal basis, by email, phone or in person. Very few LPAs formally share information or utilise shared ICT systems;
- Minerals and waste enforcement is often a separate department, or is undertaken by a separate specialist officer. Some LPAs have a service level agreement with other authorities for minerals and waste monitoring and enforcement, to help utilise limited expertise and resources in this specialist area. Cases relevant to listed buildings, conservation areas and trees are normally handled by a specialist county wide (or equivalent) staff member;
- There is often a strong working relationship with the police, although some LPAs suggest that it is difficult to secure police assistance due to lack of availability. Enforcement officers often face aggressive behaviour from offenders and serious threats are common;
- Legal advice is normally provided at Planning Committee. Some LPAs suggest that it is a challenge to seek timely legal advice due to resource constraints in the legal department. Other LPAs have a dedicated legal officer or a legal team for planning enforcement with regular contact and input to the drafting of notices;

- The South-East Wales NAPE forum assists with knowledge sharing and highlights where there are inconsistencies in the system. This approach to information sharing should be rolled out across Wales;
- LPAs suggest that they work well with statutory consultees. There was a mixed opinion on the benefit of engaging with external organisations on enforcement cases. Some LPAs suggest that statutory environmental bodies can be reluctant to utilise their own enforcement powers, and often provide very limited advice or information, and prefer not to be involved in the decision making process. Other LPAs work closely with statutory consultees in securing prosecutions and have had success in some high profile cases.

4 Local Authority Survey

4.1 Introduction

The current Development Control Quarterly Survey[3] does not record any information about enforcement and beyond the 2009 benchmarking study undertaken by the City and County of Swansea[4], there is no top-level strategic intelligence on the operation of the enforcement system in Wales. As a result, a survey was issued electronically to all LPAs in Wales in December 2012 in order to gather an up-to-date picture of enforcement workload and capacity. A copy of the survey is included in Appendix C.

LPAs were asked to provide data for the years 2010/11 and 2011/12, as well as the first six months of 2012/13. These time periods were intended to provide a balance between providing sufficient longitudinal data to provide a robust dataset, whilst minimising the burden on LPAs providing information. The survey was designed to supplement other data sources, including the appeals data from the Planning Inspectorate (see Chapter 5), the call for evidence issued at the outset of the study and the more detailed case study examples.

The survey covered the following topics:

- **Enforcement cases:** Number and origins of cases; outcomes of cases (including how many cases were found to be no breach or not expedient); and information on number and fee income on retrospective applications. These questions were designed to indicate workload volume and outcomes in enforcement departments.
- **Notices and other powers:** Numbers of planning contravention notices; enforcement notices; breach of condition notices; stop notices; Section 215 notices; completion notices; discontinuance notices; discontinuance orders (under Section 102); cases where direct action has been taken; and injunctions. These questions were designed to gather information on the use of instruments currently available to LPAs.
- **Prosecutions, fines, costs and compensations:** Details of recent prosecutions, fines, appeals, and compensation incurred. These questions were designed to supplement the call for evidence and data provided by the Planning Inspectorate on planning enforcement appeals, and to help identify potential case studies.
- **Department structure and operation:** Legal support; liaison with building control and regulatory services; existing enforcement policies or procedures; and delegated officer powers for enforcement. These questions were designed to understand the operation of enforcement departments, as well as their place within the wider Council function.
- **Service costs:** The costs of providing an enforcement service, including staff and overhead costs. These questions were designed to build on the findings of

[3] Development Control Quarterly Survey (July to September 2012), Welsh Government, October 2012
[4] Local Planning Authorities Enforcement Benchmarking Survey, City and County of Swansea, 2009

the 2009 Swansea study and provide a more up-to-date picture of the 'price' of enforcement.

Responses were received from 23 out of 25 LPAs (a 92% response rate). In some cases it was not possible for an LPA to provide a full answer to a question due to the various ways that cases had been recorded and archived. Where appropriate, the number of LPAs providing data for a particular question is identified in the analysis.

4.2 Enforcement cases

A total of 20,346 enforcement cases were registered across 19 LPAs within the period (with a case defined as 'an enforcement complaint received and investigated about an alleged breach of planning control'). This ranged from 418 cases registered in Powys, to 2107 registered in Newport. Perhaps unsurprisingly, the data indicated that the rural LPAs and National Parks tend to have fewer cases than urban ones; however, there are exceptions, whilst the lack of data from Cardiff City Council and Carmarthenshire County Council makes this difficult to fully assess. The average amount of cases across these LPAs was 1071 (or 428 per annum). Figure 1 shows the range of cases by LPA.

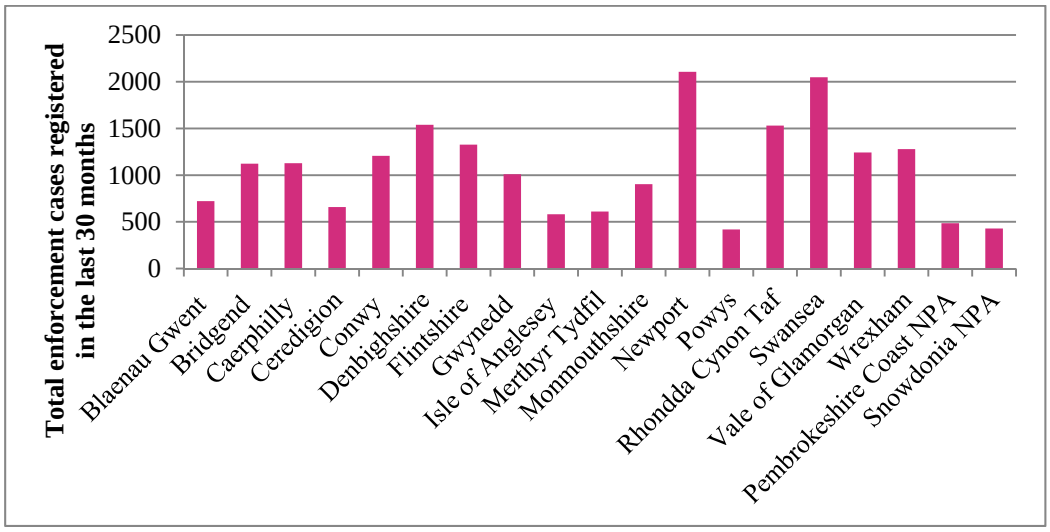


Figure 1 Total number of planning enforcement cases registered in the last 30 months, by LPA

Some 14 LPAs were able to provide a breakdown of the origin of cases registered. As is shown in Figure 2, over two-thirds of cases resulted from complaints made by members of the public, with only 22% resulting from officers. This backs up the prevailing view from the stakeholder interviews that planning enforcement remains a reactive rather than proactive process.

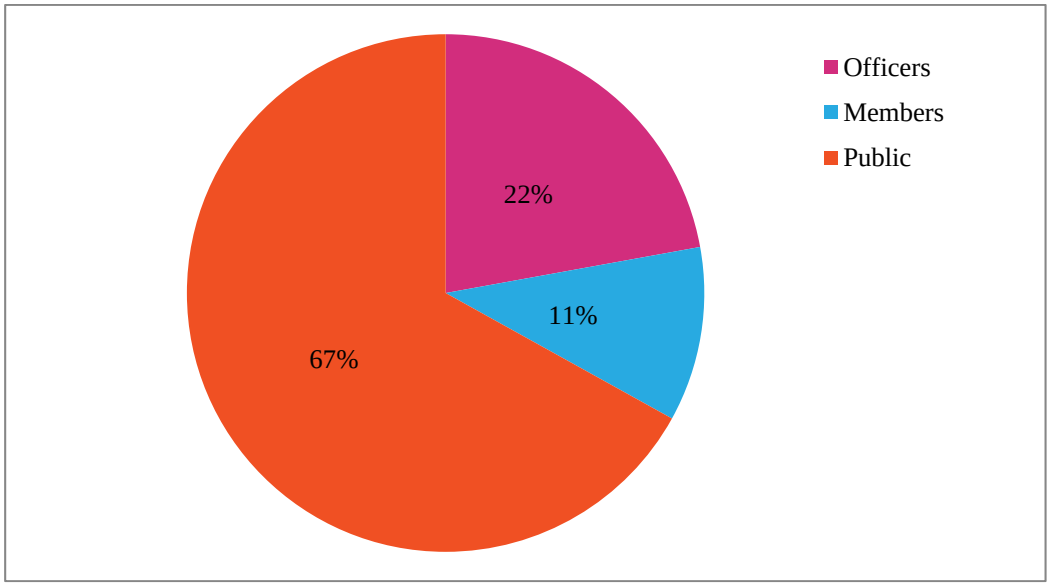


Figure 2 Origins of planning enforcement cases

LPAs were asked to provide information on the enforcement cases which were closed in each period (but which did not result in the enforcement actions dealt with in Section 4.3) (Figure 3). The majority of such cases (56% across the period) resulted in no breach of planning permission being found. Approximately 25% of cases not leading to formal enforcement action were a result of the judgement that it would not be expedient to do so.

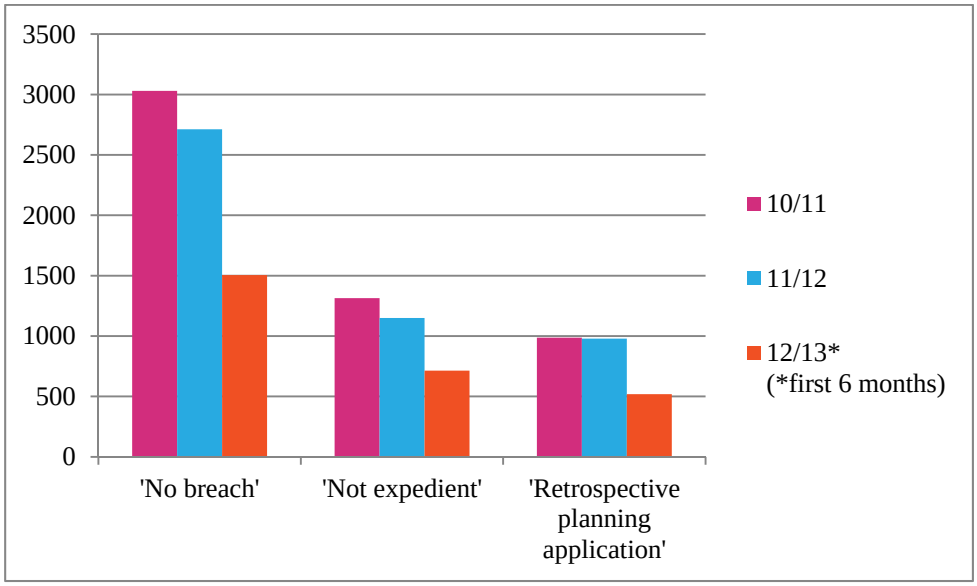


Figure 3 Outcomes of planning enforcement cases in the last 30 months

The number of retrospective planning applications received by LPAs over the 30 month period ranged from 56 (Snowdonia NPA) to 295 (Vale of Glamorgan). From the 14 LPAs providing data on both total cases and retrospective applications, it can be seen that the proportion of cases which result in an application being made varies quite considerably between 6% and 30% (see Figure 4). This might suggest this route to control of unauthorised development is not always fully utilised, and that the ability to require a retrospective application may be a useful additional lever. Figure 5 shows that the majority of retrospective

applications are approved. However, where the approval rate is slightly lower it does raise the question over whether it is fair to require an application, particularly where a fee might be charged (see Section 12). The average fee received for each retrospective application across the period is £322.

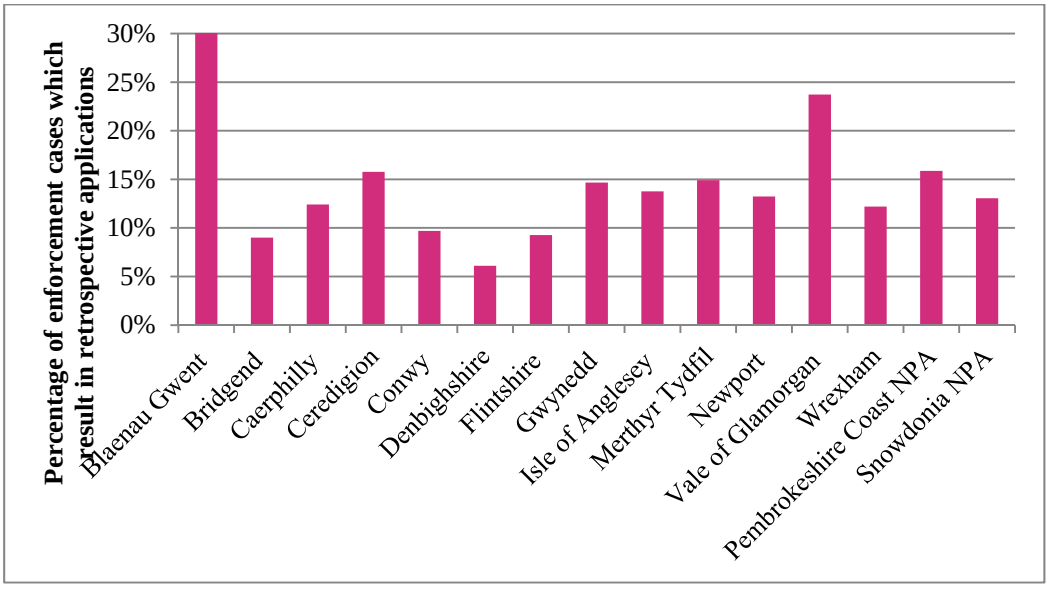


Figure 4 Proportion of enforcement cases which result in retrospective applications being submitted, by LPA

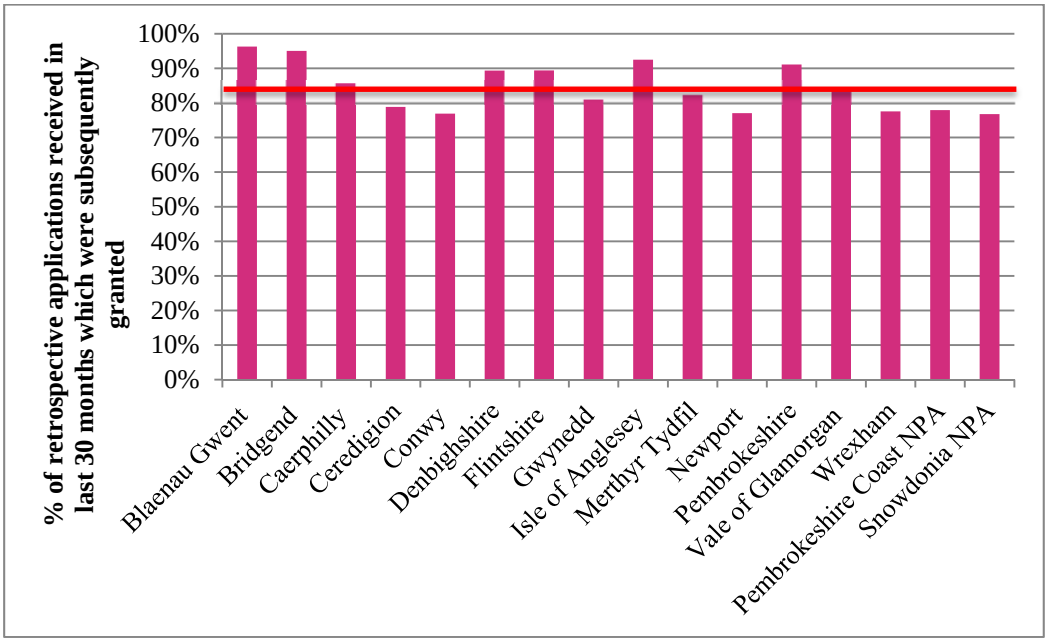


Figure 5 Proportion of retrospective planning applications in the last 30 months which are subsequently granted.

4.3 Notices and other powers

Table 2 illustrates the use of enforcement instruments since 2010/2011. There are marked differences in the use of the instruments covered in the survey, as well as a variation in the effectiveness with which identified breaches appear to be pursued. The number of apparently unresolved cases and the small proportion of cases ending in any real action, in some instances, is also shown in Table 2.

Table 2: Enforcement action taken in the last 30 months

	Cases			Enforcement action								
	Cases	'No breach'	'Not expedient'	Planning Contravention Notice	Enforcement Notice	Breach of Condition Notice	Stop Notice	S.215 Notice	Completion Notice	Discontinuance notice	Discontinuance Order (S.102)	Injunction
Blaenau Gwent	721	122	72	137	18	4	0	4	0	0	0	0
Bridgend	1,122	n/d	n/d	61	30	0	0	6	0	0	0	0
Caerphilly	1,128	n/d	n/d	105	38	12	0	12	0	0	0	0
Ceredigion	659	129	89	44	24	6	0	2	0	0	0	0
Conwy	1,207	n/d	n/d	136	33	5	0	5	0	1	1	3
Denbighshire	1,539	812	80	20	10	13	0	28	0	0	0	0
Flintshire	1,327	1,327	57	33	16	1	0	3	0	0	0	1
Gwynedd	1,009	501	299	48	1	2	0	4	0	0	0	0
Isle of Anglesey	581	191	314	82	5	1	0	1	0	0	0	0
Merthyr Tydfil	610	352	74	7	3	0	0	2	0	0	0	0
Monmouthshire	904	n/d	n/d	0	84	20	0	5	0	0	0	0
Neath Port Talbot	n/d	564	111	3	32	8	1	20	0	0	0	0
Newport	2,107	384	1,215	85	66	29	1	36	0	0	0	1
Pembrokeshire	n/d	451	168	28	19	4	0	2	0	0	0	1
Powys	418	299	73	0	14	0	0	0	0	0	0	0
Rhondda Cynon Taf	1,531	578	94	73	29	22	0	11	0	0	0	0
Swansea	2,048	n/d	n/d	21	56	10	1	6	0	0	0	0
Torfaen	n/d	330	205	20	38	13	0	1	0	0	0	0
Vale of Glamorgan	1,243	54	13	25	28	14	2	14	0	0	0	0
Wrexham	1,278	689	243	29	22	7	0	9	0	0	0	0
Brecon Beacons NPA	n/d	n/d	n/d	n/d	n/d	0	0	2	0	0	0	1
Pembrokeshire Coast NPA	485	317	17	131	26	3	0	2	0	0	0	0
Snowdonia NPA	429	147	54	18	11	2	0	2	0	0	0	0
Total				**1106**	**603**	**176**	**5**	**177**	**0**	**1**	**1**	**7**

4.3.1 Planning contravention notices

As shown in Figure 6, planning contravention notices, which allow the LPA to require detailed information about suspected planning breaches, are used across most LPAs. However, the total number used within the period varied quite considerably: Blaenau Gwent, Conwy and Pembrokeshire Coast NPA all used over 130, whilst Neath Port Talbot used three and Monmouthshire reported no planning convention notices being served across the 30 month period. The number issued bears no correlation to total enforcement cases received by each LPA, which suggests that this variation is down to choices made by each LPA.

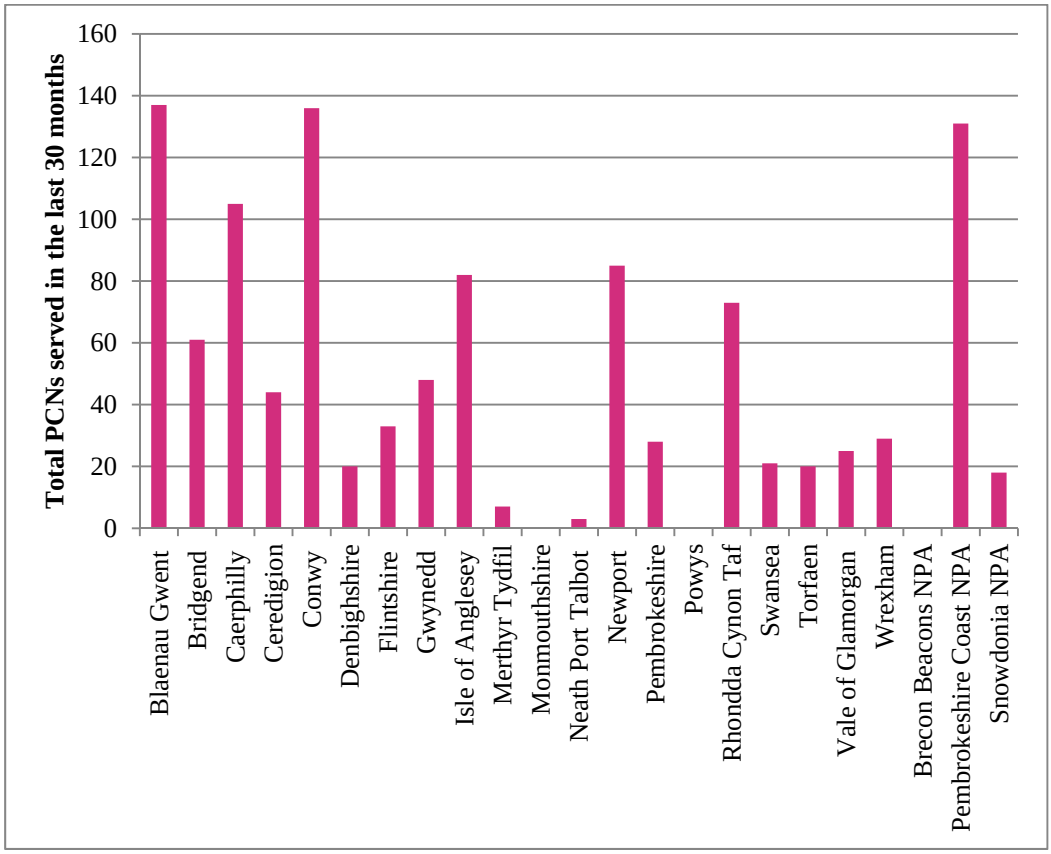


Figure 6 Total number of planning contravention notices served in the last 30 months, by LPA

4.3.2 Enforcement notices and breach of condition notices

Similar to planning contravention notices, enforcement notices are used by all LPAs, but in differing amounts (see Figure 7). The percentage of enforcement notices which were complied with within the specified period varied between LPAs: ranging from 100%[5] compliance reported by two authorities to less than 50% of notices served by six LPAs.

[5] It has emerged that some LPAs interpreted this question in the survey differently and as such the figure of 100% compliance may not be an accurate representation.

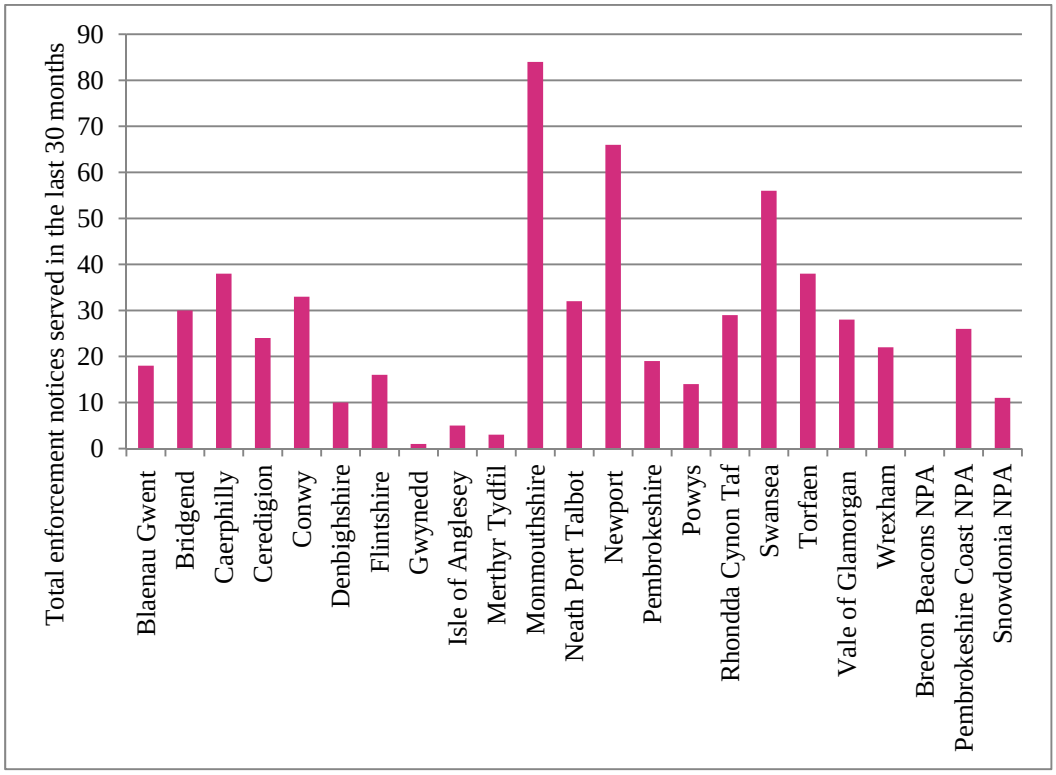


Figure 7 Total number of enforcement notices served in the last 30 months, by LPA

The number of enforcement notices which were subsequently withdrawn by the LPA also varied across respondents, as shown in Figure 8. This is dealt with in more detail in Section 5 in relation to appeals.

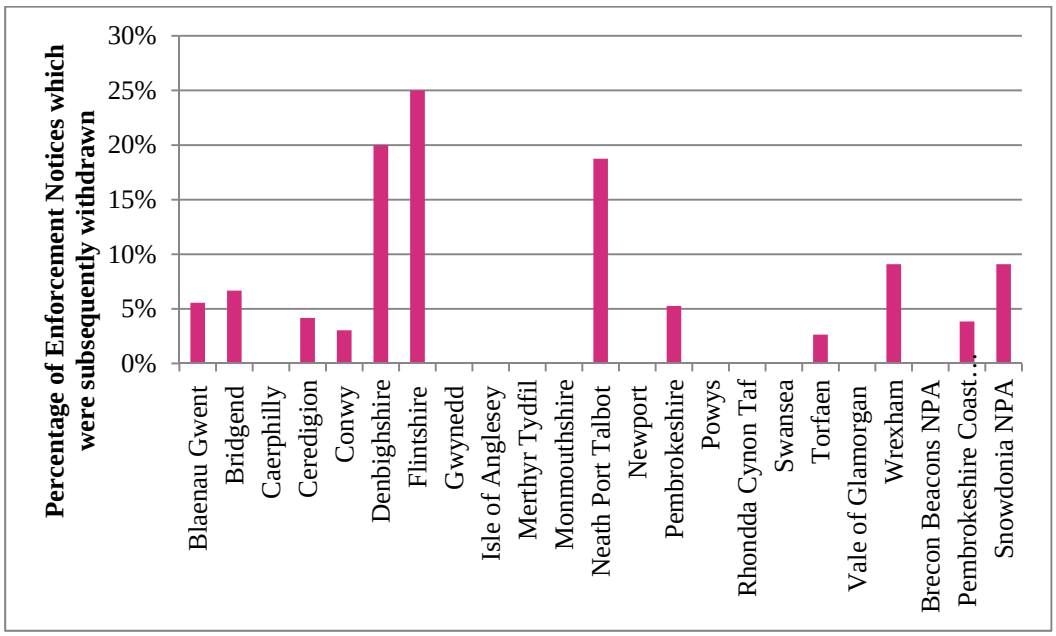


Figure 8 Proportion of enforcement notices served which were subsequently withdrawn

Again, breach of condition notices are used by most LPAs, but in various numbers (see Figure 9). The proportion of cases complied with within the specified time period was also similarly varied, with three LPAs falling under 50% compliance. Though this might suggest that some LPAs are better at using enforcement notices and breach of condition notices to resolve cases, the amount and type of cases also affect these figures.

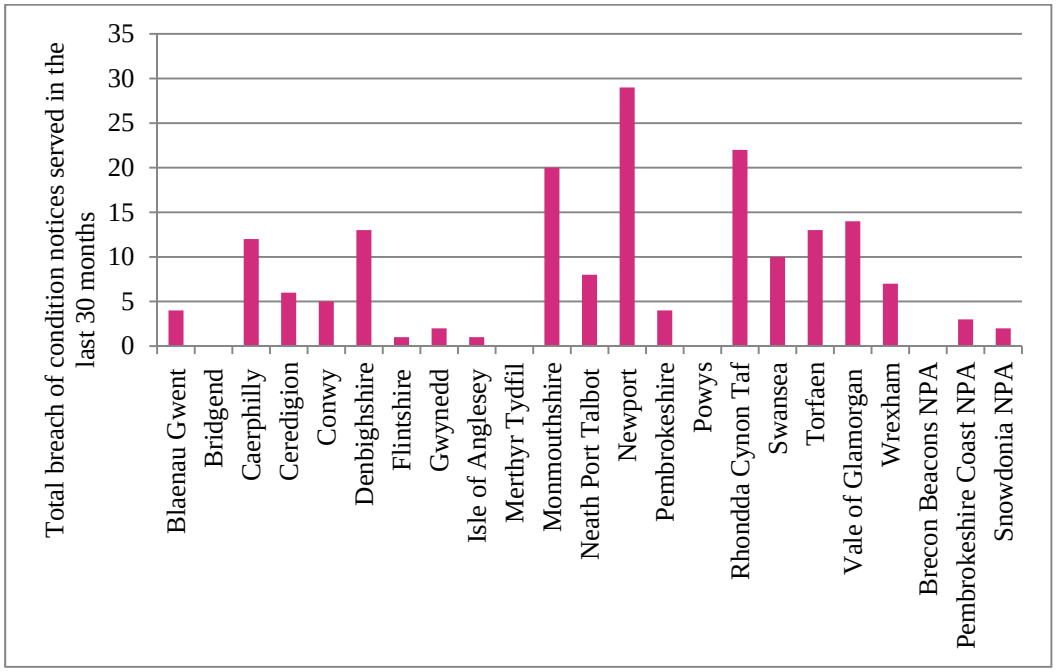


Figure 9 Total breach of condition notices served in the last 30 months, by LPA

4.3.3 Stop notices

Stop notices were reported to be used very infrequently within the 30 month period, with only five notices served by four LPAs. This supports the prevailing viewpoint from the stakeholder and Local Authority interviews that they are an infrequently-used tool. Three of the five notices were complied with within the specified time period, suggesting that it is still a useful tool despite the infrequent use.

4.3.4 Section 215 notices

Figure 10 illustrates the wide variation in use of Section 215 notices and, again, does not correlate directly with total number of enforcement cases recorded in each LPA. The number of enforcement cases brought before the Magistrate's Court, in comparison with other types of cases dealt with by the Courts, often means that Magistrates have little experience of dealing with such issues. With no national guidance or training for Magistrates on enforcement, the outcome can be uncertain. However, Figure 10 also shows that very few Section 215 notices were appealed against, with 12 appeals against seven LPAs within the time period, and six such appeals granted.

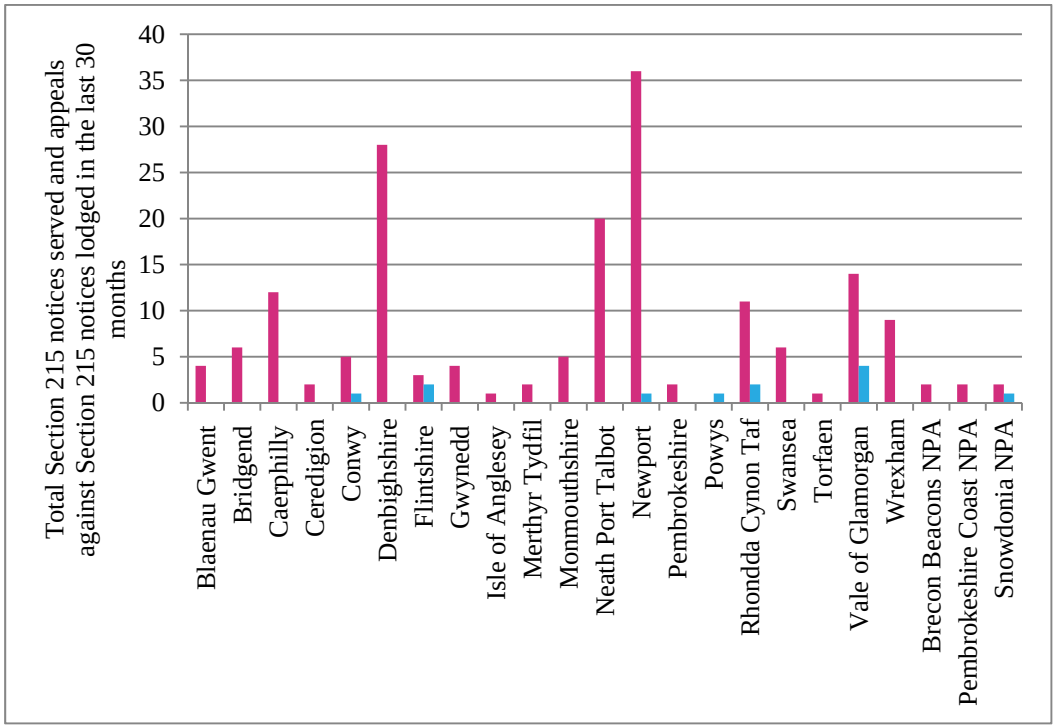


Figure 10 Total Section 215 notices served and appeals against Section 215 notices lodged in the last 30 months, by LPA

4.3.5 Completion notices

No completion notices were served within the time period. Again, this supports the finding of the stakeholder interviews that the tool, as currently formulated, is not in regular use.

4.3.6 Discontinuance notices

Only one discontinuance notice was served within the 30-month period.

4.3.7 Section 102 Discontinuance Order

Discontinuance orders, requiring the use of land to be discontinued or subject to conditions, or any buildings or works to be altered or removed, were found to be very rarely used, with only one served within the 30-month period.

4.3.8 Injunctions

Injunctions were sought seven times by five LPAs. Those which were sought had a relatively high success rate with five (71%) being granted. The two that were refused were from the same LPA.

4.4 Prosecution, fines, costs and compensations

15 LPAs provided examples of 73 cases where prosecutions had occurred as a result of enforcement action taken. Of these cases:

- 32 cases related to non-compliance with an enforcement notice or action taken against unauthorised change of use;
- 22 cases related to non-compliance with a Section 215 notice;
- 7 cases related to unauthorised advertisements;
- 5 cases related to non-compliance with breach of condition notices; and
- 6 cases referred to other or unspecified cases, including breach of an injunction, contravention of a tree preservation order, unauthorised works to a listed building, and the non-return of a Section 330 notice.

Details of these cases are provided in Table 3.

Table 3: Prosecutions occurring as a result of enforcement action in the last 30 months

LPA	Date	Description of prosecution provided by LPA
Enforcement Notice/ Unauthorised Change of Use		
Bridgend	07/2010	Non-compliance with enforcement notice
Bridgend	04/2012	Non-compliance with enforcement notice
Caerphilly	08/2010	Non-compliance with enforcement notice
Caerphilly	04/2011	Non-compliance with enforcement notice
Caerphilly	09/2012	Non-compliance with enforcement notice
Conwy	03/2012	Change of use
Conwy	04/2012	Change of Use
Conwy	07/2012	Non-compliance with enforcement notice
Denbighshire	05/2011	Non-compliance with enforcement notice
Flintshire	02/2010	Non-compliance with enforcement notice
Flintshire	07/2011	Non-compliance with enforcement notice
Flintshire	09/2012	Non-compliance with enforcement notice
Neath Port Talbot	07/2011	Non-compliance with enforcement notice
Neath Port Talbot	09/2010	Non-compliance with enforcement notice
Newport	11/2010	Non-compliance with enforcement notice
Newport	03/2011	Change of use
Newport	07/2011	Change of use
Newport	10/2012	Change of use
Pembrokeshire	05/2010	Non-compliance with enforcement notice
Pembrokeshire	11/2010	Non-compliance with enforcement notice

LPA	Date	Description of prosecution provided by LPA
Pembrokeshire	03/2011	Non-compliance with enforcement notice
Vale of Glamorgan	09/2010	Non-compliance with enforcement notice
Wrexham	08/2010	Non-compliance with enforcement notice
Wrexham	01/2011	Non-compliance with enforcement notice
Wrexham	09/2011	Non-compliance with enforcement notice
Wrexham	05/2012	Non-compliance with enforcement notice
Snowdonia NPA	11/2010	Non-compliance with enforcement notice
Snowdonia NPA	2010	Non-compliance with enforcement notice
Snowdonia NPA	05/2012	Non-compliance with enforcement notice
Snowdonia NPA	08/2012	Non-compliance with enforcement notice
Snowdonia NPA	08/2012	Non-compliance with enforcement notice
Snowdonia NPA	08/2012	Non-compliance with enforcement notice
S.215 notice		
Bridgend	02/2011	Non-compliance with a S.215 notice
Caerphilly	02/2012	Non-compliance with a S.215 notice
Caerphilly	09/2012	Non-compliance with a S.215 notice
Denbighshire	06/2010	Non-compliance with a S.215 notice
Denbighshire	12/2010	Non-compliance with a S.215 notice
Denbighshire	10/2011	Non-compliance with a S.215 notice
Denbighshire	12/2011	Non-compliance with a S.215 notice
Flintshire	07/2011	Non-compliance with a S.215 notice
Gwynedd	01/2012	Non-compliance with a S.215 notice
Neath Port Talbot	03/2011	Non-compliance with a S.215 notice
Newport	01/2011	Non-compliance with a S.215 notice
Newport	11/2011	Non-compliance with a S.215 notice
Newport	04/2012	Non-compliance with a S.215 notice
Vale of Glamorgan	09/2010	Non-compliance with a S.215 notice
Vale of Glamorgan	10/2010	Non-compliance with a S.215 notice
Vale of Glamorgan	02/2011	Non-compliance with a S.215 notice
Vale of Glamorgan	12/2011	Non-compliance with a S.215 notice
Vale of Glamorgan	02/2012	Non-compliance with a S.215 notice
Vale of Glamorgan	04/2012	Non-compliance with a S.215 notice
Vale of Glamorgan	07/2012	Non-compliance with a S.215 notice
Wrexham	09/2012	Non-compliance with a S.215 notice

LPA	Date	Description of prosecution provided by LPA
Snowdonia NPA	10/2010	S.215 notice appeal
Advertisements		
Conwy	12/2011	Breach of Advertisement Regulations
Conwy	07/2012	Breach of Advertisement Regulations
Flintshire	02/2012	Breach of Advertisement Regulations
Flintshire	09/2012	Breach of Advertisement Regulations
Pembrokeshire	03/2012	Breach of Advertisement Regulations
Rhondda Cynon Taf	04/2012	Breach of Advertisement Regulations
Wrexham	02/2011	Breach of Advertisement Regulations
Breach of condition notice		
Caerphilly	12/2011	Non-compliance with breach of condition notice
Caerphilly	06/2011	Non-compliance with breach of condition notice
Rhondda Cynon Taf	03/2012	Non-compliance with breach of condition notice
Rhondda Cynon Taf	08/2012	Non-compliance with breach of condition notice
Vale of Glamorgan	09/2010	Non-compliance with breach of condition notice
Other		
Caerphilly	08/2011	Breach of injunction
Caerphilly	08/2012	Contravention of a Tree Preservation Order
Flintshire	07/2010	Non-compliance with a high hedge remedial notice
Flintshire	09/2011	Appeal against conviction
Flintshire	07/2011	Appeal against fine
Rhondda Cynon Taf	01/2012	Non-return of a Section 330 notice
Wrexham	06/2012	Unauthorised works to a listed building

LPAs were also asked to provide details of fines levied through Court proceedings over the last 30 months, excluding the costs awarded to the LPA. Details of 59 fines were provided by 15 LPAs. Of these fines:

- 23 related to non-compliance with an enforcement notice or action taken against unauthorised change of use. The lowest fine was £300, and the highest was £18,000. The mean fine levied was approximately £4,000; however, 18 of the 23 fines levied were below this;
- 18 cases related to the non-compliance with a Section 215 notice. The lowest fine recorded was £100 and the highest was £5,500, with an average of approximately £1,400. 14 of the cases resulted in fines of £1,000 or under, with nine of these £500 or under. There were also two cases reported no fine was levied, and instead a conditional discharge was given;
- six cases related to unauthorised advertisements, The lowest fine was £150 with the highest £750. The average fine levied was approximately £400;

- five cases related to non-compliance with a breach of condition notice. Fines ranges between £100 and £1000, with an average of approximately £450; and
- five cases referred to other or unspecified cases.

Costs relating to appeals were applied for by the LPA in six cases, and awarded in four of these six. This included one case where £33,790 was awarded to the LPA; other cases were much lower. Costs were applied for against the LPA in six cases, but only awarded in two; one where £502 was awarded, and the other where the award is currently being challenged.

No cases were reported where compensation was incurred as a result of serving a stop notice. However, as shown in Section 4.3.3, stop notices are used very infrequently.

Direct action to rectify the enforcement breach was reported to have been taken in 15 cases by five LPAs. A brief description of the action taken is shown in Table 3.

Table 4: Direct action taken by LPAs in the last 30 months

LPA	Date	Description of direct action taken
Denbighshire	10/2011	Works in default on residential property following non-compliance with untidy land notice
Denbighshire	06/2012	Works in default on commercial property following non-compliance with untidy land notice
Denbighshire	09/2012	Works in default on commercial property following non-compliance with untidy land notice
Neath Port Talbot	07/2012	Garden clearance following repeated non-compliance with Section 215 and fining
Newport	08/2010	Stonework and timber repairs
Newport	08/2010	Re-painting of bus stop
Newport	08/2010	Removal of vegetation and application of herbicide
Newport	10/2010	Painting and cleaning of properties
Newport	12/2011	Repairing and painting of fascia and removing vegetation
Newport	11/2012	Removal of all non-essential horse paraphernalia
Swansea	07/2010	Removal of unauthorised rear dormer window
Swansea	05/2011	Removal of unauthorised sign
Swansea	02/2012	Removal of unauthorised outbuilding
Swansea	07/2012	Removal of unauthorised outbuilding
Pembrokeshire	04/2012	Demolition of building and walls

4.5 Department structure and operation

LPAs were asked to provide information on the operation of their enforcement departments, including whether they had:

- an enforcement policy;

- a priority system for dealing with complaints; and
- delegated powers to take enforcement action.

As can be seen from Figure 11, the majority of LPAs have already developed these three aspects. For those that did not have an explicit priority system, common priorities were Tree Protection Orders and works to listed buildings, as well as cases reported by Members. Of the six without a priority system, one was currently in development and one was included within the enforcement policy.

Although all but one LPA enjoyed delegated officer powers, the level of delegation varied. Whilst some had full delegation to officers (though action on non-compliance often still sitting with Members), others were limited to serving planning contravention notice and breach of condition notices only.

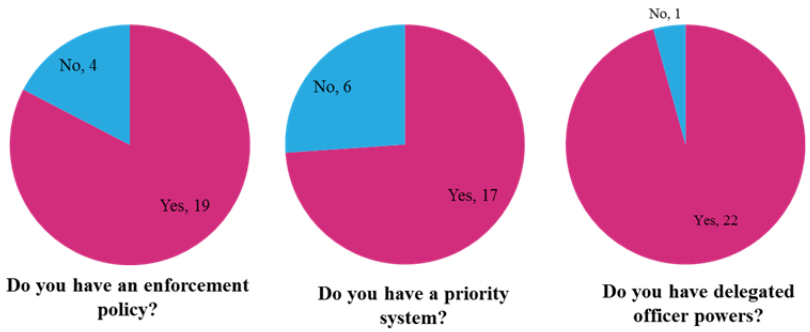


Figure 11 Enforcement department operation

Legal support was found to be provided through a variety of different methods:

- eight LPAs had a service level agreement with the Councils' legal departments;
- six LPAs used the Councils' legal departments when required, rather than through a service level agreement;
- five LPAs had legal support 'in team', with solicitors sitting full-time or part-time within the planning departments;
- one LPA had a service level agreement with an external Solicitor; and
- three LPAs did not provide information.

Liaison with building control and other Council functions was largely reported to be undertaken on an informal basis, though some LPAs had more formal arrangements in place including monthly meetings and service level agreements. A couple of LPAs delegate some planning enforcement responsibilities to other departments, such as Section 215 notices and untidy land to housing and environmental health departments. Bridgend County Borough Council's building control department provide the enforcement team with a monthly list of commenced development, allowing them to check for breaches of planning control.

Formal 'department structures' were provided alongside the submissions from 14 LPAs. In an overwhelming majority of cases, enforcement sat within a wider development management service; there was only one instance where it was clear from the structure that enforcement sat separately, with a lead sitting directly under Head of Planning. Most LPAs had managerial staff that dealt with both

development management and enforcement functions, though in some cases the structure showed a 'principal' planning enforcement officer or team leader. Two LPAs (Vale of Glamorgan and Pembrokeshire) operate joint appeals and enforcement teams.

Where the wider development management function is split into geographic teams, there is variation within the operational structure. In Newport, the enforcement functions are shown operate as two separate teams, reporting up to separate area team managers. In Rhondda Cynon Taf, however, the enforcement function sits outside the geographic development management teams.

Support and administration also varied across LPAs. In the majority of cases, administration was provided across the development management or planning function as a whole, with a separate lead. However, there were examples where enforcement assistants, technicians and administration support fell within the enforcement team directly.

4.6 Service costs

LPAs were asked to provide service costs, broken down into salary costs and overhead costs for:

- enforcement staff;
- administration and technical staff;
- management staff;
- legal staff and costs; and
- other staff and costs.

14 LPAs provided data on service costs. However, as the split between enforcement, administration and management staff (as well the various applications of overheads) varied between LPAs, it is difficult to make direct comparisons. The data provided is listed in Table 5.

Where legal costs were given, they ranged between 2% and 11% of total service costs, with an average of 6%.

The 'cost of the service' provided by the LPAs varied enormously. However, this is likely to be as much a function of accounting practices as it is a real variation in costs. The information provided on staffing structures (Section 4.5) is likely to be more useful in highlighting differences in enforcement's resources and standing across LPAs.

Table 5: Planning enforcement service costs

Local Planning Authority	Registered cases in last 30 months	Service costs										
		Enforce-ment staff	Enforce-ment OH	Admin/ technical staff	Admin/ technical OH	Manage-ment staff	Manage-ment OH	Legal staff	Legal OH	Other staff	Other OH	**Total**
Blaenau Gwent	721	£411,148				£15,037			£9,754	£14,325		**£450,264**
Bridgend	1122	£47,400	£14,466	£2,860	£774	£11,713	£3,416	£3,650	£932	£2,244	£632	**£88,087**
Conwy	1207	£103,000	£30,900	£4,000	£1,200	£4,000	£1,200	£10,000	£3,000			**£157,300**
Denbighshire	1539	£47,416	£14,102	£18,355	£5,370	£22,659	£7,213	£14,000				**£129,115**
Flintshire	1327	£336,475	£73,333									**£409,808**
Isle of Anglesey	581	£40,396	£11,397	£16,830	£4,608	£30,011	£8,881					**£112,123**
Merthyr Tydfil	610	£39,651	£10,849	£9,810	£2,885	£38,961	£12,289					**£114,445**
Monmouthshire	904	£80,000	£24,000			£20,370	£8,000		£5,000		£1,000	**£138,370**
Neath Port Talbot	n/d	£198,025	£178,378					£5,868				**£382,271**
Newport	2107	£94,767										**£94,767**
Powys	418	£52,552								£19,568		**£72,120**
RCT	1531	£185,178	£68,743			£94,990	£32,498					**£381,408**
Swansea	2048	£135,442	£40,636	£21,519	£6,456	£9,429	£2,829					**£216,311**
Snowdonia NPA	429	£240,217	£154,554	£50,804	£51,562	£38,727	£18,552					**£554,416**

5 Planning Appeal Information

5.1 Introduction

Information on individual planning enforcement appeals since 2007/08 has been provided by the Planning Inspectorate, including information on:

- the appellant;
- the alleged breach;
- the procedure followed;
- the decision reached; and
- whether an application for an award of costs was made.

Information has also been provided on those cases where appeals were lodged but withdrawn before determination by the Planning Inspectorate.

For the headline analysis (Section 5.2), data from 2007/08 to the first six months of 2012/13 has largely been used. For the analysis to examine each LPA (Section 5.3), data from 2010/11 to the first six months of 2012/13 has been used. This is to reflect the same time period used in the baseline survey of all LPAs.

This analysis is designed to develop an understanding of the current planning enforcement appeals system in Wales, through building a profile of the type and volume of workload. It is not the intention to assess the performance of the Planning Inspectorate or LPAs.

For the purposes of this analysis, the outcome of each case has been split into three categories: ‘dismissed’; ‘allowed’; and ‘split decision’. These categories are set out in Table 6. Split decision has been treated as separate category to reflect the fact that part of the enforcement was deemed to be correct and part was not.

Table 6: Planning enforcement appeal outcomes

Dismissed	Allowed	Split decision
Notice upheld Varied and upheld	Planning permission granted Quashed on legal grounds	Split decision

5.2 Headline analysis

Figure 12 shows the total number of enforcement appeals made to the Planning Inspectorate by year of decision issue. Between 2007/08 and 2011/12, the numbers are relatively consistent, numbering between 85 and 119 appeals. However, cases have fallen each year since a peak in 2009/10. The 28 cases in the first half of 2012/13 might suggest that this trend is set to continue.

Figure 12 Total number of enforcement appeals making it to the decision stage, by year of decision issue

Adding those cases which were withdrawn before the Inspectorate's determination provides the total amount of appeals lodged. As Figure 13 shows, the trend is a similar one. (As withdrawn applications were only recorded towards the end of 2007/08, this year has not been included in these totals.)

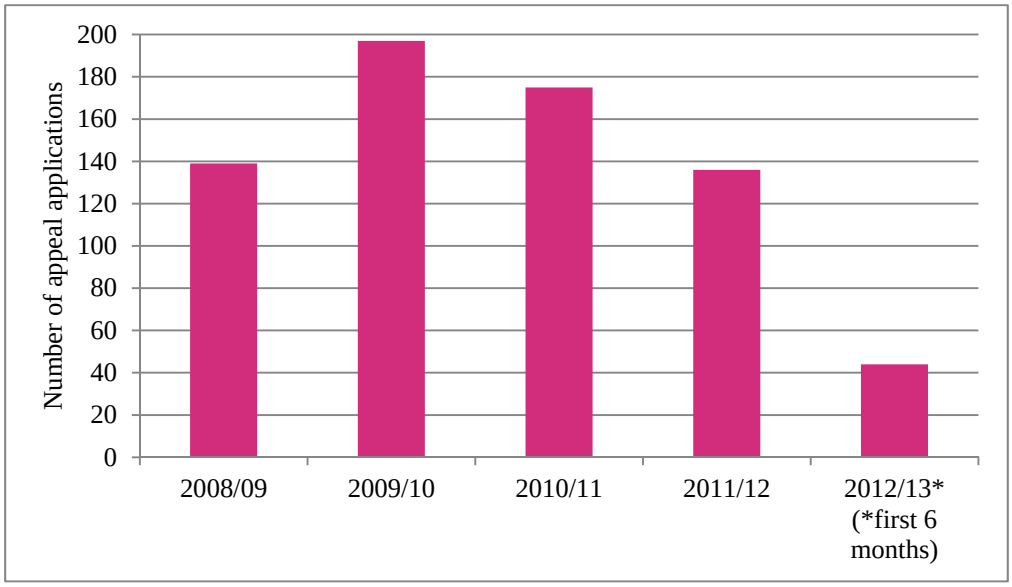


Figure 13 Total number of enforcement appeals lodged, by year of decision issue or withdrawal point

Table 7 breaks down the appeals since 2010/11 into more detail.

Outcome	Description	2010/2011		2011/2012		2012/2013* (*first 6 months)		Average
Lodged and withdrawn								
Withdrawn by appellant	Appellant has withdrawn before appeal could be determined by the Planning Inspectorate	22	**33%**	15	**29%**	4	**25%**	**29%**
Notice withdrawn	LPA has withdrawn the notice before appeal could be determined by the Planning Inspectorate	18	**27%**	30	**59%**	8	**50%**	**45%**
Nullity	Found to be badly drafted	5	**8%**	2	**4%**	0	**0%**	**4%**
Other reason	For example, elapsed time period, fees not paid, abeyance etc.	21	**32%**	4	**8%**	4	**25%**	**22%**
	Total	**66**		**51**		**16**		
Determined by the Planning Inspectorate								
Notice upheld	The appeal is not successful in any respect	50	**46%**	40	**47%**	19	**68%**	**54%**
Varied and upheld	The enforcement notice still stands, but is amended in some way	34	**31%**	23	**27%**	6	**21%**	**27%**
Planning permission granted	The enforcement notice is quashed and planning permission is granted	15	**14%**	14	**16%**	2	**7%**	**12%**
Quashed on legal grounds	The enforcement notice is quashed on the basis that it was served inappropriately (Grounds (a), (b), (c),(d) or (e))	4	**4%**	7	**8%**	1	**4%**	**5%**
Split decision	The enforcement notice is right in part and wrong in part	6	**6%**	1	**1%**	0	**0%**	**2%**
	Total	**109**		**85**		**28**		
		175		**136**		**44**		

Figure 14 shows the outcomes of determined appeals since 2010/11. The percentage of appeals dismissed (the enforcement notice either upheld in entirety or with amendments) is also relatively consistent across the period, averaging at 81%. Of those that were allowed, around two thirds were on planning grounds, with permission granted by the Inspector, with the remaining one-third quashed on legal grounds.

Appeals against an LPA that are 'allowed' by an Inspector are often done so because the Authority has, in the Inspector's view, not properly applied local and national policies in coming to a view on the planning merits of the unauthorised development. Most applications for costs show that the Authorities have not been found to have 'behaved unreasonably' (Welsh Office Circular 23/93[6]) in their original judgement. However, analysis of some of the decisions indicates that there are instances where errors on the part of the LPA have been recorded. A common error is that the stated requirements of the notice do not prevent a re-commencement of the breach once the notice has been complied with. The land to which the notice is intended to relate is often either incorrectly shown on the plan or mis-described in the notice. For instance, one enforcement case was recorded to have occurred on public open land when in fact it concerned private open land. This resulted in an appeal on Ground (c). In another case, the appeal decision remarked on ambiguity in the wording of the original enforcement notice, which impacted on the subsequent appeal. Responses from stakeholder interviews (see Section 2) also reflect the fact that occasional mistakes are made in enforcement notices and written statements to appeals.

The information does not show the split between the legal grounds (Grounds (a) – (e)), or where Grounds (f) (excessive steps required by the notice) and (g) (inappropriate time period) sit within this.

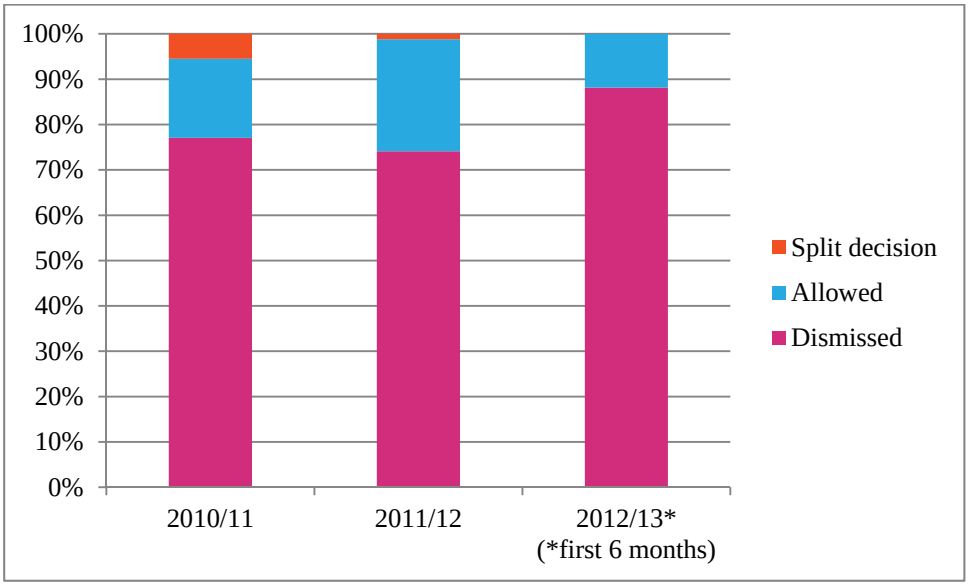


Figure 14 Outcomes of enforcement appeals determined by the Planning Inspectorate, by year of decision issue

Figure 15 shows the outcomes of the cases which are lodged but, for a variety of reasons, are not determined by the Planning Inspectorate. A high proportion of

[6] Circular 23/93: Awards of Costs incurred in Planning and other (Including Compulsory Purchase Order) Proceedings (Welsh Office Circular 23/93)

these cases, an average of 45%, result in the original notice being withdrawn by the LPA. Seven cases where the notice is a nullity due to its poor quality were recorded during the period.

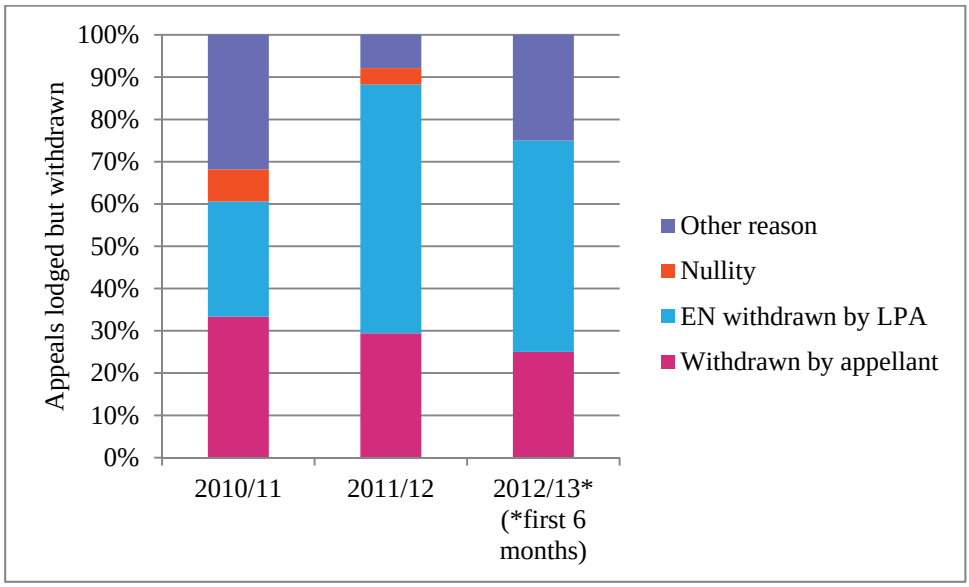


Figure 15 Reasons for withdrawn of appeal, by year of withdrawn

Figure 16 shows the breakdown of determined appeals by process used. Written representations remain the most commonly used form of appeal. Inquiries comprise between 22%-28% of appeals in any given year. No hearings were carried out in the first six months of 2012/13.

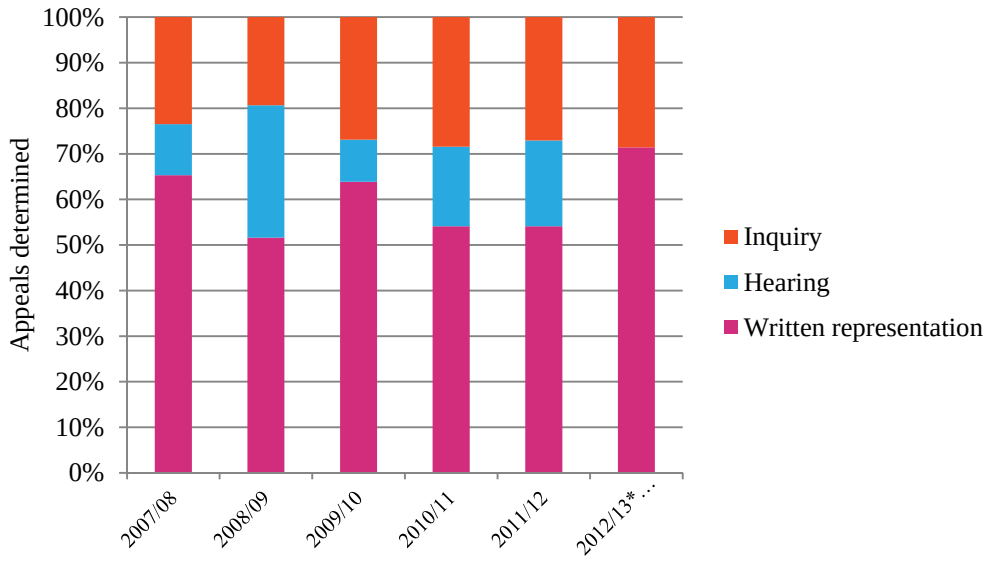


Figure 16 Process used in enforcement appeals made to the Planning Inspectorate, by year of decision issue

5.3 Local planning authority analysis

Table 8 and Figure 17 show planning appeals broken down by the 25 LPAs since 2010/11. It is difficult to identify trends between years, though it does seem that urban authorities, such as Cardiff, Newport and Swansea, have a far higher

incidence of appeals against enforcement decisions across the period. This may be because they have a higher level of enforcement cases generally.

Not all LPAs have appeal cases every year. Merthyr Tydfil County Borough Council is unique in having no appeals lodged against them across the time period. However, it is important to note that these time periods reflect the year in which the decision was issued by the Planning Inspectorate, rather than the year of the appeal itself, or the enforcement decision being disputed.

Table 9 and Figure 18 show the outcomes of enforcement appeals against LPAs within the time frame, whilst Figure 19 shows the proportion of appeals that were allowed or resulted in a split decision. As the number of appeals made against LPAs varies considerably it is difficult to make clear comparisons regarding the proportions of appeals allowed or resulting in a split decision. There does, however, seem to be some LPAs who are far less successful in defending appeals than others. This was borne out with stakeholder feedback from members of the Planning Inspectorate, who felt that there was an issue with the quality of operation of the enforcement system by some LPAs.

Figure 20 shows the proportions of appeals lodged (that is, those that were determined by the Planning Inspectorate plus those which were lodged, but subsequently withdrawn) which resulted in the LPA withdrawing the enforcement notice before the appeal or the notice being nullified. There are several reasons why this could occur, but it is likely that it was no longer expedient to serve the notice, or the notice was deemed to be flawed in some way. Again, it is difficult to draw conclusions where the range of cases distorts results, but there does seem to be significant variation between LPAs. In one LPA, six out of the sixteen appeals lodged against them in the period resulted in the notice being withdrawn.

It is important to acknowledge that the proportion of cases going to appeal, or the proportion being allowed, does not in itself identify whether the LPA’s enforcement function is performing well or otherwise. For instance, a high number of appeals could mean that the Authority is willing to use notices when appropriate. On the other hand, it could be a result of a lack of ability to negotiate with offenders before formal enforcement action is required, or a higher level of procedural error.

Table 8: Number of enforcement appeals against Local Planning Authorities making it to decision stage, by year of decision issue

Local Planning Authority	2010/11	2011/12	2012/13* (*first six months)	Total
Blaenau Gwent	0	1	0	1
Bridgend	4	7	1	12
Caerphilly	6	1	1	8
Cardiff	13	3	7	23
Carmarthenshire	5	8	3	16
Ceredigion	1	3	1	5
Conwy	7	3	3	13
Denbighshire	0	1	1	2
Flintshire	3	7	0	10
Gwynedd	1	2	0	3
Isle of Anglesey	3	2	0	5
Merthyr Tydfil	0	0	0	0
Monmouthshire	10	5	1	16
Neath Port Talbot	4	1	0	5
Newport	12	6	1	19
Pembrokeshire	1	4	3	8
Powys	2	2	0	4
Rhondda Cynon Taf	5	1	2	8
Swansea	13	10	0	23
Torfaen	4	10	0	14
Vale of Glamorgan	6	2	3	11
Wrexham	3	3	0	6
Brecon Beacons NPA	1	0	1	2
Pembrokeshire Coast NPA	2	2	0	4
Snowdonia NPA	3	1	0	4

Table 9: Outcomes of enforcement appeals against Local Planning Authorities making it to decision stage, by year of decision issue

Local Planning Authority	Dismissed	Allowed	Split Decision	Total
Blaenau Gwent	1	0	0	1
Bridgend	10	2	0	12
Caerphilly	5	3	0	8
Cardiff	18	5	0	23
Carmarthenshire	9	7	0	16
Ceredigion	3	2	0	5
Conwy	12	1	0	13
Denbighshire	2	2	0	2
Flintshire	5	2	3	10
Gwynedd	3	0	0	3
Isle of Anglesey	5	0	0	5
Merthyr Tydfil	0	0	0	0
Monmouthshire	13	2	1	16
Neath Port Talbot	3	2	0	5
Newport	13	6	0	19
Pembrokeshire	7	1	0	8
Powys	4	0	0	4
Rhondda Cynon Taf	6	1	1	8
Swansea	21	2	0	23
Torfaen	11	3	0	14
Vale of Glamorgan	9	1	1	11
Wrexham	3	2	1	6
Brecon Beacons NPA	2	0	0	2
Pembrokeshire Coast NPA	2	2	0	4
Snowdonia NPA	4	0	0	4

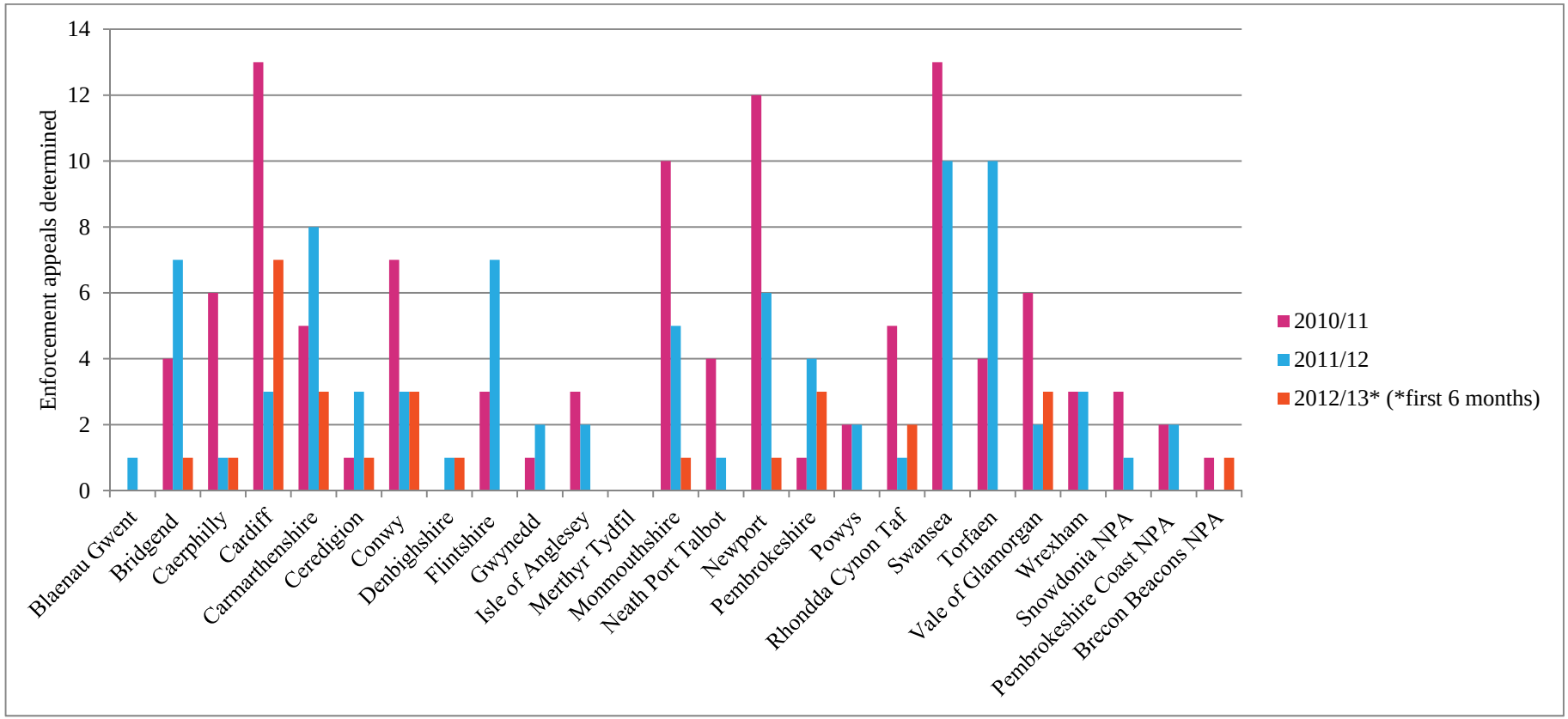


Figure 17 Number of enforcement appeals against Local Planning Authorities making it to decision stage, by year of decision issue

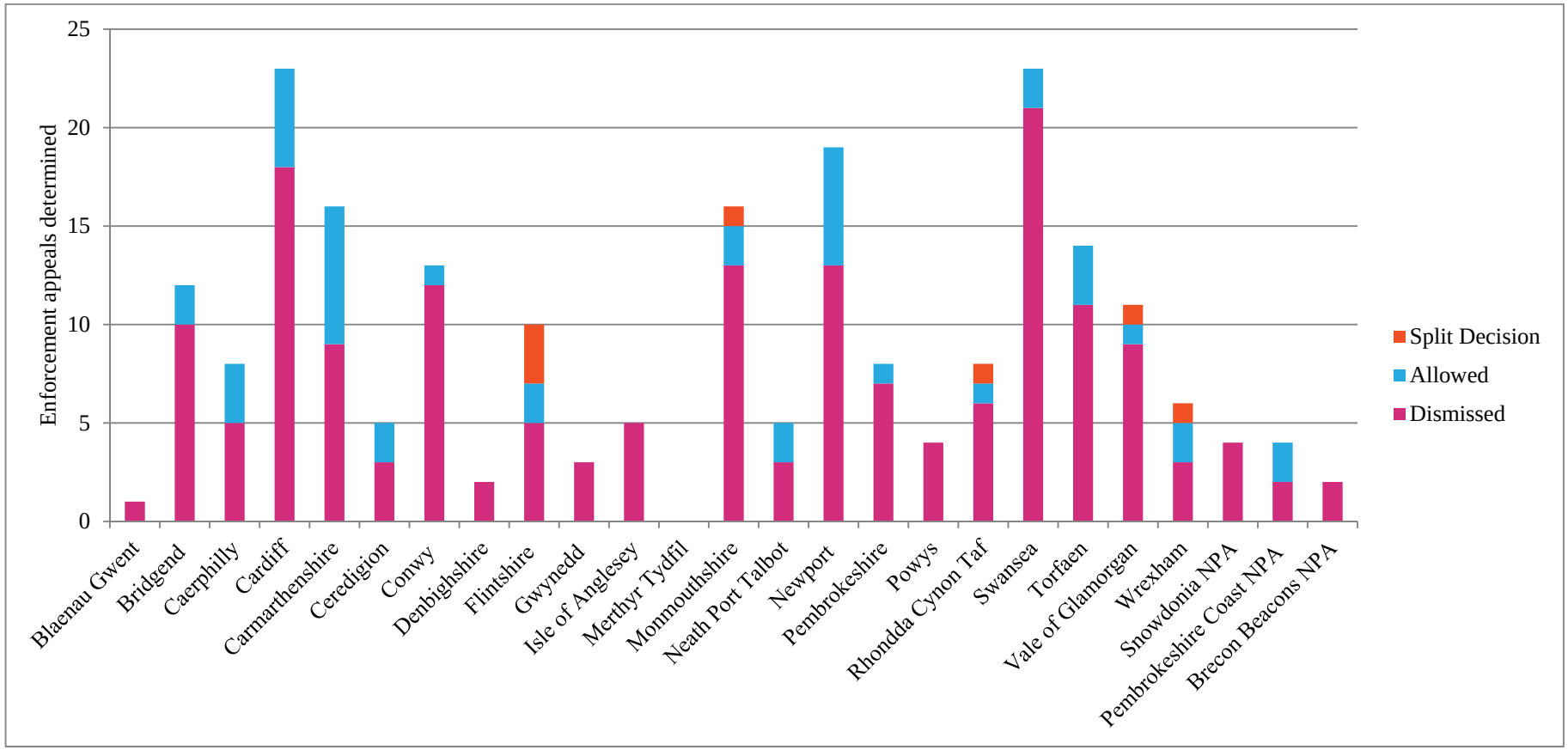


Figure 18 Outcomes of enforcement appeals against Local Planning Authorities making it to decision stage between 2010/11 and the first six months of 2012/13

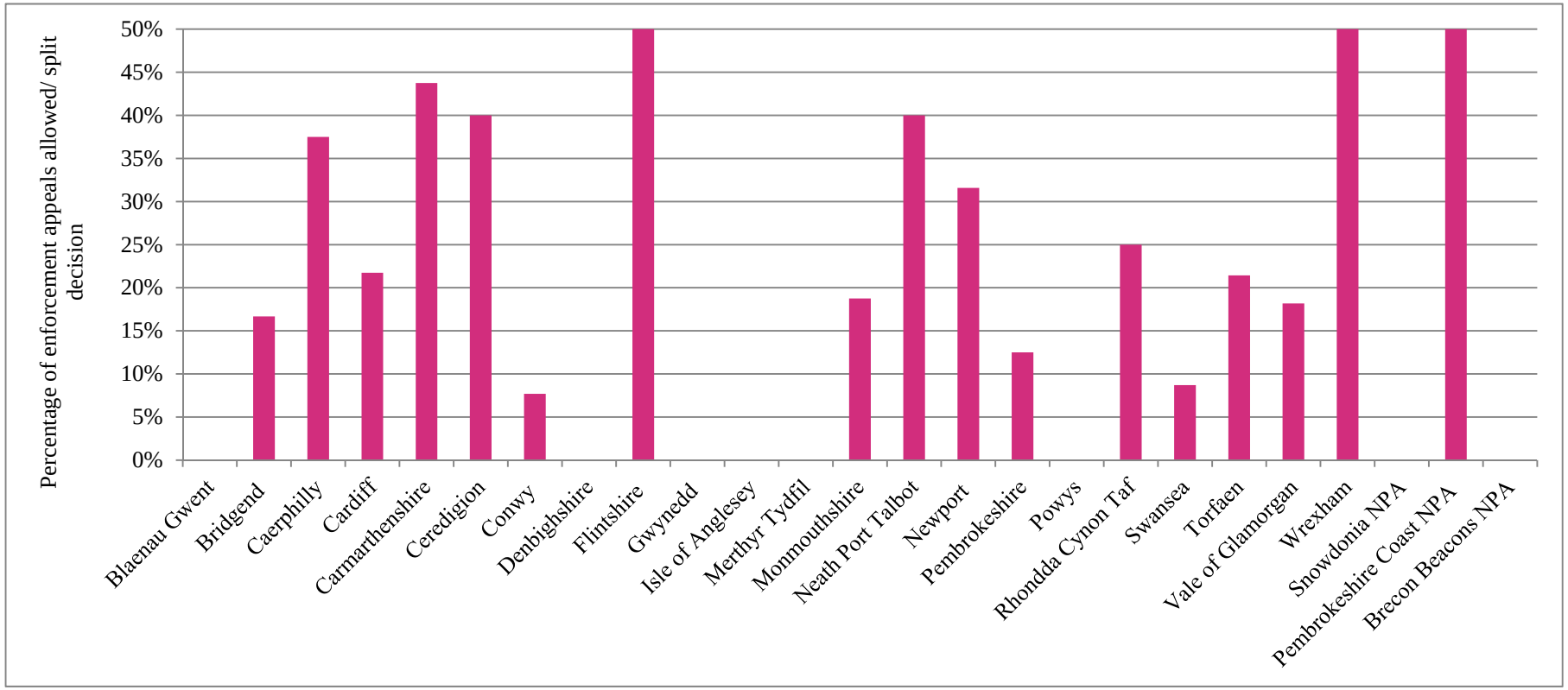


Figure 19 Percentage of allowed/split decision enforcement appeals against Local Planning Authorities between 2010/11 and the first six months of 2012/13

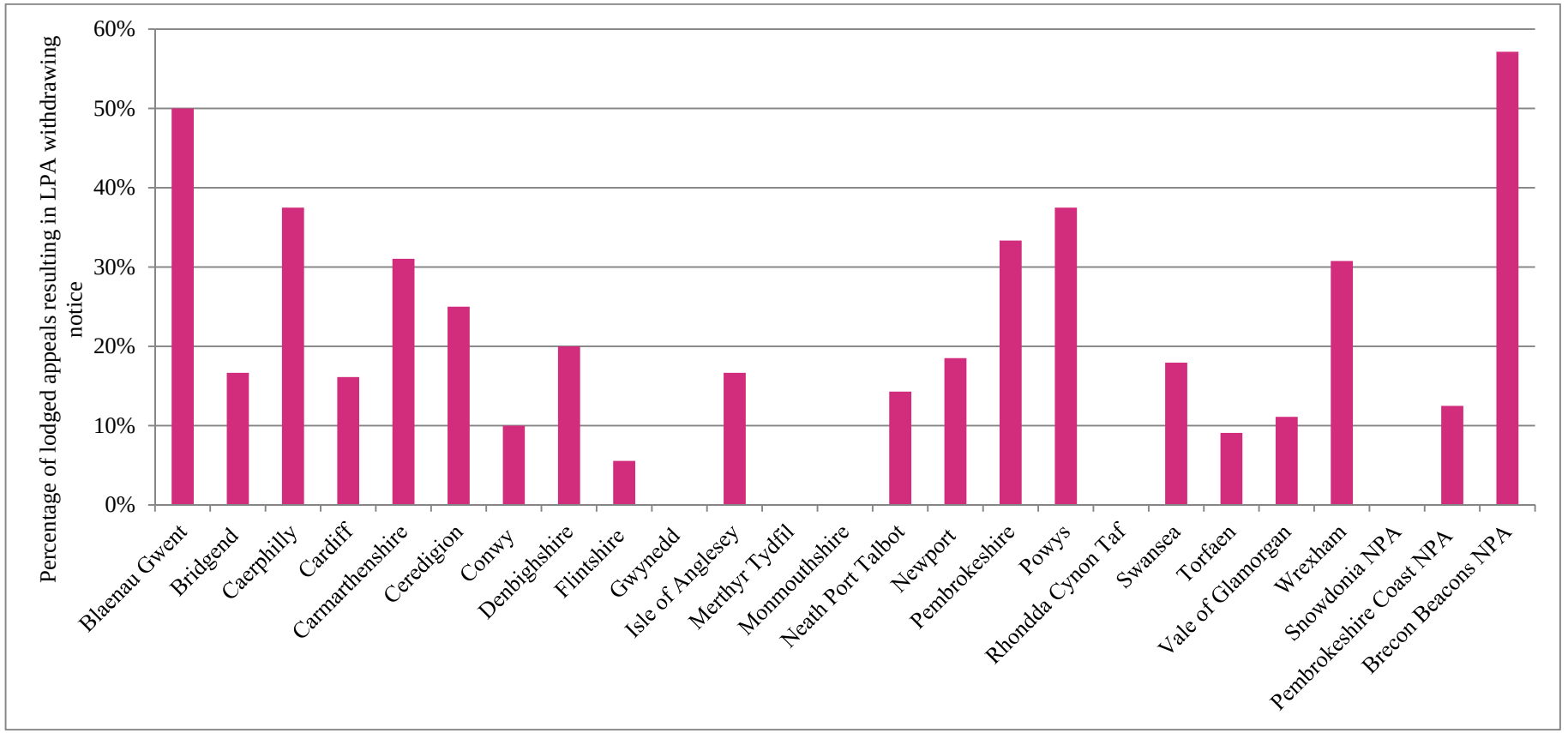


Figure 20 Percentage of lodged appeals which resulted in the subsequent removal of the notice by the LPA, by date of withdrawal

6 Removal of Time Limits for Enforcement Action

6.1 Description and rationale

There are currently two time limits, laid down in the Town and Country Planning Act 1990 (the 1990 Act). Four years is the time allowed for an authority to take enforcement action where the breach comprises either operational development (the carrying out of unauthorised building, engineering, mining or other operations) or change of use to use as a single dwellinghouse. Ten years is the time allowed for all other breaches of planning control. In both cases, enforcement action can be completed after that date provided that the development was started before it.

6.2 Advantages

- **Reduced burden in terms of evidence gathering and officer monitoring of sites:** LPAs currently need to spend significant resources to gather evidence in relation to reported planning breaches. This is in terms of the absolute resource requirement (the amount of time), but also the overall (elapsed) amount of time, for example where the permanence of use has to be established. It can be difficult for LPAs to prove when a use or development began. Most LPAs use aerial photographs to assist in identifying new development, but increasingly LPAs are finding it hard to produce historic aerial photographs, old maps or plans to be used for enforcement. There is an over reliance on technology such as Google Earth, which is good for recent photographs, but does not show the past. A substantive body of evidence can be hard to find and to prove. LPAs are often reliant on interested parties reporting suspected breaches and to provide evidence. Some people are prepared to make a signed statement, but many are reluctant to go to Court. In addition, the information received from members of the public can be highly anecdotal and is not specific. If the time periods were shortened (as opposed to eliminated), LPAs would experience the same problems of acquiring evidence. There is a conflict between what is acceptable and the length of time that has elapsed.
- **Greater clarity:** Amending the time limits so that they are open ended or the same for all types of breach would provide greater clarity. Those arguing for open ended time limits consider that unauthorised development is wrong, regardless of when it was committed. Of those favouring a single time limit, there was disagreement as to what would be the appropriate single time limit. Both 5 years and 10 years were mentioned as possibilities. However, 10 years is a long time and it can be difficult to prove that the use has been continuous. Many felt that the current 4 years was plenty of time to assess physical development (assuming in case law that a ‘deliberate concealment’ could be taken into account) except for flats because they are internal and difficult to identify. There were, however, a few respondents who thought the current limits did not cause a problem. However, the removal of time limits would take the application for a certificate of lawful use or development out of the picture and would simplify the process.

- **Fairness** – Removal of time limits would eliminate the ability to gain immunity from enforcement action. This would mean that concealment (deliberate or otherwise) would no longer be an issue. Many felt that even if there was not deliberate concealment, (in rural areas it was relatively easy to hide development as this was difficult to monitor) this would improve the public perception of applicants getting away with it and would mean that people are less likely to take the risk in the first place. A provision such as that introduced in England under Section 124 of the Localism Act 2011, whereby a planning authority is allowed six months from discovery of an apparent breach of planning permission (possible only where there has been a deliberate concealment) to apply to a Magistrate's Court for a planning enforcement order could be considered as an alternative.

6.3 Disadvantages

- **Reduce the need to take prompt enforcement action:** Some LPAs can be dilatory in relation to the existing timescales and consent/deemed consent. The failure to take prompt enforcement action has implications in terms of immunity from enforcement. If there were no time limits, LPAs could consider if the breach constituted harm and then decide whether to take action or not. However, it was thought that removing the time limits might take away the sense of urgency from officers to pursue enforcement action and thus mean that the process takes even longer. This could put neighbours at a serious disadvantage and would mean that there were greater opportunities for delay. If the time period was shortened, this would make it even more difficult for LPAs to gather the evidence/information available and to provide good counter evidence to prove that a breach has incurred
- **Result in an increase in Court action:** Many respondents felt that removing the time limits might push cases more towards Court proceedings, which would result in additional work and prove more costly for the authority.
- **Provides some justification where it is considered not expedient to take action:** the current time limits make it easier to justify to complainants that no further action will be taken. This is seen as useful when handling neighbour disputes

6.4 Case studies

Conversion of a First Floor Void in an Existing Barn to a One Bedroom Flat

This breach of planning control related to the conversion of a first floor void of an existing barn to a one bedroom flat. The Council had only become aware of the breach after it had served an enforcement notice in respect of a suspected residential use of the ground floor of part of the barn, an area that had been granted permission as a staff room, whelping room, staff shower and WC and office. An appeal had been made against this notice and during the appeal site inspection it became apparent that there were external water pipes and drainage pipes leading from the first floor, which was understood to have been a void used for storage.

The Council officers realised that the notice that had been served did not adequately cover the breach of planning control alleged and, as such, had no alternative but to withdraw the notice at the hearing with the option of serving a revised notice at a later date, once the first floor void had been properly inspected.

On inspection, a fully equipped one bedroom flat with utility room, en-suite, kitchen and large living area had been created. There were no stairs leading up to the entrance to the flat. These had been removed and hidden when Council officers had previously visited the site. The windows serving the flat were covered by the timber cladding that had been erected around the whole of the building. An enforcement notice was then served dealing with the first floor accommodation. An appeal was made on the grounds that the change of use had occurred more than 4 years prior to the notice having been served. At that point, the appellants were only able to prove 3 years 6 months of use, but had the officers not suspected anything at the appeal site visit and not found the flat it would have been possible for the appellant to argue that the use was lawful shortly after the appeal hearing.

Learning points include:

- This case highlights that there would be benefit in introducing possible exemptions to gaining immunity from enforcement action (for e.g. where there is deception or a building hidden) so that the 4 year time period did not apply in such cases. Alternatively, a provision such as that under Section 124 of the Localism Act 2011, whereby a planning authority is allowed six months from discovery of an apparent breach (where concealment has been deliberate) of planning permission to apply to a Magistrate's Court for a planning enforcement order could be considered.

CLEUD Applications for Tented Camping Sites

A Certificate of Lawful Use was submitted in December 2009 and refused in May 2010. A second application for a Certificate for the use of fields as a site for 18 tents between May and September was submitted and refused in June 2011. Since April 2012 the LPA has monitored the land, where it appeared that the land was being used for the siting of tents in excess of 28 days – in breach of planning control. Letters were sent on three occasions between October 2011 and August 2012 advising that planning permission was required and unlikely to be granted because Development Plan policy states that no new camping sites will be permitted. During the last five years the LPA has received concerns regarding the use of agricultural land for the siting of tents occurring for more than 28 days a year. An enforcement notice was served in August 2012 and took effect in September 2012 with a time for compliance of 14 days. The applicant appealed against the notice on Grounds (a), (d), (f) and (g), and has also appealed against the CLEUD decision. These have been conjoined and linked and are being held as a joint four day public inquiry.

Certificates are often submitted for tented camping sites, and this is likely to become more common now that the Council's policy to restrict sites has changed so that no new sites are being permitted. Monitoring of these types of cases is extremely difficult – the seasonal aspect and nature of the use makes it very difficult, so that it takes up a lot of staff resource in order to prove that a breach has occurred over a long time period. In this case, the case officer visited daily between Easter and September in order to establish that it was in use for more than 28 days.

In this particular case a CLEUD appeal was submitted over a year after the CLEUD application was refused. It was only submitted due to the threat of enforcement action which the LPA still took – hence the two appeals. Having no time limit and an acceptance that action could be taken against an unauthorised use would take the possibility of applying for a Certificate of Lawful Use out of the equation. This would mean that the LPA could take enforcement action, and the amount of evidence needed to be gathered would be less so that it was not so labour intensive to take action.

Learning points include:

- The disproportionate number of visits and staff resources required in order to pursue action for an unauthorised use.
- Removal of the time limits would mean that a Certificate for Lawful or Established Use would be taken out of the equation.

6.5 Implementation

The removal of time limits or changes to them would require a change to primary legislation as these are currently set out in the Town and Country Planning Act 1990. Transitional arrangements would be required in the interests of fairness, and in order to reduce the possibility of challenges caused by opening up new cases. Time limits are currently seen as part of a functioning property market and there would need to be a system in place that enables confirmation of the status of a property.

If time limits were removed the LPA would still have to make a judgement as to whether harm was being caused by the use or operation and determine whether or not it was expedient to take enforcement action. Although mixed views were expressed as to whether time limits should be kept or removed, many argued that the future implications of a development (particularly uses) was important and that this supported the removal of time limits. For example, an activity (although unlawful) might not be causing harm and therefore it may not be considered expedient to take enforcement action. However, the use could subsequently develop through intensification into a use that may then be deemed to be causing harm. The removal of time limits would mean that it would never become exempt and so action could be taken at any time, thus affording LPAs more control. Although potentially opening up a liability for new owners inheriting a form of development against which enforcement action could be taken at any time, a search undertaken prior to purchase would establish the lawful use. Under the proposed shape of the new system, the ability to require a retrospective planning application is an important tool as a means of regularising development and enabling the local planning authority to impose conditions where the development could be acceptable.

National guidance would be very important to help decide on those cases that do not warrant any further action.

6.6 Summary

Measure	Advantages	Disadvantages	Implementation
Removal of time limits for enforcement action.	Reduced burden in terms of gathering evidence and monitoring. Greater clarity and transparency for the public. Remove the ability for immunity to be obtained through concealment and eliminate the need for CLEUDs in these circumstances.	Reduce the urgency in taking action. Increase in Court action and further delay. Potentially complex transitional arrangements. Opening up potential liability for new owners inheriting a form of development against which enforcement action could be taken at any time.	Change in primary legislation. Transitional arrangements and detail in secondary legislation. Practical advice in PPW, TAN 9 or a new circular.

6.7 Conclusion

Although there were mixed views from those interviewed and attending the seminars on the benefits from the proposed removal of time limits, there was consensus that these could be removed provided the discretion as to whether it was expedient to take action remained and there was sufficient guidance given to help determine when such discretion should be exercised. Overall, it was felt that the system would benefit from this as it would be seen by Members and the public as fairer, simpler and more consistent and would ensure less circumvention of the system. The benefits of reducing the burden on local planning authorities in providing evidential information and monitoring sites to prove their case would make for a more efficient and effective service. The 'risk' that new owners buying a property might inherit an enforcement issue would also help to self-regulate compliance through periodic property sales / transfers.

If time limits were removed there would have to be transitional arrangements and the power to require a retrospective planning application, in order to impose conditions to make a development acceptable rather than take enforcement action, would be an important part of the new approach to planning enforcement.

The removal of time limits would provide a more efficient, effective and transparent system.

Recommendation 1:

It is recommended that the Planning Bill removes the time limits for enforcement action.

7 Temporary Stop Notices

7.1 Description and rationale

Compensation is an important factor why stop notices are not used or are rarely used by LPAs. The threat of compensation can also be a major concern for Members. This reform would allow an LPA to serve a temporary stop notice in line with the existing ability for LPAs to do so in England. The rationale for this measure is that temporary stop notices would allow the flexibility and time to explore a situation before deciding if further enforcement action is necessary. Providing an interim measure while the necessary authorisation for issuing an enforcement or stop notice is sought may also give the public more confidence in the enforcement process.

The Planning and Compulsory Purchase Act 2004 inserted Sections 171E to 171H to the 1990 Act to give LPAs in England the power to serve a temporary stop notice to put an immediate halt to breaches of planning control for up to 28 days. Temporary stop notices do not depend on an enforcement notice being served. LPAs can issue a second temporary stop notice in respect of the same activity, but only if the LPA has first taken some other enforcement action in relation to the beach of planning control that was required to be stopped by the earlier notice. There is no right of appeal to the Secretary of State, but a temporary stop notice may be subject to judicial review.

It is an offence to contravene a temporary stop notice, which is subject to a maximum fine of £20,000 or on conviction on indictment a fine without limit. In determining the fine, the Court must have regard to any financial benefit which has accrued to the person as a result of the offence. Compensation may be payable by an LPA to the owner of an interest in the land to which the notice relates, where that person has suffered loss or damage directly attributable to the notice. However, the right of compensation is limited to cases where the notice is withdrawn by the LPA, or the activity specified in the notice has been authorised by planning permission, is permitted development, permitted under a local development order or a certificate of lawful use or development. Compensation is not payable where the LPA grants retrospective planning permission for the activity specified in the temporary stop notice.

Use of Temporary Stop Notices in England

Evidence from the DCLG indicates that temporary stop notices are a widely used tool across LPAs and are broadly effective[7]. Since 2005, there have been 2,200 temporary stop notices served. The number of temporary stop notices served peaked at 530 in 2006/7 and has remained stable since at around 250-300 served annually[8].

They have been successfully used to stop a wide variety of unauthorised development including damage to listed buildings, trees, wildlife sites, unauthorised landfill, quarrying, tipping, processing and storage of waste, clay

[7] Amendment to the Temporary Stop Notice Regulations Consultation, DCLG, March 2007.
[8] Changes to Temporary Stop Notices: Revoking Statutory Instrument 2005/206 Consultation, DCLG, December 2012.

extraction, building new houses, flats, garages, barns gypsy sites, access roads, engineering and building works[9].

Changes to Temporary Stop Notices in England

In England, the Government has recently consulted on changes to temporary stop notices. The consultation[10] sought views on revoking the Town and Country Planning (Temporary Stop Notice) (England) Regulations 2005 (Statutory Instrument 2005/206) and closed on 13 February 2012.

The existing Town and Country Planning (Temporary Stop Notice) (England) Regulations, 2005 (SI 2005 No. 206) provide that a temporary stop notice cannot prohibit the stationing of a caravan where it is occupied by a person as their main residence. This may discourage or prohibit their use in some instances where they could be beneficial. The effect of the proposed revocation would be to give local councils greater freedom to determine whether to use temporary stop notices in respect of caravans that are used as main residences. The availability of appropriate alternative sites for caravans used as main residences will be a factor in determining whether it would be appropriate to use temporary stop notices to stop such unauthorised development (i.e. if there is suitable site provision to which the unauthorised caravans could be relocated) and may encourage councils to identify land to meet traveller needs.

The Regulations do not apply that protection to caravans where the LPA considers the risk of harm to the public interest is so serious as to outweigh any benefit to the occupier of the caravan during the period for which the temporary stop notice has effect. The consultation states that it will remain for local councils to consider the consequences of taking enforcement action on the rights of the individuals concerned, both traveller and local residents, and whether the action is necessary and proportionate in the circumstances.

Following the consultation, the Communities Secretary has confirmed[11] that the Regulations, which currently limit the use of temporary stop notices in relation to caravans used as main residences, will be revoked. This change will give councils more freedom to take action, including over a Bank Holiday weekend, when unauthorised development is at its most common. The aim of the measure is that the rules should be applied fairly to all so that the rights of travellers continue to be protected, in addition to the rights of the settled community. In exercising these powers, local councils will remain bound by the requirements of the Human Rights Act 1998 and the Equalities Act 2010.

Temporary Stop Notices in Scotland

Temporary stop notices are also in use in Scotland. Sections 144A to 144D of the Town and Country Planning (Scotland) Act 1997 allow a planning authority to issue a temporary stop notice. The provisions for the use of temporary stop notices

[9] A Practical Approach to Planning Law, Twelfth Edition, 2012, Victor Moore and Michael Purdue.
[10] Changes to Temporary Stop Notices: Revoking Statutory Instrument 2005/206 Consultation, DCLG, December 2012.
[11] DCLG Press Release: 29.03.2013 https://www.gov.uk/government/news/improving-councils-powers-to-tackle-unauthorised-development

in Scotland are very similar to those in force in England. Guidance on the use of temporary stop notices is provided in Annex I of Planning Circular 10/2009: Planning Enforcement[12].

Circular 10/2009 guidance states that temporary stop notices may be issued if the planning authority considers that:

- *'there has been a breach of planning control in relation to any land in its area; and,*
- *the breach consists of engagement in an activity; and*
- *it is expedient that the activity is stopped immediately'*

A temporary stop notice in Scotland cannot prohibit engagement in any activity which has been engaged in (continuously or not) for a period of more than four years, unless that activity is in relation to building, engineering, mining or other operations, or the deposit of waste materials.

It was expressed in stakeholder interviews that temporary stop notices provide a good "stop-gap" ahead of a stop notice, with Scottish LPAs more willing to use them due to the lack of appeal and low threat of compensation.

7.2 Advantages

The majority of LPAs interviewed considered that the introduction of temporary stop notices in Wales would be well received by enforcement officers. Two LPAs considered that there were several specific cases where the ability to serve a temporary stop notice would have been useful. It was perceived that temporary stop notices would be a useful tool if care is taken in assessing when they should be used. One LPA considered that there would be very few cases where it would be necessary to use a temporary stop notice and that they should only be used in the most severe cases. Conversely, one LPA considered that temporary stop notices would be particularly useful for non-compliance with breach of condition and pre-commencement conditions. One LPA also considered that temporary stop notices should be able to be served on caravans.

The advantages of introducing temporary stop notices in Wales are:

- **A "breathing space" for LPAs:** Temporary stop notices would allow more flexibility and time to explore the situation before deciding if further enforcement action is necessary. They would also allow the LPA more time to ensure that the enforcement notice is correct. It would also allow the LPA to be seen to be doing something as an interim measure while the necessary authorisation for issuing an enforcement or stop notice is sought. This would enable the public to have more confidence in the enforcement process.
- **Stand-alone tools**: Temporary stop notices do not have to be served with an enforcement notice and would be a benefit to LPAs where there are cases of immediate harm, allowing LPAs to act quickly.
- **Prevent the intensification of a use**: The use of a temporary stop notice can prevent the intensification of a use that is believed to be unlawful while further action is being considered[13].

[12] Planning Circular 10/2009: Planning Enforcement, Scottish Government, September 2009.

- **Requires submission of additional information:** Temporary stop notices may require those served against to provide information, including others who have an interest in the land or are engaged in the activity. This additional information could be used as part of a stop notice or other enforcement action.

7.3 Disadvantages

The disadvantage of introducing temporary stop notices is:

- **A more complex system:** Temporary stop notices could make the system more complicated.
- **Risk of abuse of system:** As there are no appeals and the likelihood of the LPA being liable for compensation in relation to temporary stop notices is low (only applying if the activity specified has already been granted planning permission or a certificate of lawful use or development, or if the notice is withdrawn), there is a risk that they could be used in situations for which they were not intended.
- **Risk of compensation:** Compensation may be payable in cases where temporary stop notices are served in England. However, the right to compensation is limited.

[13] A Practical Approach to Planning Law, Twelfth Edition, 2012, Victor Moore and Michael Purdue.

7.4 Case studies

Stop Notice Brought Against Unauthorised Hardstanding At An Equine Centre

Planning permission was granted for the change of use from a horticultural nursery to equine centre, with demolition of polytunnels and conversion of existing and construction of new buildings. The permission required the discharge of a number of conditions prior to commencement, some of which referred to drainage and runoff conditions due to the site's location within a Site of Special Scientific Interest (SSSI), but these were not discharged before construction was commenced.

Further to this, the construction of areas of hardstanding, which were not part of the permission, was also started on site. A large septic tank was found to be present on site and it was believed that it was to be installed shortly to service the site. As well as being within a SSSI, the site also fell within an Archaeologically Sensitive Area and a Green Wedge defined in the UDP. The hardstanding and septic tank were considered to be a significant threat to all these designations.

The LPA considered an enforcement notice, requiring the land to be reinstated to its prior condition. However, it was recognised that due to the right to appeal, there was a potential for delay of several months before the notice would take effect. Due to the irreparable harm that could be caused by the works, it was therefore decided to serve a stop notice alongside the enforcement notice to prevent further works. It was also noted that the stop notice would not preclude NRW from taking separate action under other legislation, on the grounds of the effect of the SSSI or waterbodies.

This case is illustrative of the usefulness of temporary stop notices as a more 'immediate' form of action, preventing further damage. Whilst stop notices have a 'notice period', temporary stop notices do not and have an immediate effect. It should be noted that, whilst the LPA did decide to go ahead with the stop notice, there was concern over whether any of the activities specified in the notice did have planning permission. The option of a temporary stop notice may have allowed more time to ensure the stop notice and enforcement notice was correct.

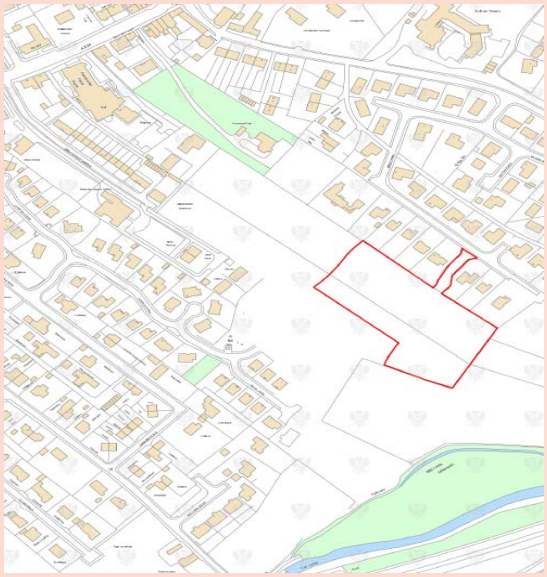
Learning points include:

- Temporary stop notices can improve the effectiveness of other forms of enforcement action, for instance by restricting further development during the appeal process and allowing time for the careful preparation of enforcement notices.

Temporary Stop Notice used in conjunction with a Breach of Condition Notice in Scotland

Planning permission was granted for the erection of 32 dwellings along with garages and associated infrastructure, subject to conditions. The permission was subject to conditions for the protection of trees on the site, some of which were the subject of Tree Preservation Orders (TPOs). The condition read:

'All existing trees on the site shall be retained and protected to the satisfaction of the Planning Authority and details of the proposed methods of protection during construction operations shall be submitted for the approval of the Planning Authority prior to the commencement of the development.'



However, it was found that the arboricultural report submitted in the discharge of this condition was not being complied with during construction, particularly the use of mechanical plant in the Root Protection Zones (RPZs) of the TPO areas.

In order to protect the RPZs, a breach of condition notice was served by the LPA, requiring the developer to adhere to the condition. However, alongside this the LPA also served a temporary stop notice, to halt adverse effects whilst the breach of condition notice took effect. This tool was found to be flexible enough to only refer to the trees in question and did not halt the rest of the on-going development. The use of the two notices combined allowed for the quick resolution of the situation.

The LPA has used temporary stop notices frequently since the new powers came into force in Scotland in 2009. Most commonly, they have been used in relation to development in breach of its consent, although they have also used them against unauthorised development. They have been used in relation to contaminated land, archaeology, construction method statements and tree protection methods, but also against cumulative 'lesser' conditions which have not have been fulfilled. These include external finishes, boundary treatments and finished floor levels, which whilst perhaps not significant in themselves, may become more serious as development progresses and the cumulative impacts become noticeable. It was felt that, in these cases, temporary stop notices are preferable to stop notices.

Learning points include:

- Temporary stop notices have the flexibility to restrict certain activities whilst not hindering the wider development.
- Temporary stop notices are more useful than stop notices in certain cases, particularly in their ability to restrict activities which may become more serious in the future.

Temporary Stop Notice used in England

Permission was granted by the LPA for ground and first floor extensions to a residential property. The permission also included a condition to protect neighbouring TPO trees:

'No development shall commence including groundworks preparation and demolition until all related arboricultural matters, including arboricultural supervision, monitoring and tree protection measures are implemented…'

The case officer noted that the area of the borough in question contained a large number of residential trees with great amenity value. Any loss would be a major issue and would be likely to result in prosecution.

Reports that work had commenced before the tree officer had been able to make an inspection were received by the case officer in the morning of the day that the temporary stop notice was served. Due to delegation of powers to officers and the relative simplicity of the temporary stop notice, the LPA was able to stop work on site within three hours of the original complaint. The case officer remained on site to make sure the tree officer could finish the assessment and for tree protection to be put in place. After compliance with the condition cited in the temporary stop notice, work was allowed to continue.

The LPA chose not to withdraw the temporary stop notice despite the fact that it had been complied with. Instead, they confirmed in writing that work was allowed to commence again, but that it could be stopped if another breach occurred within 28 days. This was to avoid the possibility of compensation claims against the LPA. A second temporary stop notice could have been issued in respect of the same activity, but the LPA would have had to have taken other enforcement action, before this could take place.

The case officer felt that, in these sorts of cases, temporary stop notices are an effective way to focus the developer's attention and deliver the required outcome, due to the cost involved with the cessation of works on site.

Learning points include:

- Temporary stop notices can act as a stand-alone tool in themselves, rather than simply bridging the gap before a stop notice or other action can take effect. They are therefore a useful addition to the tools available to officers.

7.5 Implementation

The powers for temporary stop notices in both England and Scotland are set out in primary legislation. Guidance and advice on the use of temporary stop notices is provided in the ODPM Circular 02/2005[14] and Annex 1 of the Scottish Government Circular 10/2009.

The implementation of temporary stop notices in Wales would also require new primary legislation. The DCLG has consulted on proposed changes to the Town and Country Planning (Temporary Stop Notice) (England) Regulations 2005 on the use of temporary stop notices in respect of caravans as main residences and concluded that the Regulations will be revoked.

New guidance would be required to provide clarity on the introduction of temporary stop notices in Wales either by updating Planning Policy Wales (PPW)[15] and Technical Advice Note 9[16] or the preparation of a new planning enforcement circular for Wales.

7.6 Summary

Measure	Advantages	Disadvantages	Implementation
Temporary Stop Notices	"Breathing space" for LPAs. Stand-alone tools. Prevent the intensification of a use. Requires submission of additional information	Make the system more complex. Risk of abuse. Risk of compensation.	Powers created in primary legislation. Detail in secondary legislation. Practical advice in PPW, TAN 9 or a new circular.

7.7 Conclusions

The majority of LPAs interviewed considered that the introduction of temporary stop notices would be well received. Temporary stop notices are already in use in England and Scotland and have proved to be a popular enforcement tool for LPAs. The advantages of temporary stop notices are that they offer a "breathing space" for LPAs to consider further enforcement action. They are stand-alone tools and allow LPAs to act quickly, requiring an immediate halt to breaches in planning control for up to 28 days, in cases of immediate harm and to prevent the intensification of a use.

The introduction of temporary stop notices would be a useful addition and a complementary measure that would fit within the overall suite of enforcement tools available to LPAs in Wales. Temporary stop notices should not depend on an enforcement notice being served. As in England and Scotland, it is recommended that there should be no right of appeal against a temporary stop

[14] Office of the Deputy Prime Minister ODPM Circular 02/2005 Temporary Stop Notice, 7 March 2005.
[15] Planning Policy Wales, Edition 12, Welsh Government, November 2012
[16] Technical Advice Note 9: Enforcement of Planning Control 1997

notice. Similarly, it is recommended that LPAs should be able to issue a second temporary stop notice in respect of the same activity, but only if the LPA has first taken some other enforcement action in relation to the beach of planning control that was required to be stopped by the earlier notice.

Consideration should also be given to whether the results of the DCLG consultation on changes to temporary stop notices in respect of caravans used as main residences should also be applied in Wales. A change to primary legislation would be required for the introduction of temporary stop notices.

The introduction of temporary stop notices would be a valuable tool for LPAs, but would still offer a proportionate approach to investigating enforcement action that is in keeping with the spirit of existing enforcement legislation.

Recommendation 2:

The Planning Bill should include the power for LPAs to serve a temporary stop notice to put an immediate halt to breaches of planning control for up to 28 days. There should be no right of appeal against a temporary stop notice.

An LPA should be able to serve a second temporary stop notice in respect of the same activity, but only if the LPA has first taken some other enforcement action in relation to the beach of planning control that was required to be stopped by the earlier notice.

8 Completion Notices

8.1 Description and rationale

Completion notices, requiring the completion of a partially-completed development within a set time period, are a tool rarely used by LPAs. Changes to existing provisions may be possible to enable appropriate action to be taken more commonly.

Sections 94 to 96 of the 1990 Act provide for the termination of planning permission via completion notices where development has been commenced within the period for the permission, but has not been completed within that period. The main features of completion notices are:

- The LPA may serve a notice, subject to confirmation by the Welsh Ministers, that the planning permission will be invalid and cease to have an effect by a specified date. Any further operations after that date will be unauthorised and will be liable to enforcement action.
- Development carried out before a completion notice takes effect is lawful and cannot be subject to enforcement action.
- The notice must allow at least 12 months after it takes effect for the development to be completed.

A study on completion notices was published by the Department of City and Regional Planning, Cardiff University (CPLAN) and the Buchanan Partnership in 2001 on behalf of DCLG.[17] The IAG report[18] also considered completion notices and advised in Recommendation 94b that,

"The Welsh Government considers simplifying the procedure for serving Completion Notices, taking into account the recommendations of the 2001 CPLAN/Buchanan Partnership Study."

The key findings of the CPLAN report were:

- The completion notice system is an essential component of the current planning system by providing a mechanism whereby permission for a part-completed, but unfinished development can die. However, the current powers are complex, time-consuming and are not widely used.
- At present, Section 94 plays an important, if limited, role in helping local planning authorities unlock site-specific problems where approved, but uncompleted development causes problems of amenity. The key problem is that the outcome is uncertain and it does not guarantee that a part-finished development will be completed or that the harm caused will be rectified.
- Section 94 has a potential role in enabling local planning authorities to achieve wider planning objectives through better management of the release of development land, but this is frustrated by the time-consuming nature of the procedures and by inadequate monitoring of development completions by local planning authorities.

[17] Completion Notices, Department of City and Regional Planning, Cardiff University (CPLAN) and the Buchanan Partnership, July 2001
[18] Towards a Welsh Planning Act, Independent Advisory Group, June 2012

- Minor changes in legislation and guidance, in particular the removal of the need for confirmation by the Secretary of State [Welsh Ministers], would simplify the system. The report noted that the requirement for referral to the Secretary of State [Welsh Ministers] caused an average delay of over 8 months. It recommended that a right of appeal against a notice and transfer of the decision on a contested notice to Inspectors, as for enforcement notices, would be much more appropriate. It noted that following the enforcement model, the completion notice could also allow for phased stages of work, so that where full completion is unlikely within a reasonable period, partial works could be required to rectify the most damaging aspects of an unfinished scheme.
- A more radical approach would be to set time limits for completion of development at the grant of permission. The report recommended that greater thought should be given to tailoring the time period in the standard condition relating to commencement of development to fit the situation. For instance, the report noted that the period could be reduced to two years for minor development. The report also recommended that the advice set out in Circular 11/95 (Welsh Office Circular 35/95)[19] against including a condition requiring that the whole of an approved development be completed should be reviewed and that greater use of phasing conditions could also be considered.
- A change to the completion notice procedure could allow for a phased or partial completion to take place. This would allow for problems of amenity to be addressed, particularly in cases where the developer cannot afford to complete the development.
- There was a clear need for a good practice guide and publicity to promote the imaginative use of the power and to give a step-by-step guide to the procedures and examples of its use.

8.2 Advantages

The majority of the LPAs interviewed as part of the research, did not consider that there were any significant benefits to the existing provision for completion notices. However, one LPA did report that the use of completion notices had been useful in trying to resolve incomplete housing developments. It was also noted that Section 215 notices can be more effective, particularly in relation to untidy land.

8.3 Disadvantages

- **Completion notices are difficult to use:** Completion notices are not used by LPAs on a regular basis. There were very few cases in which completion notices had been used and most LPAs considered that the outcome of the action taken was far from satisfactory. It was generally acknowledged that completion notices are difficult to use.
- **Section 94 has 'no teeth':** The only sanction under this section is to invalidate the planning permission. This is counter-productive as it results in a partially built development. It also has the effect that the remainder of the development is lawful, even though the planning permission is invalidated. As completion

[19] Circular 11/95: Use of conditions in planning permission (Welsh Office Circular 35/95)

notices can therefore lead to the perpetuation of a partially-completed building, with no further actions available to remedy the situation, completion notices can lead to the outcome that was originally being enforced against. The measure has 'no teeth,' it needs a 'next step' or further power at the end of the process in order for it to be effective. Most LPAs considered that the section needs to be amended to require works to be completed within a set timescale or removed so the land can be brought back into beneficial use or cleared.

Most LPAs are not in a position to compulsorily purchase land in order to remedy this type of situation. It might be more appropriate to have managed expectations of what a completion notice might deliver, for instance leading to a 'desired outcome' rather than the completion of a development, which may be unrealistic.

- **Slow, cumbersome process:** Section 94 is a slow, cumbersome and protracted process, which needs to be approved by the Welsh Ministers. LPAs have to wait until the planning permission has expired (five years) and then have to give a period of at least 12 months for the works to be done. This brings the system into disrepute.
- **Risk of compensation:** The risk of compensation and the costs to the LPA can be a deterrent to the more frequent use of completion notices. If the legislation was amended to limit the compensation payable, this would be beneficial for LPAs.

8.4 Case studies

Section 94 Completion Notice Served Against A Detached Garage

Planning permission for the erection of a detached garage was granted in 1993, with the condition that the development permitted should begin within five years of the date of permission. Construction was started shortly after, but by 1994 had stalled, leaving an uncompleted structure that attracted several complaints.

In 2001, the LPA served a completion notice against the development, on the basis of its 'incongruous appearance' on the street scene. The notice was confirmed by the Welsh Assembly in 2002, and gave a period of 12 months after which the planning permission would cease to have effect. After this period, the Council issued an enforcement notice against the partially-built structure, with the argument that it was no longer covered by a planning permission.

At appeal, the Inspector also took this view, but the Welsh Government did not accept the Inspector's recommendation and quashed the enforcement notice. Due to the wording of Section 95(5) (the provision *'shall not affect any permission so far as development carried out under it before the end of the period'*), the effect of the Welsh Government's decision was that the works still had planning permission and were therefore not in breach of planning control. This decision was upheld at the subsequent High Court case between the LPA and the Assembly in 2006, at which the LPA was also ordered to pay costs.

This case highlights the limitations of completion notices in delivering the desired objective – the LPA has no further actions to remove the part-completed garage, and the owner no longer has permission to complete it. The development remains an eyesore.

The case also highlights the cumbersome process involved in completion notices: allowing enough time for the development to be completed and the need to give a period of at least 12 months for the work to be done. Whilst not directly related to the outcome of this case, it is also worth noting that it took over 12 months for the Welsh Ministers to confirm the completion notice.

Learning points therefore include:

- Section 94 notices are not regularly used by LPAs and often do not result in a desired outcome.
- Reducing the time periods for the approval of the Notice by Welsh Ministers would be beneficial.

Completion Notice Considered Against An Equestrian Facility

Planning permission was granted in 2001 for the erection of a large equestrian facility at a private school, comprising of stabling and an indoor riding arena, with the condition that development permitted should begin within five years of the permission. Construction commenced within this period, but stalled after the steel portal frame of the building had been erected.

Concerns surrounding failure to complete the build were raised to the school, who advised that funds for the project were not available at the time, but that it intended to complete the development when its financial situation improved. The school was then hit by the recession, with income prioritised to ensuring the school's operation, the completion of the equestrian facility was no longer seen as a viable option.

In determining a course of action, the LPA was mindful of the effect on the operation of the school. The service of a completion notice was considered, but was judged to be extremely unlikely to lead to the desired outcome and could have an adverse effect on the school.

As an alternative to a completion notice, action under Section 215 of the Town and Country Planning Act 1990 (power to require proper maintenance of land) was also considered. However, this was also discounted due to the high costs to the school to complete the development or to demolish the structure that had already been erected. Furthermore, an appeal against the LPA under Section 217 was too great a financial risk for the Council to consider.

A satisfactory outcome is still under consideration, but might include using part of the steel portal frame to provide a replacement barn at a farm owned by the school. This would decrease the size of the equestrian centre, and thereby reduce the eventual costs for completion.

This case highlights the importance of understanding why a development may have stalled, and therefore what the implications of serving a completion notice might be. In this case, the potential adverse effects of the completion notice far outweighed the negative effects of the partially-completed development.

The case also underlines other options that are available to LPAs, whether they are other enforcement actions or less formal negotiations.

Learning points include:

- Using other actions to deliver the 'desired outcome' can be useful, but is only beneficial if the developer is willing and able to negotiate with the LPA.

8.5 Implementation

Completion notices do not work as defined in the legislation and require amendment if the measure is to be used effectively by LPAs. Primary legislation would be required in order to introduce any amendments to Section 94 completion notices. The research has revealed that it is not the use of this section of the Act by LPAs that is the problem. Rather, it is the fact that there is no route to achieving a desired outcome.

8.6 Summary

Measure	Advantages	Disadvantages	Implementation
S94 Completion Notices	Beneficial in terms of resolving partially completed residential development in one LPA area.	Completion notices are difficult to use. The measure has no teeth. Slow, cumbersome process. Risk of compensation.	Powers created in primary legislation. Detail in secondary legislation. Practical advice in PPW, TAN 9 or new circular.

8.7 Conclusions

The majority of LPAs considered that Section 94 completion notices did not offer significant benefits and this section of the Act is little known and underused. The main disadvantages of completion notices, which were highlighted by LPAs, are that Section 94 has 'no teeth', it is a slow and cumbersome process and the risk of compensation is a deterrent to their use by LPAs.

Although the concept of Section 94 completion notices is good, the legislation does not work in practice and invariably does not secure the 'completion' of a development to the satisfaction of the LPA. In considering possible changes to completion notices, the research has considered four main options:

- Option 1: Section 94 completion notices can be regarded as having a deterrent effect. Even though they are not issued in any great numbers by LPAs in Wales, they are used on an occasional basis. As a result, Section 94 completion notices could be retained in their current form, supported by the provision of good practice guidance and advice to draw LPAs attention to completion notices and to facilitate their use. Section 94 notices should continue to be approved by the Welsh Ministers in view of the potential for compensation.
- Option 2: Introducing a step in-between full completion could be useful in cases where lesser works could address amenity issues. This option could be combined with enhanced powers for LPAs, over and above those that are already available under Section 215, but with the more formal sanction of a completion notice, that is a new Section 215 hybrid notice. This proposal was popular at the seminars and would offer an alternative tool for smaller scale development. Appeals against Section 215 hybrid notices could be dealt with by the Planning Inspectorate, with a short, streamlined procedure. This would be in line with the recommendation for the Planning Inspectorate to determine Section 217 appeals (Section 18).

- Option 3: Introducing new completion notices, which would involve the total loss of planning permission for the development and/or a requirement to sell the land to allow the LPA to undertake direct action to re-instate the land or to complete the development.
- Option 4: An amendment to the standard time condition, which requires the completion of the development within, say, 10 years of the date of the planning permission. This would require the preparation of a definition of the 'completion of development' to provide applicants clarity on what constitutes 'completion' and the extent to which a development that is 'substantially completed' is acceptable to the LPA. Applicants could apply to the LPA to extend the time period for the completion of the development via a Section 73 application to vary the condition. LPAs would still retain the ability to determine whether it would be expedient to grant an extension of time for the completion of the development in its consideration of the Section 73 application. If the development is not completed, the LPA could serve a breach of condition notice and/or a fixed penalty notice. This would sit alongside other enforcement measures including Section 215 powers on untidy land.

The research has indicated that there are very few cases per year in Wales where the need for LPAs to require the completion of a development occurs. As a result, Option 3 appears to be rather too onerous and draconian, to deal with a potentially small number of cases, and with potential implications for challenge and compensation that would not attractive to LPAs. Option 4 would raise legal issues regarding the definition of the completion of the development. In addition, the fact that an applicant could seek to vary the condition to extend the time for completion may mean that LPAs would find it hard to justify expediency for enforcement action and consequently this condition could be difficult to enforce in practice.

It is not recommended that Options 3 and 4 should be considered further. However, both Options 1 and 2 have merit within the enforcement system. Option 1 would not require any amendments to primary or secondary legislation. Option 2 would involve a change to primary legislation.

Recommendation 3:

a) Existing Section 94 completion notices should be retained. The Welsh Government should consider issuing guidance, outlining the range of circumstances where completion notices could be used. Section 94 notices should continue to be approved by the Welsh Ministers.

b) The Planning Bill should include a provision for a new Section 215 hybrid notice. This would provide LPAs with an additional power over and above that which is already available under Section 215. Appeals against a Section 215 hybrid notice should be determined by the Planning Inspectorate.

9 Additional Notification of Development

IAG Recommendations for additional notification of development

The IAG included a number of recommendations relating to additional requirements for the notification of development. Recommendation 82 of the IAG report states that,

"Requirements should be introduced requiring persons implementing a planning permission to:

a. Give notification to the local planning authority of the date on which development began.

b. Post and maintain throughout the carrying out of the development at or near the development site and in a location accessible to the public a copy of the planning permission.

c. Give notice to the local planning authority of the completion of the development."

9.1 Advantages

- **Maximise use of scarce resources**: A similar procedure is in place as part of the building regulations process. Under Building Regulations, notice must be given before construction work begins, and a final inspection must take place before a completion certificate is issued (Regulation 17, Building Control Regulations 2010). It would help LPAs to maximise the use of scarce resources, bringing planning in line with building control. If a similar process could be introduced into the planning process, this would be useful.
- **Improved monitoring of conditions:** The proposal would provide for more effective development and compliance with conditions. It was considered that the proposal could help to protect prospective purchasers of property, as there would be a need to check that conditions had been dealt with. It was noted that the extra administrative work that this would involve should be built in to the cost of the planning application fee, or an appropriate scale of charges introduced.
- **Reduce disputes:** The proposal would reduce disputes regarding immunity where operational development is involved.

9.2 Disadvantages

- **Additional administrative burden for LPAs:** The proposal for additional notification requirements would add a lot of extra and unnecessary work to LPA enforcement teams. Enforcement officers would need to check on site that the development had commenced and was completed to the satisfaction of the LPA. The extra benefit that this proposal would offer was questioned.
- **Complexity due to the use of private sector approved inspectors:** Making better use of the information that is available under building regulations would be a more efficient way forward in terms of monitoring the commencement of development, although there could be some logistical difficulties for LPAs

seeking to this information for planning purposes due to the use of approved inspectors for building regulations approval in the private sector.

- **Difficult to enforce:** The measure may be impractical. The power that LPAs would have to enforce this was questioned. It was considered that developers may well ignore this requirement in the same way as pre-commencement conditions are ignored. People may also forget to notify the LPA and it may be regarded by developers as being 'anti-development.' Problems could arise when development takes years to complete due to financial issues or when the development has only been started in order to ensure that the planning permission is extant.
- **Does not lead to desired outcome:** Similar to the disadvantages shown in Section 8.3, the additional notification of development may not actually lead to the desired outcomes, that is, the development that was originally granted permission.

9.3 Summary

Similar requirements to Recommendation 82 of the IAG report for additional notification of development are already in force in Scotland. Guidance on initiation and completion notices is provided in Planning Circular 10/2009: Planning Enforcement[20]. Section 27A (1) of the Town and Country Planning (Scotland) Act 1997 requires that a planning authority be notified of the date work is expected to commence, before the work actually commences on any development for which planning permission has been granted. Developers are also required to inform the planning authority when the work is completed. Where the planning application states that the development is to be carried out in phases, then it is to be a condition of any planning approval that a notice of completion is also to be submitted at the completion of each phase. Initial feedback from the Scottish Government indicates that this measure is not being used regularly and as a result, its merits need to be considered further as part of the overall shape of the enforcement system.

Measure	Advantages	Disadvantages	Implementation
IAG Completion Notice	Maximise use of scarce resources. Improved monitoring of conditions. Reduce disputes.	Additional administrative burden for LPAs teams. Complexity due to the use of private sector approved inspectors. Difficult to enforce. Does not lead to the desired outcome.	Powers created in primary legislation. Detail in secondary legislation, including possible changes to planning fees to cover additional notices. Practical advice in PPW, TAN 9 or new circular.

9.4 Conclusion

A number of LPAs considered that the additional notification of development, recommended by the IAG report, would be beneficial maximising scarce resources, improving the monitoring of conditions and reducing disputes. However, it was also thought that the measure could result in an additional

[20] Planning Circular 10/2009: Planning Enforcement, Scottish Government, September 2009.

administrative burden for LPAs. Nevertheless, there are already some good practice examples of joined-up working between enforcement, development management and building regulation teams. This tends to occur most readily when planning and building control were located within the same Council department.

The options for the additional notification of development that have evolved as part of the research are:

- Option 1: There should be no change, based on the fact that additional notification requirements are not necessary as information on when development starts and finishes on site already exists in building control.
- Option 2: A single set of notification requirements, encompassing both planning and building control, could be established in order that notification of development to an authority is undertaken in a more streamlined and unified way. However, this option would involve a change to the legislation on building regulations and would be outside the remit of the Planning Bill. It could also pose a number of logistical difficulties given that elements of building control have been devolved to the private sector.

The research has concluded that, as details on the commencement and completion of development are already available through building control, information sharing with development management and enforcement teams should be encouraged and the data should be used more effectively in monitoring development and conditions precedent by LPAs.

Recommendation 4:

No additional notification requirements are proposed by the study. The preparation of guidance on better integration and use of data resources by LPAs should be considered by the Welsh Government.

10 The Effects of Fines

10.1 Description and rationale

Dissatisfaction over the levels of fines for non-compliance with enforcement notices, imposed by Magistrates, were highlighted by the IAG report. There appears to be an unclear relationship between fines and whether they are a sufficient deterrent so that the LPA pursuit of prosecution is seen as beneficial when deciding to take further enforcement action.

10.2 Advantages

- **Higher fine levels would increase the deterrent effect:** All those responding provided lots of anecdotal evidence that the current level of fines imposed by Magistrates was not high enough and are therefore not effective. Many felt that the financial gain of the offender's actions was not sufficiently taken into account. Some felt that this was as much to do with the way local authorities present the case as it is with the training or experience of Magistrates. Authorities also need to do more to illustrate the financial advantage being gained. Fine levels need to be proportionate to the severity of the offence (and take less account of the offender's means), so the extent to which it is a deterrent will depend upon the intentions of the offender and the balanced consideration of risk versus benefit. There are certainly some areas of unauthorised development where the financial gain to an offender can far outweigh any financial penalty by the time the system catches up with them and puts a stop to the activity. In these cases, there should be the scope for an appropriate level of penalty to be set. Eventually, with effective imposition of fines, appropriate to the offence and publicity for the same, there may be a noticeable deterrent effect. However, there are a few cases where the proceeds of crime legislation is more appropriate.
- **The imposition of a criminal conviction is a useful deterrent:** Irrespective of the level of fine imposed, the imposition of a criminal conviction and the publicity surrounding this was felt by some to be a useful deterrent.

10.3 Disadvantages

- **No incentive for the LPA to instigate Court proceedings**: Often these are lengthy and expensive and take up considerable staff resources. The fines are retained by the Courts, so whilst the financial risk lies with the authority, there is not enough incentive to take it that far. Many reflected that the costs awarded did not reflect the costs in bringing the court proceedings. There are often unnecessary delays and adjournments. People know how to drag out the process and play the system. Even when fines are imposed, there is a tendency to take account of defendants' financial circumstances to reduce the fine and to allow payment by instalments. In some cases, remediation may be a better penalty, for example requiring the demolishing of a dwelling.
- **Need for consistency in approach by Magistrates' Courts**: Given the volume of work handled by Magistrates, this is likely to remain an issue whatever level the fines are set at. Magistrates do not have sufficient volume of work in order to build up their knowledge of planning and the impact of

development. Unlike other areas of work in the Magistrates' Court, there are no national sentencing guidelines and clerks have little information with which to advise their benches.

10.4 Case studies

Works to a Grade II Listed Public House

From 2005 onwards, work was undertaken to a Grade II listed building used as a public house. A number of windows were removed and replaced with plain glass and later that year other internal and external work went ahead without consent. The owners were advised that listed building consent was required. The advice was not heeded and shortly afterwards refurbishment work continued. This included the removal of eight important leaded coloured glass windows dating from the 19th century, which were replaced by contemporary clear glass windows with a leaded effect design. In order to prosecute, the Council had to commission an independent report and obtain expert advice. This meant that they were able to establish that that the original panes could easily have been repaired. On the basis of this evidence, there was a change of plea just before hearing. The owner complied with the requirements and the original panes were repaired and refitted.

The successful prosecution resulted in a fine of £11,000 and costs of £7,674 being awarded. The relatively high level of fine and costs awarded against the defendant resulted in this case being widely reported locally providing a deterrent effect. However, the costs awarded did not cover the costs of taking enforcement action, obtaining expert advice and pursuing prosecution through the Courts.

Learning points include:

- More detailed advice/guidelines for Magistrates in this regard would be helpful to ensure consistency of approach.
- LPAs need to ensure that they include all reclaimable costs in the cost schedules.

Use of Motorcycles and Grass Track Cars on Agricultural Land

The Council had received complaints from 2002 onwards regarding the use of motorcycles and grass track cars on agricultural land forming part of an Area of Outstanding Natural Beauty. Planning legislation allows such activity on this land for a maximum of 14 days in any calendar year.

The complaints focussed upon the nuisance caused by the excessive, undulating high pitched noise emanating from motorcycle engines as they are ridden over the rough land. A further concern related to the potential danger to walkers due to the unrestricted routes taken by motorcyclists across this land, through which there are public footpaths. Initial investigations were inconclusive in establishing sufficient evidence that the activity was being undertaken for more than 14 days in any calendar year.

The landowners were, however, advised and the use of the land was monitored. An application for a certificate of lawful use was rejected by the Council in July 2009 and the Planning Committee resolved to serve an enforcement notice at its meeting on 29 July 2009. No appeal was lodged against the refusal of the certificate for lawful use and the authority served an enforcement notice on the landowners, which formally restricted motorcycle use of the land to a maximum of 14 days in any calendar year. Despite warnings, the 14 day allowance was exceeded and the LPA commenced proceedings in the Magistrates' Court for failing to comply with the enforcement notice.

Following a two day trial during May 2011, the three land owners were found guilty and each were fined £200, ordered to pay £1000 in prosecution costs and a £15 Victim Surcharge. The total payable for each defendant was £1215.00.

The Council consider that the level of fine did not relate sufficiently to the fact the landowners had been charging and making a profit on its use and as such provided an insufficient deterrent. Whilst anecdotal and hearsay evidence suggested that each motorcyclist paid £10 on each occasion they used the land the Council were unable to gather sufficient evidence to put this before the Court. Had the Council been able to do so, action under the Proceeds of Crime Act may well have been considered. The costs awarded did not sufficiently reflect: that, in order to provide sufficient evidence for the trial, monitoring of the use had needed to take place over a couple of years; that a committee resolution was required for enforcement action to be taken; and the resources required for the preparation for the initial hearing and then a two day trial. In addition, the Magistrates accepted an offer from the defendants to pay costs at £80 per week so recovery of the costs awarded was further delayed. The imposition of a criminal conviction has proved to be sufficient to reduce the current use of the land to below the permitted development limit of 14 days per year.

Learning points include:

- The case has identified that, in addition to providing guidance for Magistrates on the appropriate level of fines, it would be useful to provide some guidance on the costs likely to be incurred by LPAs in bringing such cases.

Non-compliance with Enforcement Notices

The LPA took action to seek the reduction of the height of a building by 1.5 metres. The LPA served an enforcement notice and the owner appealed, but the Inspector upheld the notice on appeal. The owner did not comply with the requirements of the enforcement notice and the matter was heard in the Magistrates Court where they received a conditional discharge and no fine. As there was still no compliance the matter was brought before the Magistrates for a second time in August 2012 where they were fined £1,500 with £1,500 costs. As the owner has still not complied with the requirements of the notice, the LPA are now considering seeking an injunction. The owner is now claiming that there are bats and they will need a licence to carry out the works. The LPA consider that the level of fine imposed even at the second hearing has not been sufficient to ensure compliance.

In a separate case, the same LPA became aware of the unauthorised use of land as a camping site in 2005. An enforcement notice was served but at the appeal the Inspector ruled that it was permitted development as there was insufficient evidence to show that it was in use for more than 28 days in a year. Following further complaints and extensive monitoring the LPA served a further notice in 2011. The owner again appealed and the appeal decision in December 2011 on Ground (a) was unsuccessful the requirements under Ground (f) were varied and time for compliance was extended. As the owners had failed to comply with the requirements of the Enforcement Notice the matter was taken to the Magistrates Court in August 2012 where they were fined a total of £400 with £400 costs. The owners were able to plead lack of funds despite the fact that the site had been shown to be very busy and profitable. In a case such as this where the maximum fine is £20,000 the fine given was seen as derisory. The owners have still not complied and the LPA is considering whether to take the matter back to Court or alternatively to take direct action. Although the costs of taking such action could be recouped, the LPA are concerned about the number of charges already on the property. One of the issues is that cases such as this do not come before the Magistrates' Court sufficiently often for them to have experience with which to assess the level of fines. Additional training and guidance to Magistrates on appropriate fine levels would be beneficial.

Learning points include:

- Taking actions back to court does result in levels of fines being increased – LPAs need to be more proactive in providing information to Magistrates as to the appropriate level of fines. A national data bank of such information could be useful.

10.5 Implementation

Irrespective of whether or not the maximum fine levels are changed (the general view was that it was not the maximum fine levels that was an issue, but their implementation), the provision of guidance to Magistrates would help to deal with the low volume of cases seen by most justices and help it to be less of a lottery as to the level of fines imposed. Training, best practice and sentencing guidelines for clerks would be beneficial. At present, there is no reference to planning in the guidelines and therefore benches are dependent on information put forward by the authority.

It is noted that the Sentencing Council has recently consulted on guidelines for sentencing on fly-tipping for judges and Magistrates in England and Wales, with the aim of increasing the levels of fines for the most serious offences, with jail terms being reserved for the most serious and persistent offenders. A similar approach could be taken to enforcement.

Local planning authorities could also be more proactive in providing information to Magistrates on the harm caused and details of fines imposed on similar cases. The setting up of a national data bank of fines would help. Less reliance should be placed on the means of the offender. The proposal to issue fixed penalty notices would be helpful in this regard.

10.6 Summary

Measure	Advantages	Disadvantages	Implementation
The Effects of Fines	Higher fines (and appropriate award of costs) would be a more effective deterrent. Need to be considered in conjunction with criminal conviction.	Lack of financial incentive for LPAs to take cases to Court. Need for more consistent approach from Courts.	Provision of sentencing guidelines, training and information on best practice for Magistrates, a national databank of information on fines and considering it in conjunction with fixed penalty notices.

10.7 Conclusion

The current system is not as effective as it could be. The volume of cases heard by Magistrates is relatively small and matters are often brought before different benches so that individual Magistrates rarely hear such matters. This coupled with the lack of information on sentencing and level of fines means that there is an inconsistent approach taken. The provision of such information, including best practice and a national database of fines and appropriate cost awards, together with the proposal to introduce fixed penalty notices would improve the system without the need for significant changes.

The provision of national sentencing guidelines, training and a database with information on levels of fines and costs awarded together with best practice could improve the operation of the present system.

Recommendation 5:

The Sentencing Council, in conjunction with the Magistrates Association, should be asked to incorporate guidelines and training on planning enforcement to justices within its benchbook and a national database of fines should be established.

11 Attaching Conditions to Unauthorised Development

11.1 Description and rationale

Section 102 of the 1990 Act allows LPAs to issue orders requiring either that a use is discontinued, that conditions be imposed on its continuation, or that steps are taken to alter or remove buildings from land. An order under this section may grant planning permission, subject to conditions, for any development of the land to which the order relates. Section 102 orders must be confirmed by the Welsh Ministers. Under Section 104, the Welsh Ministers may also make a discontinuance order. Section 115 sets out the circumstances in which compensation is payable by LPAs in respect of orders served under Section 102.

Sections 189 and 190 of the Act refer to the enforcement of orders for the discontinuance of the use of land. Section 189 provides that a person who contravenes an order under S102 will be guilty of an offence. Section 190 provides that where steps set out in a S102 order have not been undertaken, the LPA may enter the land and undertake the required step. The LPA may also recover any expenses from the owner of the land.

The Welsh Government Planning Enforcement Review in December 2009[21] noted that LPAs do not use this power under Section 102, perhaps because of the compensation aspect associated with such orders. The review also noted that it could be useful for LPAs to have the power to attach conditions to control an aspect of an unauthorised development, which is acceptable in all other respects. There is no problem where the developer applies for retrospective planning permission, but where an application is not forthcoming the only option available to LPAs is to issue an enforcement notice requiring the cessation and/or removal of the development.

11.2 Advantages

- **A useful tool for LPAs:** The ability to add conditions to enforcement notices was considered to be very useful where a development would be acceptable, with conditions, but the developer refuses to submit an application. The enforcement notice would have the effect of granting planning permission with conditions. If this proposal was introduced, it may not be necessary to introduce a provision requiring an application to be submitted.
- **A quicker route to resolving issues:** At the moment, only an Inspector can attach conditions to a permission granted on appeal in enforcement proceedings. The proposal would provide a quicker route for LPAs to resolve issues where a developer does not voluntarily submit a planning application.

[21] Planning Enforcement Review, Conclusions of the Welsh Assembly Government (Annex 1), 11 December 2009.

11.3 Disadvantages

- **Recovery of planning fees:** LPAs should be able to recover a planning application fee where an enforcement notice is served, with conditions, and has the effect of granting permission.
- **An alternative route to planning permission:** The measure could be seen by some developers as an alternative route to gaining planning permission, avoiding the application process and payment of a planning fee. The public could interpret a situation where those who do not use the correct channels are not penalised as being unfair.
- **Ministerial approval may deter use:** If the approval of the Welsh Ministers is retained for this additional power, it may discourage LPAs from using it because of the potential for delay.
- **Limited neighbour consultation:** Whereas a planning application allows a consultation period where neighbours and other interested parties can provide feedback, this is not possible where conditions are attached to an existing development. It is unclear how neighbour consultation (if any) would work.
- **Limited influence over design and materials:** The LPA will have far less control over the design and materials used in the development once built, although the conditions attached could refer to design and materials.

11.4 Case studies

The interviews with LPAs confirmed the Welsh Assembly Government's previous research that Section 102 is rarely used. In fact, the research indicated that there was very little knowledge or experience in the use of Section 102 orders in the LPAs interviewed. As a result, no relevant examples of action taken under Section 102 were forthcoming from the case study authorities.

11.5 Implementation

There is, currently, very little knowledge or awareness of Section 102 powers and it is rarely used. Encouraging greater use of Section 102 powers will require improving awareness of this section of the 1990 Act and the preparation of a good practice guide.

The power to attach conditions to enforcement notices was well received in the LPA interviews and would require new primary legislation. However, the ability to place conditions on an enforcement notice could preclude the power to require a retrospective application to be submitted.

The disadvantages of attaching conditions to unauthorised development may be rationalised somewhat by including a condition to require the applicant to apply for a certificate of lawful use or development (CLEUD).

11.6 Summary

Measure	Advantages	Disadvantages	Implementation
Attaching Conditions to Unauthorised Development	A quicker route to resolving issues. May eliminate the need for the measure requiring an application to be submitted.	LPAs would need to be able to recover a planning application fee. May be seen as an alternative route to planning permission. Ministerial approval may deter use. Limited neighbour consultation. Limited influence over design and materials.	Needs to be considered alongside proposal to require a retrospective application to be submitted. Powers created in primary legislation Detail in secondary legislation Practice advice in PPW, TAN 9 or a new circular and/or a best practice guide.

11.7 Conclusions

Some LPAs considered that this measure would be a useful mechanism and that it could be a quicker route to resolving issues. However, a number of concerns were raised in terms of the ability of an LPA to recover a planning application fee and that it may be seen as an alternative route to gaining planning permission. Additional concerns on the potential for delay if Ministerial approval was required, limited neighbour consultation and a lack of control over design and materials were also cited.

Although imposing conditions on enforcement notices could work in theory, there are a number of complications with this measure. It could be potentially complex, introducing an alternative and possibly undesirable way of gaining planning permission, with some developers seeing this route as a way of 'getting away with it' and conflicting with the central tenant of planning legislation that all applications should be considered on their merits. This would not be within the spirit of the existing enforcement system.

In situations where a development might be made acceptable with the addition of conditions, it would be unnecessary for the enforcement system to include the dual powers to attach conditions to an enforcement notice and to require a retrospective planning application to be submitted. The two measures would not sit comfortably alongside each other. Given that the measures aim to provide a more streamlined approach, with enforcement and development management working more closely together, it is considered that the power to attach conditions to enforcement notices would be unduly complex.

LPAs and the Welsh Ministers already benefit from extensive powers under Section 102 to require the discontinuance of any use of land or that buildings or works should be altered or removed. This includes the power to attach conditions if required. Although this Section of the Act does represent a very powerful tool for LPAs, it does not appear to be viewed as part of the enforcement system. Awareness of Section 102 powers should be promoted by the Welsh Government. LPAs should be reminded that Section 102 can be applicable in enforcement cases. However, the fact that this section is subject to compensation liabilities is

likely to mean that action under this part of the 1990 Act may be seen as a power of last resort and as such its use it likely to continue to be limited.

The power to require a retrospective planning application to be submitted is considered to be the most effective and appropriate way of regularising unauthorised development. Given the existing powers under Section 102, the measure to attach conditions to enforcement notices is not recommended for further consideration.

Existing powers under Section 102 should be more widely promoted. In view of the compensation issues, Section 102 notices should continue to be approved by the Welsh Ministers. However, the arrangements for the approval of notices should be streamlined in order to expedite the process.

Recommendation 6:

Existing powers, under Section 102, should be more widely promoted by the Welsh Government. The arrangements for the approval of notices by the Welsh Ministers should be streamlined in order to expedite the process.

12 Requiring a Retrospective Application to be Submitted

12.1 Description and rationale

In the event of a breach of planning control, this reform would enable a LPA to require the submission of a retrospective planning application. The rationale is that this could be a more satisfactory means of regularising development. It would be based on an initial 'triage' approach by the LPA (Section 20). This initial 'triage' approach would require LPAs to consider the most appropriate form of action to pursue, assessing whether the planning breach would be acceptable, in principle, or with conditions in place which would be attached to any grant of planning permission or whether conditions could be successfully attached to an enforcement notice (Section 11).

12.2 Advantages

- **Outcome focused:** The measure is less concerned with punitive measures and more focused on ensuring that the desired outcome is achieved.
- **Draws on established processes:** The measure would not require a substantially different process to that currently in operation. Enforcement officers are experienced in preparing and serving notices and then the planning application process could occur normally.
- **Publically efficacious:** The result of serving a notice would be the submission of a planning application, which would be consulted on in a standard way including neighbours and interested parties. This would provide a visible means of demonstrating that the LPA has listened to any complainants and has taken appropriate action.
- **Proven elsewhere:** This tool currently operates well in Scotland. Further details are provided within the case studies section (Section 13.5).

12.3 Disadvantages

- **Does not dis-incentivise planning breaches:** All other things remaining equal, this measure does not, by itself, dis-incentivise a breach of planning control. The offender has two theoretical options: to apply for planning permission, or to undertake development illegally knowing that the worst case scenario would be the other option of submitting a planning application. In short, this could encourage people to 'chance it', unless there was a further enforcement sanction in place requiring the removal or cessation of the breach of planning control.
- **Still requires work by enforcement officers:** A notice would still need to be served, investigation work would still need to be undertaken and follow up monitoring would still be necessary.
- **Not necessarily a swift way of regularising development:** Compared to, say, serving an enforcement notice, which places conditions upon development, this is not necessarily the quickest route to resolving a planning breach.

- **A reasonable approach might not achieve the best outcome:** Since development would have already taken place, there is no opportunity to influence design, materials and similar issues related to the development. The LPA is making an 'on balance' decision about whether the development is acceptable and what the most proportionate response might be.
- **Issue of application fee unclear:** Natural Justice principles suggest that it might not be possible to require the applicant of the retrospective application to pay a planning application fee. Clearly, from a position of the incentivisation effect, it is critical that making a retrospective application is not a 'cheap' or 'easy' option that justified any risk-taking or breach behaviour.

12.4 Case studies

Section 33A Notice Served in Response to Unauthorised Development in Scotland

Under Section 33A of the 1997 Act and introduced in the Planning (Scotland) Act 2006, Scottish LPAs have the power to require a retrospective planning application. The exact notice served varies between LPAs, with template notices often used, with some similarities and differences.

Important – this notice affects this property and has immediate effect. Failure to comply with the requirements of the notice may result in prosecution.

Town and Country Planning (Scotland) Act 1997

NOTICE REQUIRING SUBMISSION OF A PLANNING APPLICATION FOR DEVELOPMENT ALREADY CARRIED OUT.

Issued by:

This notice is served on:

Date of issue: **20 April 2012**

Whereas:

1. In respect of development on land at:

Example of a S33A Notice, Scotland

Expediency of case – all notices served include a section stating that the LPA *'consider that it is expedient to issue this notice, having regard to the provisions of the development plan and other material considerations'*. This conforms to the requirement for LPAs to ensure that their actions are proportionate to any breach of planning control.

Breach – the notice sets out the breach that it refers to, though LPAs can do this in different ways and to different degrees of accuracy. Red line drawings and addresses are often used to delineate where the breach has taken place. However, some LPAs go further and set out the specific breach(es) in question (e.g. 'the unauthorised dormer window'). This extra level of detail could become important if cases involved development where only part was unauthorised (with other aspects covered by planning permission or permitted development rights), or where certain parts of the unauthorised development were deemed inexpedient to pursue under this power. Notices also set out the legislation under which the breach of planning control falls.

Choice of action – some notices used by LPAs lay out the 'choice' for the owner, e.g. *'1) To remove the dormer window, Or, 2) Submit an application for the dormer window'*. Other LPAs choose to simply request the application.

Time periods – the notice must set out the time period after which the planning application must have been received in order for the notice to have been complied with. Section 33A does not prescribe a set time period, instead requesting that a reasonable time period be used. 28 days and six weeks periods seem to be commonly used by Scottish LPAs. The LPA must also be mindful of the effect of the period given on the timeframe of additional enforcement action in the case of non-compliance – further action cannot be taken until this period has ended.

Non-compliance – notices all set out the consequences of a failure to submit a retrospective application, with a common clause that '*failure to comply with this notice may result in further enforcement action which may include prosecution*'.

Powers To Require a Retrospective Planning Application

There have been several recent cases in Wales where the power to require a respective planning permission may have been advantageous. These cases are outlined below.

Use class change in a commercial unit

Reports were received of a commercial unit within a group of A1 and A2 shop units, which had erected an extraction flue and begun operation as an A3 use. The owners were advised not to open the hot food premises to the public and to submit a retrospective planning application. It was noted that the development was not unacceptable in itself, but that the uncontrolled use of the site had unacceptable impacts on late night noise, odour, and on-street parking. Unfortunately, an application was not forthcoming and an enforcement notice was subsequently served.

Outbuilding converted for residential use

Permission to convert an outbuilding into a residential unit was refused on the grounds of unacceptable access. The development was carried out nevertheless, albeit to a high standard. The use of the building for residential units was deemed to be acceptable in principle; however, a retrospective application was required not only to set conditions for access and parking, but also to remove further permitted development rights on the historic rural building. However, an application was not submitted and so the LPA served an enforcement notice requiring the cessation of the use of the building as a dwelling.

Extension for an elderly person

A self-contained extension to a residential property, to accommodate an elderly relative, was made without planning permission. The development was deemed to be acceptable by the LPA, but there was a concern that without conditions on its occupancy and use it could lead to a new dwelling in the open countryside. For this reason, a retrospective planning application was requested. An enforcement notice was drafted which encouraged the owners to apply, and the development was permitted.

Learning points include:

- In all these cases, the unauthorised development would have been acceptable subject to being regularised through a retrospective permission. However, without the power to require an application, in the first two examples the LPA had no choice but to serve enforcement notices. This course of action did not lead to the desired outcome for either the owner of the development or the LPA.

12.5 Implementation

The power to require the submission of a retrospective planning application would require a change to primary legislation. It would take the form of a notice, akin to the powers provided in Scotland under Section 33A of the 1997 Act and introduced within the Planning (Scotland) Act 2006.

Planning authorities must, prior to issuing a notice, ensure that their actions are proportionate to any breach of planning control. A notice should be issued that states a breach of planning control has occurred, describe the nature of development (often assisted by a location map), and sets a (reasonable) date by which the planning application is to be made. This date would depend on the size and complexity of the application required, but as a general rule should not exceed three months and should ideally be one month. As in Scotland, the notice should be recorded on the planning register and constitutes the taking of enforcement action. There should be no right of appeal.

The power to require a retrospective application would only be used in those cases where the development or use would be acceptable, or where conditions could make it acceptable. Payment of a fee would be required alongside the application.

If no application is submitted by the required date, an enforcement notice or other action may still be taken by the planning authority. However, engagement with practitioners has shown that there may be cases where a retrospective planning application may be refused, but where further enforcement action may not be expedient. A further 'triage' stage may be required to consider the most appropriate form of action to pursue.

To reduce delay in the system, it may be desirable to decline to accept any retrospective applications received after the time period has lapsed. The power to require a retrospective planning application sits alongside the power to decline to accept a retrospective planning permission, which is dealt with in Section 17.

12.6 Summary

Measure	Advantages	Disadvantages	Implementation
Requiring a Retrospective Application to be Submitted	Outcome focused. Draws on established processes. Publically efficacious. Proven elsewhere.	Does not dis-incentivise planning beaches. Still requires work by enforcement officers. Not necessarily a swift way of regularising development. A reasonable approach might not achieve the best outcome. Issue of application fee unclear.	Needs to be considered alongside the power to impose conditions on an enforcement notice. Powers created in primary legislation Detail in secondary legislation Practice advice in PPW, TAN 9 or a new circular.

12.7 Conclusion

Feedback from LPA interviews and seminars was largely supportive for the introduction of the power to require a retrospective planning application. Many expressed the view that, as retrospective applications were often encouraged to regularise unauthorised development, the power to require their submission would be a useful tool. Furthermore, the tool has proven effective in Scotland since its introduction in 2006.

The power to require a retrospective planning application would be an important part of the 'pronged' approach to planning enforcement, providing an outcome-focused path to reaching the desired result where unauthorised development is acceptable or could be made acceptable through conditions. It would also provide a publically efficacious action where consultation could proceed in the standard way.

It is recommended that the period given for compliance should be commensurate with type of the planning application to be prepared, but as a general rule, should not exceed three months and should ideally be one month. Payment of a fee would be required alongside the application. If no application is submitted by the required date, an enforcement notice or other action may still be taken.

The power to require the submission of a retrospective planning permission would provide a valuable additional path for LPAs, without requiring a substantially different process to those currently in operation. There should be no right of appeal against receipt of this notice.

Recommendation 7:

The Planning Bill should include the power for LPAs to require the submission of a retrospective planning application.

13 Fixed Penalty Notices

13.1 Description and rationale

Fixed Penalty Notices (FPNs) would operate as a quick and convenient means of issuing a standardised, smaller fine for a breach of planning control. The aim is to create a system that can react quickly, but which is proportionate. Some breaches warrant action, and officers are reluctant to take no further action, but there is an acceptance that Court action might not be commensurate to the breach. The threat of a notice is intended to act as a disincentive to both persistent and prospective offenders.

FPNs currently operate in Scotland. This section draws upon the Scottish experience. It also recognises that there could be some variation in the application and structure of a system of FPNs, principally around the process of issuing, the means of recovering fine monies, the ability to pursue Court proceedings, the right of appeal and the ability to issue successive notices for a continued breach. In Scotland, the maximum fine is currently £2,000 in the case of a breach of an enforcement notice, and £300 in the case of a breach of a breach of a condition notice.

13.2 Advantages

- **Simple and lightweight system:** The idea of FPNs is a straightforward approach, i.e. it is in keeping with other systems such as parking tickets, other motoring offences or library fines. It creates a simple means of discouraging ‘rule breaking’ through a summary financial penalty, which can be swiftly and easily issued.
- **Ability for an authority to fine without Court proceedings:** One of the main attractions of a FPN approach is that it creates a ‘halfway’ (or proportionate) option between the extreme of either Court action or deciding that it is not expedient to pursue a breach. In this way it might provide some ‘bite’ to pursuing minor offences.
- **Potential modifications to enhance effectiveness:** If a system of FPNs could be devised, which included a sliding scale of payments, a means of gathering fines and the ability to serve repeat fines, it is possible that FPNs could be an effective enforcement tool. However, this would have to be considered in the light of appeal rights and the resulting implications for implementation and operation.

13.3 Disadvantages

- **Lack of appeal power or ability to pursue in Courts limits effectiveness:** The compromises made in order to prevent a right of appeal have limited the effectiveness of FPNs. However, if there had been a right of appeal included, it might have created an additional means of delaying enforcement proceedings, as well as increasing the administrative burden.
- **Lack of mechanism to collect monies:** Scotland does not currently have provision to place a charge on the land, as exists in Wales, where a debt can be placed on a register against the site or property, which must be cleared in order

to sell, transfer or (re)mortgage. However, this power in Wales results in a long 'lead time' in order to receive monies as land transactions might not occur for several years. Also, if the charge relates to a business which has gone into administration, it is possible that the monies may never be recovered as the amounts of charges are usually low in comparison to other debts;

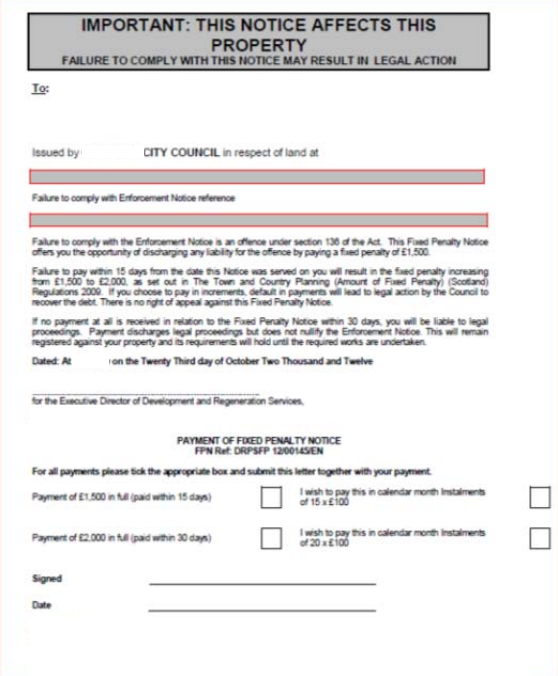
- **Inconclusive evidence of their effectiveness:** FPNs are very rarely used in Scotland because of the shortcomings already identified. As a result of their light usage, it is not possible to demonstrate their effectiveness in either deterring or rectifying planning breaches.

13.4 Case studies

Fixed Penalty Notice use in Scotland

Since the introduction of fixed penalty notices in in Scotland in 2009, there has been a variation in their take-up by planning departments. Whilst overall they have not been widely used, one Scottish LPA served nine fixed penalty notices in the year 2011/2012, not including listed building fixed penalty notices (under provision from separate legislation). The levels of fines the LPA have adopted are in line with the maximums set out by the Scottish Government, and are as follows:

- Non-compliance with an enforcement notice: £3,000 (£1,500 if paid within 15 days);
- Non-compliance with a breach of condition notice: £300 (£225 if paid within 15 days);
- Listed building fixed penalty notice: £2,000, rising to £3,500 and £5,000 for second and third breaches.



IMPORTANT: THIS NOTICE AFFECTS THIS PROPERTY
FAILURE TO COMPLY WITH THIS NOTICE MAY RESULT IN LEGAL ACTION

To:

Issued by: CITY COUNCIL in respect of land at

Failure to comply with Enforcement Notice reference

Failure to comply with the Enforcement Notice is an offence under section 136 of the Act. This Fixed Penalty Notice offers you the opportunity of discharging any liability for the offence by paying a fixed penalty of £1,500.

Failure to pay within 15 days from the date this Notice was served on you will result in the fixed penalty increasing from £1,500 to £2,000, as set out in The Town and Country Planning (Amount of Fixed Penalty) (Scotland) Regulations 2009. If you choose to pay in increments, default in payments will lead to legal action by the Council to recover the debt. There is no right of appeal against this Fixed Penalty Notice.

If no payment at all is received in relation to the Fixed Penalty Notice within 30 days, you will be liable to legal proceedings. Payment discharges legal proceedings but does not nullify the Enforcement Notice. This will remain registered against your property and its requirements will hold until the required works are undertaken.

Dated: At on the Twenty Third day of October Two Thousand and Twelve

for the Executive Director of Development and Regeneration Services,

PAYMENT OF FIXED PENALTY NOTICE
FPN Ref: DRPSFP 12/00145/EN

For all payments please tick the appropriate box and submit this letter together with your payment.

Payment of £1,500 in full (paid within 15 days) ☐ I wish to pay this in calendar month instalments of 15 x £100 ☐

Payment of £2,000 in full (paid within 30 days) ☐ I wish to pay this in calendar month instalments of 20 x £100 ☐

Signed _____

Date _____

An example of a fixed penalty notice served in Scotland

The LPA found that cases where fixed penalty notices were served tended to be small-scale domestic development or change of use (where formal prosecution following non-compliance may not be expedient or beneficial), often in conservation areas where small changes have a proportionately large impact. In one building in a conservation area, fixed penalty notices were served on two separate flats where non-conforming windows had been installed without authorisation. In both cases, enforcement notices to rectify the problem were originally served but not complied with, hence temporary stop notices being served. In both cases, the outcome was the resolution of the breach through the replacement of the windows.

The LPA noted that fixed penalty notices do not always have the effect of rectifying the breach – payment of the penalty discharges any liability for prosecution, even if that breach continues. However, they felt that, as most recipients were individuals, the notice did usually lead to action.

Furthermore, the LPA felt that fixed penalty notices are a good 'public relations' exercise, showing that breaches and non-compliance could have immediate monetary effects. They are now included in Council publications showing the potential consequences of breaches.

Learning points include:

- Although temporary stop notices have limitations, they can be a useful tool in the right sort of cases – not only can they act as a punitive measure against non-compliance, they can also encourage the rectification of a breach.

Potential Fixed Penalty Notice use in Wales

There have been several recent cases in Wales where the power to serve a fixed penalty notice may have been advantageous to the outcome. Two of these cases are outlined below.

Repeated non-compliance with a Section 215 notice on a deteriorating residential property

walesonline.co.uk

Planning permission was granted in 2005 to convert a large residential property into smaller flats. The development appeared to commence in 2010. However, the property fell into disrepair and was deemed by the case officer to 'adversely affect the amenity of the area'. A Section 215 notice was served in 2010, requiring the improvements to the roof, windows, brickwork and grounds. An appeal was lodged, but was subsequently withdrawn by the appellant. The notice was not complied with within the period of four months given, but as work to convert the property had begun no further action was taken. However, when work stalled again, a further Section 215 notice was served, with an appeal against it dismissed. Again, the notice was not complied with.

A fixed penalty notice could have provided a way to counter the non-compliance with the first notice without causing the development to stall.

Take-away operating outside its hours of operation

A take-away was operating outside its conditioned hours of operation. A breach of condition notice was served requiring the cessation of the breach and that the take-away should return to operating within its permitted hours. The breach of condition notice was ignored and the LPA began prosecution proceedings on loss of and harm to amenity. The LPA also suspected that the take-away was a focus for anti-social behaviour in the area, but this could not be proved. The LPA obtained supporting evidence from the police and town centre wardens to substantiate the fact that the business was operating beyond its hours of operation. However, on hearing the case, the Magistrate's Court gave an absolute discharge in respect of the offence, meaning the defendant was not punished, although guilty. One of the issues that contributed to this outcome was the fact that the license for the premises granted a longer period of opening than the more restrictive planning permission. On receiving this judgement, the LPA considered that it had no choice other than to close the enforcement case.

Learning points include:

- Fixed penalty notices could offer a quick and 'lightweight' method of issuing a fine against non-compliance without resorting to more time consuming and costly Court action.
- They could also be the preferred option where direct action is deemed to be too expensive to carry out.

13.5 Implementation

The power to serve FPNs in Wales would require primary legislation, with levels of fines set nationally through a statutory instrument.

The powers for FPN in Scotland are set out within primary legislation (Section 136A and Section 145A of the Planning (Scotland) Act 2006), with additional detail provided via the Town and Country Planning (Amount of Fixed Penalty) (Scotland) Regulations 2009. Further advice is provided within Circular 10/2009 (Planning Enforcement)[22].

The main implementation concern with FPNs in Scotland was a requirement to ensure that they could not be appealed. This was not intended to curtail freedom, but rather to ensure that FPNs did not create an additional layer of administrative burden, or enable further delay within the system. This had several consequences for their implementation, in terms of preventing a penalty escalator (if payment is not made within a prescribed time period), and also preventing repeat notices being served if a breach persisted following the issue of a previous FPN.

An alternative system would be to operate a system more akin to the 'parking ticket' system. Repeat fines could be issued where a breach persisted, albeit with a right to appeal. Any appeals system would need to be lightweight and standardised, operating in a way similar to the Traffic Penalty Tribunal (in England and Wales outside London) and the Parking and Traffic Appeals Service (in London). An lodged appeal should not preclude the further issue of (repeat) FPNs where the LPA considers it appropriate. In these cases, the fines would accrue and stand or fall on the determination of a single appeal.

13.6 Summary

Measure	Advantages	Disadvantages	Implementation
Fixed Penalty Notices	Simple and lightweight system. Ability for an authority to fine without Court proceedings. Potential modifications to enhance effectiveness.	Lack of appeal power or ability to pursue in Court limits effectiveness. Lack of mechanism to collect monies. Inconclusive evidence of their effectiveness.	Powers created in primary legislation. Detail in secondary legislation. Practice advice in PPW, TAN 9 or a new circular.

13.7 Conclusion

The experience of using FPNs in Scotland have been mixed; whilst the LPA explored in the case study found them to be a useful tool, on the whole they are used rarely. The reasons for this are the lack of ability to collect monies of pursue in the Courts, as well as the inability to serve repeat fines. However, the research suggests that a system of FPNs, operating in a different way to Scotland, and more akin to the 'parking ticket' system, could provide a useful additional power for LPAs. At the seminars the idea was very popular, with many highlighting the positive incentive effect it would have.

[22] Planning Circular 10/2009: Planning Enforcement, Scottish Government

FPNs should be served after the failure to comply with a notice, and repeat issue of the FPN should be possible for every day that the breach remains. This would require the right of appeal. In line with the 'parking ticket' analogy, the right of appeal should be a quick and straightforward process, which could be administered by the Planning Inspectorate. The right of appeal should not preclude the serving of subsequent FPNs; the penalties would accrue until the appeal had been determined. There should be no discount for early payment (as there is in Scotland). In the event that FPNs were persistently ignored or in cases of non-payment, LPAs should pursue prosecution or an injunction via Court action.

FPNs should predominantly be used to deal with unauthorised uses (such as camping sites or takeaways, where the continued breach has a financial benefit) or breach of conditions, rather than unauthorised development. Feedback from the seminars suggested that clear guidance would be required to support LPAs on the use of multiple FPNs.

FPNs would allow for a simple, proportionate option for LPAs, offering a 'halfway' tool between Court action and deciding that a case is not expedient to pursue. As such, it would provide a means of discouraging breaches and provide a 'bite' to pursuing minor offences.

It is recommended that a system of fixed penalty notices should be introduced. Unlike the system operating in Scotland, the ability to serve repeat notices and pursue payment in the Courts should be made possible to ensure effectiveness.

Recommendation 8:

The Planning Bill should include the power for LPAs to serve fixed penalty notices, with the ability to serve subsequent daily fixed penalty notices for as long as the breach remains. Recipients of fixed penalty notices should have the right of appeal. A statutory instrument should set national fine levels for fixed penalty notices.

14 Inclusion on the Planning Register

14.1 Description and rationale

Enforcement action is a form of planning decision-making. In the same way that a planning application is recorded as having a decision, it is logical to suggest that enforcement action should also have its decision recorded. This measure would require LPAs to record the date on the planning register on which they were satisfied that a given enforcement notice was complied with.

14.2 Advantages

- **Useful in cases of unauthorised development:** Where there is a clear physical breach of planning control, it would be possible to state consistently and without ambiguity when an enforcement notice has been complied with. For example, once an authorised outbuilding has been demolished and the land has been returned to its prior state, or once a retrospective application for planning permission has been granted.
- **Transparent and accountable:** Several stakeholders felt that this would ensure that authorities continued to ensure that their planning service presented transparent information about their planning function and its accountability.
- **Would assist in land transfers:** Making this information publicly and freely available on the planning register would assist with standard land searches and similar requests associated with house sales and land transactions. Parties involved in such transactions need to be confident that any breaches of planning control have been resolved.

14.3 Disadvantages

- **Less useful in relation to unauthorised changes of use:** Whilst there is a clear case to be made for including compliance dates for unauthorised physical development, the position is less clear-cut for unauthorised changes of use. As with the potential for repealing or cancelling enforcement notices, authorities involved in this research appeared more reluctant to finalise or remove previous enforcement controls in relation to changes of use. The underlying perception is that there is a greater likelihood of the unauthorised change of use returning and that the authority might have to start enforcement action afresh.
- **Additional burden to authorities:** Authorities would have to monitor and formally record a piece of information that they do not currently record. Furthermore, authorities currently charge for, and so derive income from releasing this information.

14.4 Implementation

Section 30 of Part 7 of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 deals with the register of enforcement and stop notices. In particular Section 30 (2) (i) states that the register must contain:

"…the date, if any, on which the authority are satisfied that steps required by the notice for a purpose mentioned in section 173(b) of the 1990 (contents and effect of notice: remedying any injury to amenity)(1) have been taken."

The 2012 Order replaces the Town and Country Planning (General Development Procedure) Order 1995 (as it related to Wales). Article 26 of the 1995 Order related to the register of enforcement and stop notices and Part (1) (i) contained a similar clause requiring the register to record this information.

Similar provisions are contained in legislation within England (The Town and Country Planning (Development Management Procedure) (England) Order 2010 Part 7 Section 38 (1) (i)) and Scotland (The Town and Country Planning (Enforcement of Control) (No. 2) (Scotland) Regulations 1992 Part 4 Section 7 (1) (m)). As such, LPAs should already be recording enforcement action on their planning registers.

14.5 Summary

Measure	Advantages	Disadvantages	Implementation
Inclusion on the Planning Register	Useful in cases of unauthorised development. Transparent and accountable. Would assist in land transfers.	Less useful in relation to unauthorised changes of use. Additional burden to authorities	Good practice guidance to highlight this requirement.

14.6 Conclusion

As the inclusion of enforcement action is already in force under Section 30 of Part 7 of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012, it is not proposed that this should form part of the future list of measures. Rather, good practice guidance should seek to remind LPAs of their on-going requirement to maintain an up to date register of enforcement action, and its role in the operation of a transparent and accountable planning system.

Good practice guidance should be introduced to remind authorities of their requirement to include enforcement action and dates of compliance on the planning register.

15 Cancellation of Enforcement Notices

15.1 Description and rationale

The proposal for the cancellation of enforcement notices is closely linked to the measure for recording compliance with an enforcement notice on the planning register. The IAG report noted that the fact that an enforcement notice remains in force, even if it has been complied with and is spent, can be an impediment to property transactions. The report recommended that LPAs should have the ability to either themselves, or on application, to cancel enforcement notices that have been fully complied with or to record this on the planning register.

15.2 Advantages

- **A clear record of planning history:** Recording that an enforcement notice has been complied with or that the LPA has decided not to take any further action, on the planning register would provide a clear record of the planning history of a site. This would be a benefit, provide certainty for purchasers of property and legal enquiries.
- **Useful in certain cases:** Cancelling an enforcement notice would be useful in certain historic cases where a site has been developed and the original breach could never re-occur, that is the notice is clearly spent.

15.3 Disadvantages

- **Enforcement notices offer a lasting effect:** Enforcement notices should not be cancelled. They should remain on the land to reflect the planning history of a site. The fact that an enforcement notice remains in force is important in respect of land uses as it prevents any lawfulness being claimed and holds the threat of prosecution. It was also noted in by one LPA that an enforcement notice can have a deterrent effect in some cases.
- **Possible need to re-start enforcement action:** If an enforcement notice had been cancelled and a breach of planning control re-occurred, the LPA would have to re-start enforcement action, with consequent implications of cost and further delays. Most LPAs were reluctant to formally cancel enforcement notices and considered that they should continue to run with the land.

15.4 Implementation

There is an on-going requirement for LPAs to review the expediency of enforcement action. However, the ability of LPAs to cancel an enforcement notice that is spent, or which has been satisfactorily complied with, would require a change to primary legislation.

15.5 Summary

Measure	Advantages	Disadvantages	Implementation
Cancellation of Enforcement Notices	A clear record of planning history of enforcement. Useful in certain cases where the enforcement notice is clearly spent.	Enforcement notices offer a lasting effect. Possible need to re-start enforcement action if a breach re-occurs.	Powers created in primary legislation Detail in secondary legislation Practice advice in PPW, TAN 9 or a new circular.

15.6 Conclusions

A number of LPAs considered that recording that an enforcement notice had been complied with would offer a clear record of planning history and that the ability to cancel notices would be useful in certain cases where the notice had been clearly spent. However, there was a general concern that enforcement notices offer a lasting effect and that the cancellation of notices could lead to the need to re-start enforcement action should a breach of planning control re-occur. For these reasons, it is not recommended that LPAs should have the power to cancel enforcement notices.

The Town and Country Planning (Development Management Procedure) (Wales) Order 2012 requires LPAs to keep a register of enforcement and stop notices and to record the date on which steps to remedy any injury to amenity have been taken. In keeping with the previous measure regarding inclusion on the planning register, it is recommended that LPAs are reminded of their existing obligations to maintain an enforcement register and that good practice guidance is put in place to ensure that the register is kept up to date.

It is not recommended that LPAs should have the power to cancel enforcement notices.

Recommendation 9:

The Welsh Government should prepare good practice guidance to remind LPAs of their obligation to maintain an up to date register of enforcement action.

16 Changes to Ground (a)

16.1 Description and rationale

The IAG report concluded that the ability to gain planning permission using Ground (a) for an enforcement appeal and/or paying a fee for the deemed application caused confusion for the public. It can also cause delay when separate applications are submitted for development. There are currently several possible grounds for appeal against an enforcement notice, but only one – Ground (a) is that planning permission ought to be granted.

The IAG report recommended that Ground (a) should be the only route to obtaining planning permission once an enforcement notice has been served and eliminating the deemed application. The proposal that Ground (a) should be unable to be pleaded when previous refusals for the same development have been upheld on appeal is also under consideration.

The proposed measure would mean that a successful appeal on other grounds, for example that the enforcement notice was not served in the proper manner, would not result in the granting of planning permission. The main reason for this proposal is to try to eliminate the problem of successive applications and appeals lodged in order to delay enforcement proceedings. This measure needs to be considered in conjunction with the proposed measure to decline to accept retrospective applications discussed in Section 17.

16.2 Advantages

- **Provide greater clarity and transparency between deemed and other application routes:** The IAG report found that the current arrangement causes confusion for the public and the uninformed appellant. Most of those responding considered that the deemed application, in parallel to Ground (a) is confusing. It was also thought that the removal of Ground (a), where there had been previous refusals for the same development which had been upheld on appeal, also made sense. The requirement to pay a fee also causes confusion and could be avoided if the fee issue was properly explained including a clear statement that no fee is required if the appeal is only made on grounds other than Ground (a) (and the deemed application is not being pursued). Currently LPAs often issue confusing or incorrect advice on this.
- **Avoids it being used as a delaying tactic:** The main reason for this proposal is to try to eliminate the problem of successive applications and appeals lodged in order to delay enforcement proceedings**.**

16.3 Disadvantages

- **Restriction of appeal rights:** It could be argued that the removal of this ground would restrict appeal rights. None of those responding considered that this was a significant issue.

16.4 Case study

Erection of a Stable Building in the Countryside

The LPA first became aware that a stable building, consisting of four stables and a small room, together with a yard and access track, had been erected causing a harmful impact on the countryside and intensified use of a substandard access on a site located outside a village settlement in April 2007. Prior to the works, the land consisted of an unspoilt field and contained grass and tree vegetation. Following the sale of the land in March 2008, the new owner was advised that the works required planning permission and was contrary to Council policy. A planning application was submitted in June 2008 and this sought retention of the track and stables in an attempt to regularise the development on the site. The application was refused on 18 August 2008. The applicant appealed and the appeal was dismissed on 9 March 2009.

An enforcement notice was served on 16 August 2009 and the appellant appealed on Grounds (f) that the steps were excessive, and (g) that the time to comply was too short. At appeal, the appellant contended that lesser steps would overcome the objections such as painting of the stables in an appropriate colour and removing the track. As the appellant had previously failed at planning appeal, the appellant had made no formal Ground (a) appeal, but nevertheless argued the case for retaining the stables without the track through the Ground (g) appeal. If the appeal had been allowed on this basis this would have meant the appellant would have successfully managed to under-enforce the unauthorised development without appealing on Ground (a). It should not be possible to do so and the LPA consider that if planning permission is sought then using Ground (a) should be the only route to obtaining planning permission. In the circumstances described above, the appellant could have obtained planning consent to retain the stables through a successful appeal on other grounds and without having paid the appropriate fee.

The change of ownership delayed the initial taking of enforcement action. Since then, the track was removed and a new application submitted. This was refused by the Council, an appeal submitted and permission has now been granted with alternative access arrangements.

Learning point:

- Appealing on grounds other than a ground (a) appeal could have led to the appellant achieving a planning consent to retain the development through a successful appeal on other grounds despite a previous dismissal at appeal and without paying the appropriate fee.

16.5 Implementation

The proposal that a ground (a) appeal should be the only route to planning permission once an enforcement notice was served would require primary legislation. In England, Section 123 of the Localism Act, 2011 has introduced the provision that an appeal under Ground (a) cannot be made if the enforcement notice was issued at a time after the making of a related application for planning permission, but before the end of the period for the application. This provision does not go as far as the measure currently being considered by the Welsh Government.

In Scotland, the ability for an appeal to be made on the grounds that planning permission ought to be granted or that the condition or limitation ought to be discharged was repealed by the Planning (Scotland) Act 2006. Appeals can no longer be made on this basis. This has been seen to be beneficial and has made a positive difference in empowering LPAs.

The fee arrangement needs further consideration as, currently, the fee for a ground (a) appeal is shared between the Planning Inspectorate and the LPA. It is proposed that a Ground (a) appeal against an enforcement notice should be unavailable when previous refusals for the same development have been upheld on appeal. This would need to be for substantially the same development, otherwise a party could circumvent the system by making a very minor change. Also, a demonstrable substantive change in relevant circumstances (such as a change in the relevant policy context or some physical change to the environment which has altered the implications of a development's impact) ought to constitute circumstances whereby a Ground (a) should be arguable.

This study has confirmed the IAG recommendation that Ground (a) should not be able to be pleaded after retrospective refusal and appeal.

16.6 Summary

Measure	Advantages	Disadvantages	Implementation
Changes to Ground (a) and Enforcement	Greater clarity and transparency for everyone. Reduce delay. Ensure that a fee is paid for a deemed application. Retains appeal rights for a defective notice.	Loss of further appeal rights.	Powers created in primary legislation. Practical advice in PPW, TAN 9 or a new circular.

16.7 Conclusion

The proposal that Ground (a) should be the only route to planning permission once an enforcement notice has been served, (assuming that discretion has been exercised by the LPA not to accept a retrospective application) and should only be able to be used where applicants have not previously exercised their right of appeal against a refusal of a planning application and had their appeal dismissed for substantially the same development; this fits in with the overarching principle to cut out the potential for allowing applicants to delay enforcement action by pursuing multiple avenues**.** It would retain the ability of the applicant to appeal against a defective notice or under the other grounds that the steps proposed were too excessive or the time for compliance was too short. The overall aim is to avoid duplication within the system, and this conclusion and recommendation should be read in conjunction with the content of Section 17 which deals with the power to decline to accept retrospective applications.

The power to prevent a deemed consent through an appeal against an enforcement notice on grounds other than ground (a) would provide a valuable tool as part of a system to ensure that enforcement action is not delayed through multiple appeals.

Recommendation 10:

The Planning Bill should include a provision so that a ground (a) appeal is the only route to planning permission (if discretion has been exercised by the LPA not to accept a retrospective application) once an enforcement notice is served and can only be used where there has not been a previous appeal against the refusal of an application for planning permission for a development which is substantially the same.

17 Power to Decline to Accept Retrospective Applications

17.1 Description and rationale

The power to decline the submission of retrospective applications for planning permission following the service of an enforcement notice has been introduced in England under Section 123 of the Localism Act, 2011 by the introduction of Section 70C into the Town and Country Planning Act 1990 and has sought to tackle some of the tactics that are often seen as an abuse of the enforcement system. This provision has strengthened the hand of the planning authority. It removes from an applicant, in certain circumstances, the right to use two separate defences in a single case, i.e. the appeal against an enforcement notice and an application for retrospective planning permission. Powers have been given to planning authorities to decline to determine retrospective planning applications after an enforcement notice has been issued. The right of appeal is also limited so there is only one route of appeal against an enforcement notice. This power limits the ability to submit a retrospective planning application and gain a further right of appeal.

17.2 Advantages

- **Remove injustices to neighbours/enhance enforcement as a service:** This was seen as a particular concern for some respondents whereby the current system means that applicants have a right of appeal, whereas neighbours have no such right. The inequity in the current arrangements would be re-dressed by the proposal, which would provide a more appropriate balance between the developer and the neighbour by ensuring that the system was less open to abuse. In addition, it would ensure that it could not be used as a delaying tactic to prolong the impact of unacceptable development on those affected and would ensure that enforcement action is more effective.
- **More effective use of resources**: The introduction of this measure would mean that an LPA would not be bound to spend resources dealing with applications for the same development that it has already determined to be unacceptable. Some felt, however, that the discretion to accept retrospective applications was important as they generate income for the authority to offset the cost of the enforcement service. In addition, such applications allow conditions to be attached to any permission granted.

17.3 Disadvantages

- **Requires difficult judgements:** It would be difficult to distinguish if an application for a modified form of the development had been designed to genuinely address the reasons why a notice was served or if the applicant was deliberately trying to play the system.

17.4 Case studies

Retention of Land as a Storage Compound

An application was submitted for the retention of land as a storage compound for building materials and equipment and the siting of a storage container. This was refused under delegated powers for two reasons: inappropriate development in the countryside and causing a significant visual intrusion which adversely affected the landscape value of the National Park and the adjoining Conservation Area. The LPA subsequently agreed enforcement action. An enforcement notice was served in April 2009, coming into effect in May 2009. An appeal was submitted but later withdrawn in November 2009. The notice was not complied with and the owner subsequently submitted a further application to regularise the development. This was seen as a delaying mechanism by the applicant to halt the prosecution action, which had been started and was put in abeyance pending the consideration of the application.

In this case the applicant did not appeal the enforcement notice, but submitted a further application for retention of the use. If the authority had the ability to decline to accept a retrospective application following the service of the enforcement notice, this would have led to prosecution at an earlier stage. In this instance, the second retrospective application was reported to Committee as it was the subject of enforcement action and was approved by Members subject to conditions, despite the fact that they had originally authorised the enforcement action.

Learning points include:

- The ability to submit a retrospective planning application, have it refused, appeal, lose on appeal and then appeal against an enforcement notice gives applicants two rights of appeal, causes delay and brings the enforcement system into disrepute.

Enforcement Action against an Agricultural Dwelling

The LPA became aware of a breach of planning control regarding an agricultural dwelling and served a planning contravention notice in June 2008. An enforcement notice was subsequently served in January 2009 requiring the removal of the timber chalet, septic tank and all other materials associated with the structure. The notice came into effect in February 2009 and required compliance within six months of that date. No appeal was lodged against the notice. A site visit in September 2009 confirmed that the notice had not been complied with. A planning application was submitted in November 2010, but was not validated until October 2011 as all the required information had not been submitted. Prosecution for non-compliance with the notice was held in abeyance pending the outcome of the application.

Planning permission was subsequently refused in June 2012 for three reasons:

- The timber chalet was not adequately justified as housing for essential farming or forestry needs;
- It detracted from the appearance of the National Park and was contrary to aims to protect the open countryside from new development; and
- Its design and appearance was at odds with the established traditional architectural character of the surrounding area.

In determining the application in June 2012, the Members resolved that enforcement action should be suspended for 12 months to enable the applicant to produce a satisfactory alternative proposal for the use of alternative buildings on the site and to submit a further planning application. No such application has been forthcoming.

The case officers see this as a delaying mechanism. The applicant could have appealed the enforcement notice, but chose not to. Had the LPA been able to decline the retrospective application, the situation would have been resolved by now. Instead, they are now awaiting the outcome of the appeal against the refusal of the application.

Learning points include:

- The provision to decline retrospective applications has worked well in England and provided it is discretionary, would provide a helpful additional tool.

17.5 Implementation

The power to decline to determine the submission of a retrospective planning application would require primary legislation. This measure seems to have had a successful introduction elsewhere in the UK as for example the changes introduced under the Localism Act 2011 in England. It would be important to ensure that it is discretionary, so that where appropriate applications can be accepted and conditions attached to any subsequent planning permission. As such, guidance would be helpful for local planning authorities to consider the circumstances in which such a power should be used e.g. whether or not the development proposed was substantially the same or had been modified to circumvent the system or whether the policy position had materially changed. Such a power would be used only where an enforcement notice had already been served and the applicant would therefore retain their right of appeal and indeed an appeal on ground (a) would ensure that planning permission with conditions could still be granted.

The power to decline to determine a retrospective planning application needs to be considered in conjunction with the proposals to require a retrospective planning application (see Section 12) and the proposal that ground (a) appeal against an enforcement notice should be the only route to deemed consent (see Section 16)

17.6 Summary

Measure	Advantages	Disadvantages	Implementation
Power to Decline to Accept Retrospective Applications.	Remove injustices/speed up enforcement action. More effective use of resources.	Requires difficult judgements.	Powers created in primary legislation. Draw on experience elsewhere in the UK. Ensure it remains a discretionary measure. Practical advice in PPW, TAN 9 or a new circular.

17.7 Conclusion

Feedback from LPA interviews and the seminars was largely supportive of the introduction of a power to decline to determine a retrospective planning application and the ability to prevent delay was seen as particularly powerful. The current system brings enforcement into disrepute and enables applicants to delay the taking of enforcement action. A similar tool introduced by the Localism Act 2011 in England has proven to be effective. If introduced, it would remove from an applicant, in certain circumstances, the right to use two separate defences in a single case:

- appeal to the Secretary of State against an enforcement notice; and
- application for retrospective planning consent (and a further appeal).

It is seen as an important tool for local planning authorities to ensure that there is only one avenue, rather than several, to reach the desired result whereby the unauthorised development or use is ceased.

By giving local planning authorities the power to decline to determine retrospective applications after an enforcement notice has been issued and limiting the right of appeal against an enforcement notice after a retrospective planning application has been submitted, but before the time for making a decision has expired, is an important part of a new enforcement system to reduce the delay in achieving the desired outcome.

Recommendation 11:

The Planning Bill should include the power for LPAs to decline to determine a retrospective planning application after an enforcement notice has been issued.

18 Section 217 Appeals to be Heard by Welsh Government

18.1 Description and rationale

An LPA may serve a notice under Section 215 of the 1990 Act against the owner and occupier of land in its area, which appears to be in such a condition that it is having an adverse effect on the amenity of the area. The notice must specify remedial steps and a compliance period. The authority must allow a period of at least 28 days, after service, before the notice takes effect. Failure to comply with the notice within this time is an offence, which may lead to prosecution in the Magistrates' Court. The authority also has default powers. The recipient of the notice or anyone else with an interest in the land may appeal at any time before the notice takes effect.

Unlike planning and enforcement appeals these are considered by the Magistrates' Court. Section 217 gives four grounds of appeal and involves matters of planning judgment. Whilst these are issues with which Planning Inspectors are familiar, the same is not necessarily true for the Magistrates' Court, particularly if the appeal is heard by a lay bench rather than by a District Judge. The suggested measure is, therefore, that Section 217 appeals should, in future, be determined by the Welsh Government. In practice, this would be the Planning Inspectorate acting on behalf of the Minister.

18.2 Advantages

- **Introduction of procedural rules:** This measure would allow the introduction of procedural rules similar to those used in other enforcement appeals for the advance preparation and exchange of evidence and supporting documents as for other enforcement appeals. While the Magistrates' Court procedures do cover civil matters, there is currently no specific requirement that these should apply to an appeal under Section 217. The lack of such procedures means that the authority is often at a disadvantage, especially where the appellant is a litigant in person.
- **Some Magistrates' Courts use their powers to charge the LPA an administration fee for bringing cases to Court:** Under the current system, apart from enforcement appeals under Ground (a) all other enforcement appeals are undertaken without a fee. The imposition, by some Courts, of an administration fee (often £150 to £200) acts as a deterrent to LPAs bringing action. This latter point would appear to be anecdotal evidence rather than hard evidence as, through the interviews and seminar discussions, no specific cases were identified where charges had been imposed by the Courts.
- **Planning Inspectorate better placed to consider planning merits:** The Planning Inspectorate, on behalf of the Welsh Ministers, would be better placed to consider the planning merits of the case than Magistrates who often have little or no training in planning matters. Planning Inspectors would, therefore, provide a more objective assessment of the planning merits of a case. However, some Councils had mixed views as they achieve better outcomes in Court with Section 215 prosecutions than any other Court proceedings.

- Reduce delay: Anecdotal evidence was provided that the hearing of appeals by the Magistrates' Court often results in delay: people not turning up, dates for compliance and submission of evidence are allowed to slip and the process drags on with adjournments. The view was expressed that referring Section 217 appeals to the Welsh Ministers would be a much quicker process and it could be subject to strict timescales similar to those already operated by the Planning Inspectorate on other case work.

18.3 Disadvantages

- **No fundamental problems with the existing legislation:** The research undertaken for the ODPM best practice guidance on Town and Country Planning Act 1990 Section 215[23], published in January 2005, found that very few notices are appealed and of those that are, only a small proportion are upheld
- **Additional workload for the Inspectorate might lead to delays**: It will be important to ensure that the handling of appeals by the Inspectorate does not lead to delays. There needs to be more information as to the time taken to determine the appeals in the Magistrates' Court.
- **Need to prosecute after an appeal in a Magistrates court**: If the system was transferred to the Planning Inspectorate and the notice upheld, local planning authorities would still need to prosecute through the courts in order to enforce and this would introduce another layer of complexity and delay.

[23] Town and Country Planning Act, 1990. Section 215 Best Practice Guidance, ODPM, January 2005.

18.4 Case studies

Section 217 Appeal on Former Fire Station

In this case, a notice was served under Section 215 of the Act in January 2011 giving a one month period of appeal and a three month period for compliance with the notice, requiring works to improve the condition of the building.

In February 2011, the LPA received a letter from the appellant advising that they intended to appeal the notice, but giving no formal confirmation that the appeal had been made. The letter did not include the summons from the Court that the appellants are supposed to (but not, it seems, required) to serve on the LPA.

The LPA wrote to the owner in March 2011, advising them that as an appeal had not been made, the Notice had come into effect and the period for compliance with the notice had commenced. Some two weeks after the period for an appeal to be made against the notice, the LPA received a letter from the owner contending that he had made an appeal within the one month appeal period. The only ground of appeal made was that the period given for compliance with the notice was not sufficient.

The LPA responded to this, advising that the documentation had not been submitted to it within the one month period and that it had not received the necessary court documentation (i.e. the summons issued by the Court to be delivered by the appellant). In addition to the above, the Court confirmed that they had no record of an appeal having been made to them. In view of this, the LPA took the view that there was no appeal. In view of the lack of any formal notification of the appeal, the LPA allowed the three month period for compliance with the notice to expire. No works had commenced on site at the end of this period.

The LPA then requested that a prosecution be brought against the owners of the property for their failure to comply with the Section 215 notice. A court date was set in October 2011, but at the request of the defendants was adjourned. At the adjourned hearing in November, the defendants alleged that they had made an appeal against the Notice within the one month period for such an appeal to be made. The defendants were given three weeks to submit the necessary evidence to prove that they had made an appeal and a trial date was set for February 2012.

The defendants wrote to the courts requesting an extension to the period given for the submission of their evidence and a further three weeks was given to provide the evidence. A pre-trial hearing date was set in January 2012, with the trial remaining in February 2012.

The evidence was not submitted, despite the additional period allowed. At the trial in February 2012, it was determined that, since the issue of whether or not the appeal had been made was reliant on the evidence of staff that worked at the Court, the matter could not be heard there and was transferred for trial three months later in May 2012 at another Court.

At that hearing it was determined that, on the balance of probabilities, an appeal had been made. It took 16 months from the date of the service of the notice for it to be determined that there was an appeal.

The first court date for the appeal was then set for July 2012. On that date the appellants were directed to submit to the Courts and to the Council their grounds

of appeal by September 2012. This information was not submitted. In October, 2012, the LPA requested that, as the appellants had not complied with the Court direction, the appeal be dismissed.

Instead of the appeal being dismissed, the appellants were given a further period to comply with the direction and a further court date was set for two weeks later. At that hearing, no grounds of appeal had been submitted and the appellants withdrew their appeal. This had taken 21 months.

Learning points include:

- This period taken by the Court in this case is far greater than the time that the Planning Inspectorate have to consider an enforcement appeal. The case study demonstrates the huge uncertainty of timescale with an appeal to the Courts. The procedural rules imposed through the Planning Inspectorate would ensure a quicker process and ensure that the problems outlined above are avoided.

Required Works to a Two Storey House in a Conservation Area

The property that is the subject of this complaint is a two storey detached house with a basement close to the sea front and in situated in a Conservation Area. A notice was served in May 2009 to a previous owner under Section 215 of the Act to require works to improve the condition of the building. The notice was served giving a one month period for compliance. An appeal was made on 19 June 2009.

The first Court hearing was in August 2009 where an adjournment was granted to give the applicant further time to comply with the notice. Although the matter could have been taken back to Court in October there was no notification from the appellant that the appeal had been withdrawn and the LPA received no notification from the Courts that the matter was no longer being dealt with by them. The LPA had therefore lost 5 months as a result of the appeal, adjournment and the subsequent failure of the appellant to address the appeal. The Notice was not complied with and prosecution was sought. The trial took place in October 2010, four months after prosecution was sought. The defendant was fined £600, with a further four month period of compliance. By March 2011, compliance had still not been achieved and a further prosecution was sought. Following a number of abortive court and trial dates, the matter was not heard until December 2011 when the fine had risen to £5000. The ownership of the property was transferred from the wife to her husband and the LPA's action under Section 215 had to start again.

After serving a new notice in May 2012, the LPA was not advised by the Courts that an appeal had been made and only became aware of the summons the day before the first hearing in Court. An adjournment was allowed in August 2012 on medical grounds. The next hearing in September was also non-effective as the Court had failed to notify the appellant of the new date. The matter was finally heard in November 2012. The decision of the Courts is now being challenged in the Crown Court. During this period the condition of the building has deteriorated.

Learning points include:

- The case illustrates the difficulties with the lack of procedural arrangements for such cases in the Magistrate's Court. This results in a huge degree of uncertainly for the LPA in terms of knowing when the appeal has been submitted, being given sufficient notice of the first hearing date and both parties having clear deadlines for the relevant appeal documents and information on the grounds of appeal to be submitted. Coupled with the delays as a result of the appellant not appearing and administrative failures by the Court, means that there is merit in such cases being considered by the Planning Inspectorate.

18.5 Implementation

A change is proposed, in order that Section 217 appeals should be heard in future by the Planning Inspectorate (in the same way as other appeals on issues involving a consideration of planning merits are determined) rather than the Courts. It is further recommended that there is training for Magistrates and clerks, with guidance provided on the level of fines that should be imposed. The preparation of a good practice guide for local planning authorities could help make the best use of Section 215 powers. Many of those interviewed considered that the ODPM guidance note provides useful advice and the preparation of similar guidance could be a quick win ahead of the legislative process.

18.6 Summary

Measure	Advantages	Disadvantages	Implementation
Section 217 Appeals to be Heard by Welsh Government	Introduction of procedural rules. Dealt with in same way as other enforcement appeals. No fee payable for appeal (some Magistrate's Courts charge an administration fee). Inspectorate better placed to consider planning merits. Reduce delay.	No fundamental problems with current system. Additional workload for Inspectorate might result in delay. Need to take the matter back to court in order to prosecute.	Powers created in primary legislation. LPAs need ability for authority to do necessary works Strict time limits/targets on Inspectorate Need case studies Best practice guidance on S215 notices

18.7 Conclusion

Section 215 notices and Section 217 appeals are relatively well utilised by local planning authorities (see Table 2 in Section 4.3). There was concern from some of those interviewed, about the lack of experience of Magistrates in dealing with the merits of such cases and the lack of procedural requirements meaning that cases could be delayed.

It has been concluded, that as these cases involve a consideration of planning merits, they would be more appropriately dealt with by the Planning Inspectorate rather than the Courts. Training for Magistrates (and clerks) so that there are appropriate guidelines on fines (see Section 10) would improve the system. In addition, proposals to provide guidance on good practice for LPAs, along the lines of the ODPM advice on Section 215, would improve the current system. A central repository for advice on each tool in which advice was kept up to date was supported.

The Planning Inspectorate should, in future, hear Section 217 appeals, with good practice guidance provided to both the Courts and LPAs for subsequent prosecutions.

Recommendation 12:

The Planning Bill should include a provision so that the Planning Inspectorate should hear Section 217 appeals rather than the Courts. Good practice guidance should be provided to both the Courts and LPAs on appropriate fine levels for subsequent prosecutions.

19 The Overall Shape of the Enforcement System

19.1 Introduction

Whilst this study has been principally tasked with considering a range of potential reforms, it is also important to consider the overarching shape of the enforcement system:

What is the overall shape of the enforcement system? How will these individual tools work together to provide an efficient and effective enforcement system?

Sections 2 and 3 set out the findings of the stakeholder interviews and a common theme is around the overall shape of the system, the non-linear route that a case makes through it, and the overall effect of this on the timescale for a case from investigation to final resolution. This is characterised by limited public and/or Member faith in the enforcement system to resolve planning breaches and a risk averse approach to costs, notices and direct action. This is underpinned and exacerbated by cross-service resource and performance challenges.

This section:

- defines the challenges to the overall enforcement system including an example of how these challenges can influence the time taken to deliver enforcement outcomes;
- sets out a framework or process outline which will meet those challenges;
- develops this framework into an ideal enforcement process pattern; and
- covers issues around direct action and the potential usefulness of the Proceeds of Crime Act for enforcement.

19.2 Overarching system challenges

Through the interviews, visits, survey and discussion seminars, the overall set of challenges identified for the enforcement system included:

- **Delays and feedback within the process:** A consistent theme throughout all the interviews and engagement with practitioners was that the system is currently constrained by delays and that there are too many ‘loopholes’ for developers and agents to try to evade or delay action being taken. The delays in the process are frustrating for complainants and members of the public and bring the enforcement system into disrepute. Shorter timescales and more effective action are needed in order to rectify the harm to amenity and the environment that unauthorised development can cause.
- **Enforcement has ‘no teeth’:** Associated with the problem of delay, is the perception that enforcement has ‘no teeth’ and that there are insufficient penalties and sanctions against those who breach planning control. In short, officers said that they regularly received informal feedback that people were ‘playing the system’ or ‘getting away with it’.
- **Training and knowledge of enforcement:** Most LPAs considered that officers have sufficient skills in order to undertake their enforcement

functions, although a lack of awareness and understanding of enforcement was highlighted among Members in some LPAs. Nevertheless, the Planning Inspectorate has indicated that there are many cases where enforcement notices have been incorrectly prepared. This points to a need for improved drafting and checking of notices by officers and Local Authority legal teams. A lack of knowledge of enforcement was highlighted as a fundamental problem in Magistrates' Court cases, as was the lack of guidelines for Magistrates and clerks on the level of offences and fines.

- **Inconsistent approaches:** The data gathered by the survey illustrated the many different approaches being taken to the operation of a local planning authority enforcement service. This in itself is not a fault; a discretionary system will by design deviate in approach. However, this does result in considerable uncertainty for those subject to enforcement action, neighbours and members of the public. It is possible to have a discretionary system, which can choose the most appropriate tool for a given planning challenge but which is also robust, legible and consistent.
- **Under use of some existing provisions:** It was clear from the LPA interviews that both Section 94 completion notices and Section 102 discontinuance notices are either little known or are not utilised because they are considered to be difficult to use or are ineffective. There is a need to either remove these measures or reform them to provide a 'next step' to make them more useful and to promote their use by LPAs.
- **Possible conflict or overlap of measures:** A wide range of measures are being considered as improvements to the planning system. The challenge will be to ensure that the preferred measures are complementary and do not conflict with each other.
- **Call for good practice guide for enforcement:** A number of LPAs identified the need for best practice notes and clear guidance on enforcement. This will be particularly important if new measures are introduced in order to provide clarity and certainty to LPAs on how to use the new enforcement tools. Section 21 provides further assessment and recommendations around guidance, training and capacity building issues.
- **Inter-relationship with other consents:** One LPA noted that conditions can be attached to advertisement consents, but that it is not clear in the legislation if a breach of condition notice can be served if those conditions are breached or whether legal action should be taken. It was suggested that new legislation should allow breach of condition notices to be served in respect of breaches of advertisement control. In addition, the advertisement regulations currently suggest using candelas as a unit of measurement. Unfortunately, most enforcement officers are unable to measure these and so the condition is effectively unenforceable. Similarly, in respect of Tree Preservation Orders, where a tree re-planting notice is served, there seems to be no sanction to force an individual to comply with that notice.
- **Rest of the UK experience:** a number of the measures that are under consideration have already been introduced elsewhere in the UK, some more successfully than others. For instance, the proposal for fixed penalty notices in Scotland was well intentioned, but the legislation has resulted in the measure being ineffective and rarely used. Conversely, temporary stop notices in England have, in general, been regarded as a success and as a useful tool for LPAs.

19.3 Timeline of an enforcement case

As set out above, planning enforcement cases can, as they progress, develop a 'looped' path over a sustained period of time. A hypothetical path for an enforcement case could comprise:

- informal negotiation following the identification of a breach;
- the issue of the appropriate enforcement notice;
- further informal negotiation to encourage compliance;
- an appeal against the enforcement notice;
- the appeal being dismissed;
- commencement of Court proceedings;
- submission of a retrospective planning application;
- Court proceedings being halted to await the result of the retrospective planning application;
- the retrospective planning application being appealed;
- the appeal against refusal of planning permission being dismissed; and
- commencement of Court proceedings or direct action.

The obvious 'blame' for the length of time that such action takes is easily laid upon the offender: if they had only complied with initial requests for compliance no escalation would have occurred. Pragmatically, the position is not this simple and local planning authority officers and members (and to a lesser extent the Welsh Government through its overarching guidance about enforcement action being a last resort) can also be seen to be in part responsible. This is collectively through:

- a combination of reticence to undertake formal enforcement notice proceedings unless an offender repeatedly ignores less formal means;,
- a perhaps excessive lenience or tendency to pursue or repeat previous action (e.g. three court judgements against an offender before direct action is considered);
- the challenges associated with skills, resources, training and capacity; and
- the overall risk averse corporate approach to enforcement.

It should be stated that such a protracted process is not the general result of enforcement action or the standard reaction to enforcement proceedings by developers or the general public. However, practitioners clearly and consistently suggest that where 'honest mistakes' occur these tend to be rectified quickly and so enforcement action broadly falls into two 'camps' and it is this latter camp that is using the existing processes and tools to try and draw out enforcement proceedings in a battle of attrition with local planning authorities. The hypothetical example set out above is an extreme example but not an unusual or uncommon one. Most local planning authorities can point to several current and recent cases which fit this mould.

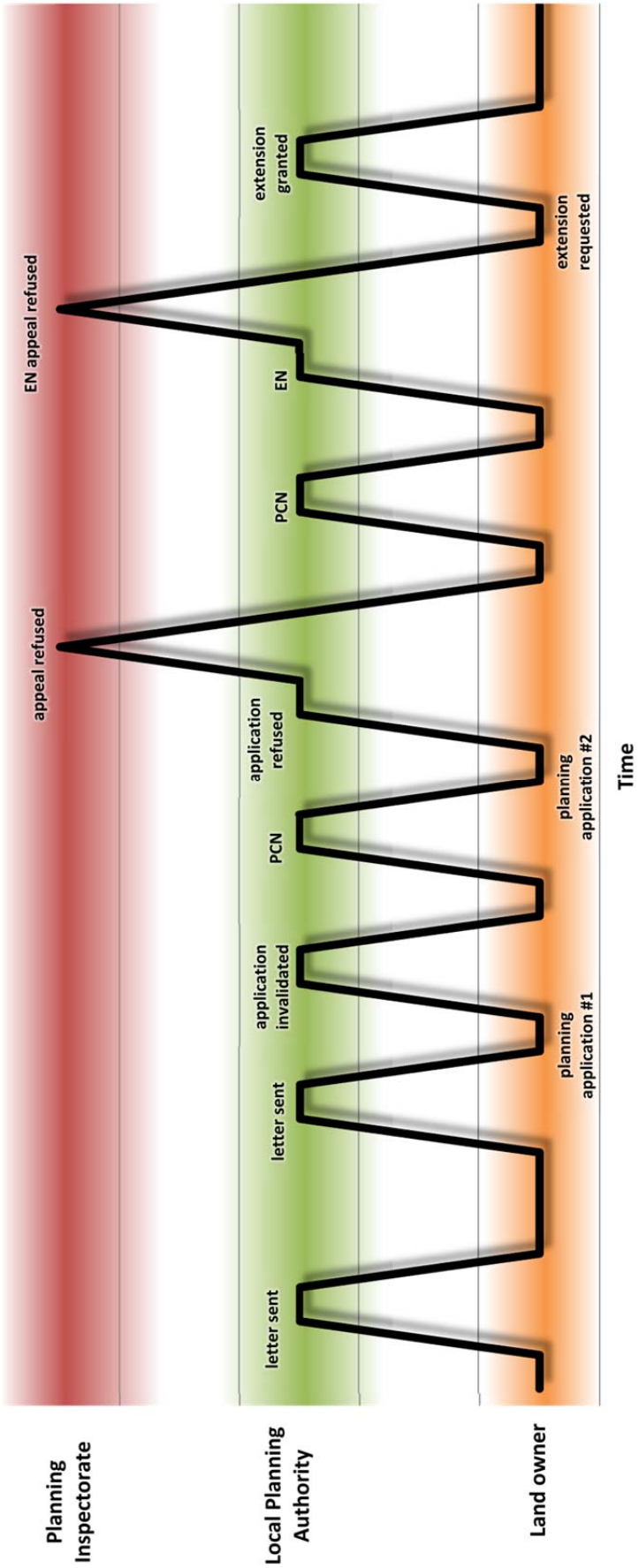
Following the analysis of several case studies undertaken as part of this study, we have presented below the abridged timeline (80 months to date) of a single enforcement case to highlight the non-linear and time consuming route that some cases can take. The case refers to the unauthorised siting of two metal storage

container units in open countryside within a national park, and designated as a CADW Landscape of Historic Interest:

Table 10: Timeline of a Single Enforcement Case

Date	Step	Months elapsed
September 2006	A letter was sent to the owner regarding an unauthorised metal storage container sited within a field, requesting contact to be made with the LPA. The container was outside the curtilage of the dwellinghouse and was being used for domestic storage, therefore requiring planning permission.	1
September – October 2009	Site visits were made, with two metal containers now present. The owner stated that she had spoken to the LPA at the time of the original letter, and was advised that she did not need planning permission. However, no records or specific contacts could be produced. The owner stated that the containers were an interim storage solution whilst plans were drawn up for a new studio.	38
February 2010	A letter from the LPA was sent to the owner, **requesting the removal** of the metal containers within 28 days.	42
February 2010	A letter from the agent was sent to the LPA, stating that the containers were part of the planning application for a studio, and requesting that further enforcement action should be halted until the planning matters were resolved.	42
December 2010	A **planning application** for the retention of the two metal storage container units was submitted. It was unable to be validated due as the information submitted was inadequate; a letter was sent to the agent requesting more information.	52
February 2011	As no further information was received, the planning application was returned.	54
July 2011	A **planning contravention notice** was served on the owner.	59
July 2011	A **second application** was submitted for the retention of the storage containers, along with the erection of an artist's studio. The application was validated by the LPA in August 2011.	59
September 2011	The second application was refused. An appeal against this decision was made to PINS.	61
November 2011	A **second planning contravention notice** was served.	63
April 2012	An **enforcement notice** relating to the material change of use from agricultural to mixed use was served against the owner, requiring the containers to be removed within two months. This was disputed by the owner on the grounds that an appeal against the planning refusal had been lodged with PINS. The enforcement notice was also appealed by the owner.	68
May 2012	**The appeal against the planning application was dismissed by PINS.**	**69**
November 2012	**The appeal against the enforcement notice was also dismissed by PINS**. The owner was given a further two months from the date of the decision to remove the containers.	**75**
November 2012	The owner argued that the ground was too wet to use the appropriate machinery to remove the containers. The LPA agreed to extend the time period given in the notice until April 2013.	80

Figure 21 Timeline of a Single Enforcement Case



19.4 Towards a recommended system

As the example in Figure 21 illustrates, as well as assessing a range of potential reforms and how they might work together, a more fundamental issue is around the way in which the current system and tools provide potential 'feedback' into other parts of the enforcement process or other enforcement tools. The most efficient and effective route from an end-to-end timescale perspective would be a linear one. This would require a legal and practical basis for a LPA to consider (some form of 'triage' style assessment) and thus determine the most appropriate action to take, and for the remainder of the system to reflect this.

The key to preventing delays through this more 'linear' approach to the enforcement system is to cut out (or minimise the impact of) the appeal and/or retrospective planning application feedback loops. Our recommended system includes a 'pronged' approach whereby an enforcement case can be channelled through either the retrospective planning application route or through the enforcement action route. **The key to this approach rests in two main reforms, namely the ability to require the submission of a retrospective planning application alongside the ability to refuse to accept and determine a retrospective planning application once formal enforcement proceedings have begun**. Figure 22 sets out the overall system and its component parts in broad terms:

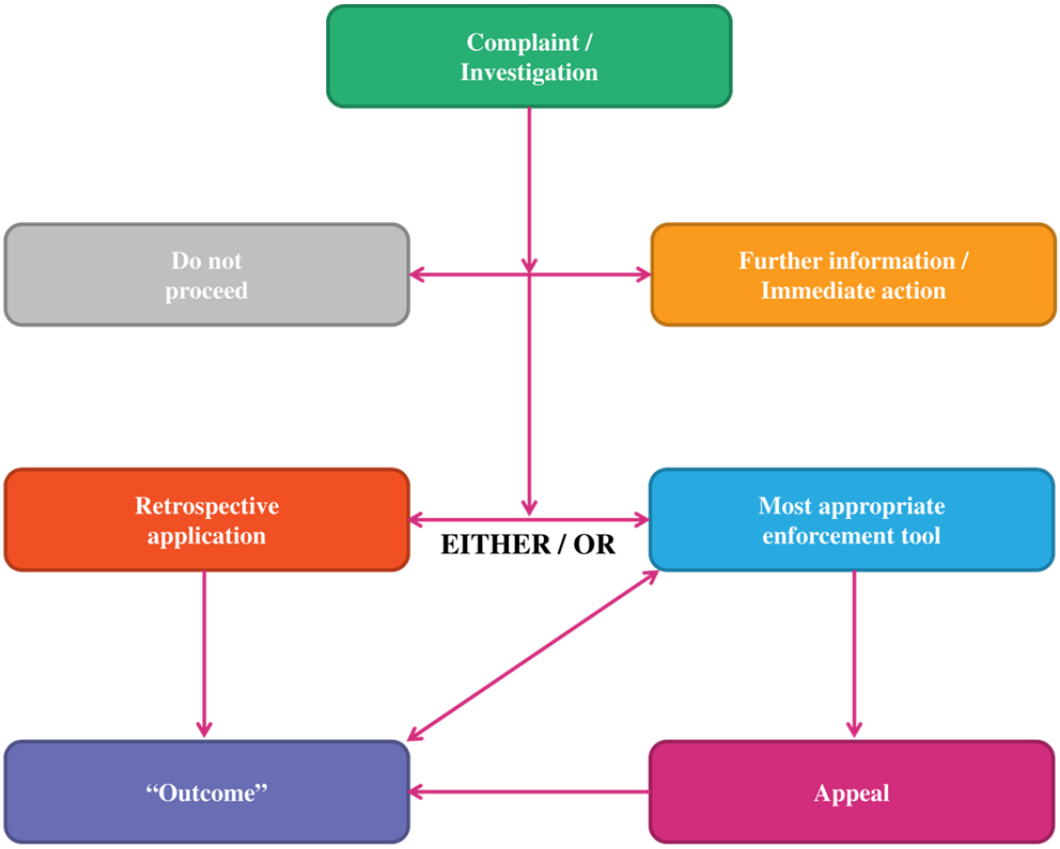


Figure 22 Component Parts of a Recommended Enforcement System (Summary)

19.5 The recommended system

Figure 23 below sets out the recommended system in more detail, showing the individual elements of the system:

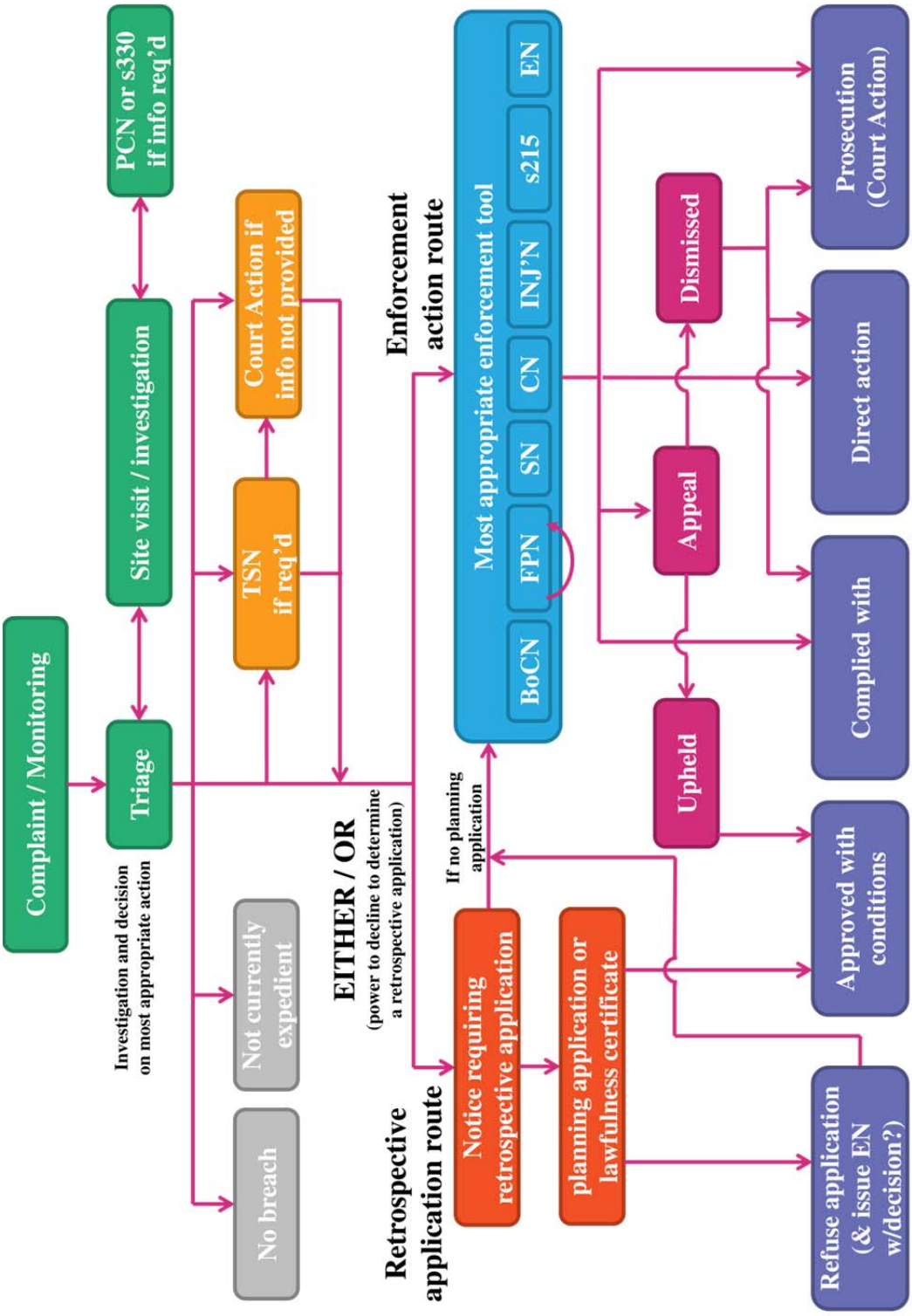


Figure 23 Component Parts of a Recommended Enforcement System

19.5.1 Investigation / triage / no action / immediate action

An authority would receive a complaint or otherwise (proactively) identify a potential breach of planning control through their on-going proactive monitoring work. This would include investigation (and probably a site visit) and then would pass through a triage decision 'gate' which has the option of either:

- (a) not proceeding as there is no breach or it is felt not expedient to pursue further (at this current time – this could be revisited later on with the removal of time limits for enforcement action, especially if a use evolves or intensifies); or
- (b) gathering further information if needed or taking more immediate action if there is a clear risk that permanent damage or harm might arise by not doing so.

The use of a Planning Contravention Notice or a Section 330 notice would be an important part of the triage stage for gathering information where a breach of planning control is suspected. This would not preclude serving further Planning Contravention Notices in respect of the same breach of planning control in the future. **This stage would include the use of a temporary stop notice where appropriate** and court action where information required by the notice is not provided.

As a point of note, there is notably no explicit mention of letters, discussion and negotiation as a means of encouraging compliance. This is deliberate and aims to counter the current guidance, culture and approach, which is reluctant to take enforcement action. Throughout the study, reference was made to government guidance, corporate policies and a prevailing culture of using enforcement action only as a last resort. However, it is recognised that negotiation and informal means can bring about swift compliance, especially in cases of 'honest mistakes'. **Effectively, informal contact and negotiation now forms part of the triage stage** and will help to determine whether further action is required. **It is vital that this stage is quick and efficient and not a source of delay or indecision**. The triage or investigation is likely to involve a maximum of two communications: an information request, and then an informal request for compliance.

Following this initial 'gate' the system splits into the two possible 'prongs' of the system, namely the retrospective application route or the enforcement action route. Following the initial information or immediate action stage, the local planning authority should be in a position to determine the most appropriate course of further action:

- If the judgement is that the breach of planning control is acceptable, then it would not be expedient to pursue **at this current time**.
- If it is judged that the breach of planning control could be made acceptable or regularised with some minor modifications or through the imposition of conditions, then the authority could require the submission of a retrospective planning application. **The authority is not being premature in this decision – it is not pre-judging a planning application but is making a professional assessment and judgement on a current breach of planning control** – in the same way as an authority currently assesses and decides whether to issue a notice or not.

- If it is judged that the breach of planning control is unlikely to be capable of being made acceptable then enforcement action would be pursued.

19.5.2 Retrospective application route

If a retrospective application is the chosen route, then the authority would **issue a notice requiring the submission of a retrospective planning application**. The notice should clearly identify the breach (and so what the application should cover), and should define a time period for the planning application to be submitted, which should, as a general rule, be a **maximum of three months and usually one month**. The average timescale given should be recorded as part of new enforcement process and performance monitoring by the Welsh Government to ensure consistency of application. In line with the recommendation to eliminate delays and feedback loops in the system, there would be no right of appeal against receipt of this notice.

A planning application fee would be payable at the prevailing rate for the retrospective planning application. If a planning application is not received within the prescribed timescale then the breach would then pass over to the enforcement action route. This may include the issue of one or more fixed penalty notice(s) in relation to failing to submit a retrospective planning application or serving of the most appropriate form of enforcement notice or action.

Continuing with the retrospective planning application route, an application would be determined as per the current system/arrangements. In cases where applications are approved, the appropriate conditions can be added to the decision in order to regularise the development. It is unlikely, but not impossible, that an application could be refused. The local planning authority would have required the retrospective planning application on the basis that they believed the breach could be made acceptable. However, the consultation element of the planning application might identify additional information, which results in a refusal or recommendation for refusal. It is also possible that Members might refuse an application (in some cases against officer recommendations). This single instance, a refusal by the local planning authority of a retrospective planning application that they required to be submitted, is the sole means by which an enforcement breach can go through both ‘prongs’ of the new enforcement system. Whilst this is not ideal in design, it is acceptable and in the public good. It certainly improves on the current position, where the route through the enforcement system can be driven or chosen by the offender.

In most cases where a retrospective application for planning permission is refused, an enforcement notice should be served alongside the refusal notice. The local planning authority’s expediency decision was originally such that they felt the breach warranted action (the notice requiring a retrospective planning application). All other things being equal, enforcement action should then commence. A further aim is to ensure that any appeal against the refused retrospective planning application can be combined with the enforcement notice/proceedings, i.e. to ensure that only one appeal can be heard for a case. It is accepted that they may be instances where serving an enforcement notice is not appropriate. These should be exceptional, and should be recorded as part of new enforcement process and performance monitoring by the Welsh Government to ensure consistency of application.

19.5.3 Enforcement action route

Informal negotiation efforts have already been made and have failed in order for a breach to have reached this point and the local planning authority have made an informed professional judgement that the breach is incapable of being made acceptable in planning terms. This route is therefore principally concerned with the appropriate use of the tools and powers available to the local planning authority. These tools for enforcement action have been covered in depth in earlier sections including detailed conclusions and recommendations on their operation, but in summary include:

- Temporary Stop Notice/Stop Notice;
- Enforcement Notice;
- Breach of Condition Notice;
- Completion Notice/Section 215 hybrid;
- Injunction/Court Action; and
- Direct Action.

19.5.4 Appeals

As set out above, one purpose of the recommended system is to prevent feedback loops or delays within the system. One element of this is, within the current system, the chance to have two appeals over the same breach. Appellants can appeal against both refusal of a retrospective planning application and an enforcement notice. **The recommended system with its 'pronged' approach (and standard issue of an enforcement notice with a refusal of a retrospective planning application) combines (or removes) these opportunities into a single appeal opportunity**.

The Planning Inspectorate has been involved throughout this study, via the Steering Group, and has been asked about the practical operation of such a recommendation. There is no reason why, in principle, a single appeal could not cover the issue in the round. The main factor, is for local planning authorities to ensure that the system is managed appropriately to avoid 'crossing' prongs and opening up a second appeal opportunity. **This is about both timing and process**. The various parts of the process must be operating together in order that they can be combined into a single appeal. From a process perspective, the local planning authority need to exercise their recommended powers appropriately, i.e. to be prompt in deciding which route to pursue, to refuse to accept a retrospective planning application when going down the enforcement route, and by ordinarily serving an enforcement notice at the same time as refusing a retrospective planning application.

19.5.5 Outcomes

As can be seen in Figure 22 and explained above, the potential outcomes from the recommended enforcement include:

- **Approval with conditions:** stemming from either an approved retrospective planning application, or a single appeal opportunity being upheld;

- **Refused:** refusal of a retrospective planning application;
- **Complied with:** the breach is removed or remedied by the offender either as a result of enforcement action or following the dismissal of a single appeal opportunity;
- **Direct action:** where the local planning authority use their powers to intervene and remove or remedy the breach themselves; or
- **Prosecution:** where the local planning authority initiates court action.

An obvious point, but worth stating, is that all outcomes result in either 'legalisation' or 'removal' and so by definition solve the initial breach.

19.6 Risks to the system:

Here, risks are issues or potential situations, which might undermine the 'linear' approach of the recommended system, i.e. scenarios under which it might be hard to keep to a 'pronged' approach. The potential outcome of the local planning authority requiring a retrospective application and then subsequently refusing that application has been addressed above.

There is a further risk associated with a retrospective application being submitted to the local planning authority early on in the process during the triage or information gathering stage. This might be seen by an offender as being able to steer the process or work in some way to elongate it. In this case the LPA should not be afraid to run the systems (i.e. both routes) in parallel where they feel the retrospective planning application submitted is vexatious or otherwise intended to delay enforcement action or prolong a development or use. For example, **an enforcement notice could still be served on a development which does not have the appropriate consent. When it is not complied with, fixed penalty notices could be served subsequently.** Whilst a retrospective application has been lodged, the breach has still occurred in the first instance. The enforcement action would still be valid and if retrospective permission were granted, this would normalise the development from the date of granting. Development (operational or use of land) has still taken place in the absence of consent and this is in part what is being enforced.

This approach does in some ways increase the 'stakes' for both parties: if the retrospective application is approved, for example, might appeals against the fixed penalty notices be submitted? Again, the fixed penalty notices were served at a time in which a breach had occurred. An application for planning permission is explicit recognition that planning consent is required. For its part, the local planning authority must determine the planning application expeditiously to avoid claims that it is 'running up a bill' in the meantime. **Good practice should in these unusual circumstances, be that fixed penalty notices cease to accrue after the statutory 8 or 16 week period**. If the retrospective application is refused, the system could and should play out as by design and set out at the beginning of this section in the paragraphs above.

These risks might seem at first glance to undermine the reforms suggested by this study. However, in the medium term, consistent and nationwide adherence to these principles would reduce if not eradicate vexatious retrospective applications where there is little hope of getting planning permission. And even in these cases,

it would not 'pay' to commit a planning breach as the fines that accrue in the meantime would ensure it is always better to seek planning permission prior to development.

19.7 Direct action fund

Under Section 178 of the 1990 Act, a LPA may enter land and take steps to secure compliance with an enforcement notice. This is commonly known as taking 'direct action'. It is commonly used in conjunction with Section 215 Notices (untidy land), but has much wider application, and is generally favoured where the likely cost of seeking an injunction is judged to be excessive or disproportionate to the breach. **The study has identified several examples of direct action being used successfully.**

Direct action has not been considered elsewhere in this report, which is why it is addressed here. Practitioners expressed a strong preference for using direct action. They said that when they had used it, that it had been both timely and effective, and that is had often had a further deterrent effect and resulted in good local publicity upholding the good standing of the planning system. However, local planning authorities do not have budgets available to them to undertake direct action and were only using it as a last resort in smaller cases after a number of prosecutions had failed to resolve a breach.

There is thus a strong link between the cost of direct action and the willingness of a local planning authority to take direct action. The cost of tidying up land usually only runs to a few hundred pounds. The cost of major demolition works of an entire building could be substantially higher. The local planning authority can recover these costs through placing a charge on the land. This charge must be paid before the land can be transferred – most commonly through a sale or re-mortgage/refinance transaction.

Placing a charge on the land ensures that the local planning authority will recover the costs of direct action when a property is sold, but does not stipulate the timescale for receiving those monies. Indeed, waiting for a land transaction can result in monies not being recovered for many years. This acts as a practical disincentive to local planning authorities taking direct action. **The choice of enforcement action taken should be driven by the ability of that action to deliver the desired outcome in the most efficient and effective way possible. The choice of enforcement action taken must not be driven by resource, training or capacity constraints.**

Given the comparative 'certainty' of recovering the costs of direct action in the long term, **this study recommends that the Welsh Government establish a national 'revolving fund' for direct action**. It should be centrally held and managed (by the Welsh Government) and would provide a shared fund to finance direct action. Authorities could claim the cost of direct action, and when charges placed on the land are paid, the monies would be returned to the fund.

In practical terms, and to avoid disproportionate administrative burden, the direct action fund should have a **minimum threshold of direct action to be considered (suggested to be £5,000**). This should operate alongside a recommendation that **local planning authorities also establish a minimal direct action operating budget** to undertake their own small-scale direct action beneath this threshold. This might be driven and built over time by receipts from fixed penalty notices.

Applications to draw down or access the national direct action fund need to be lightweight and handled quickly. It is also important that the Welsh Government be listed directly in any charge placed on the land so that the money is easily recovered and not potentially lost within a vast range of local authority transactions.

It should be remembered that an enforcement system, which is more able and likely to use direct action, is also expected to become an enforcement system that will not need to use direct action as often. It is also expected to deliver time savings from less (repeated) use of other tools and time, which can in turn be invested into proactive monitoring.

Recommendation 13:

The Welsh Government and Local Planning Authorities should establish direct action funds.

19.8 The Proceeds of Crime Act (POCA)

The Proceeds of Crime Act 2002 (POCA) allows the provision to recover proceeds from those who benefit from criminal conduct. The purpose is to deprive guilty parties from the benefits of their criminal conduct, within the limits of their available means. This has application to planning enforcement in cases such as:

- the failure to comply with an enforcement notice;
- false or misleading statements on a CLEUD application;
- non-compliance with a tree preservation order; or
- the carrying out of works to a listed building without consent.

Indeed, there may be many cases where the use of POCA may be justified, such as illegal caravan sites, identified in several LPA interviews as being of particular concern.

As set out in Section 6 of POCA, the Crown Court must proceed if the following two conditions are satisfied:

"The first condition is that a condition is that a defendant falls within any of the following paragraphs –

(a) He is convicted of an offence or offences in the proceedings before the Crown Court; …

The second condition is that –

(a) The prosecutor asks the court to proceed under this section, or

(b) The court believes that it is appropriate to do so."

There is therefore a responsibility for the Local Authority, as prosecutor, to ask for POCA to be applied in cases where it feels it is appropriate. From interviews with LPAs, it was clear that proceeds of crime was seen as an emerging issue, with some remarking that its use was being considered more often. Newport City Council, for instance, recently provided training for its staff on the use of the Act as part of its prosecutions.

The confiscation regime is dependent on whether the defendant has led a 'criminal lifestyle,' that an offence has been committed over the course of at least six months, and that the defendant has benefited from this conduct. The recoverable amount is then determined to be an amount equal to the defendant's benefit from the conduct concern. It is therefore not simply the role of the prosecution to demonstrate that the defendant has benefited from the offence, but also to show exactly how long for and by how much in order to ascertain the recoverable amount. POCA may therefore involve more preparatory work for the enforcement department, though it is unclear whether this currently precludes its use.

An example of the use of proceeds of crime in a planning prosecution (albeit in England) is the case of R v Del Basso and Goodwin (2010, EWCA Crim 1119) where the use of the site for a 'park and ride' led to a failed High Court appeal and two prosecutions for the continuance of the use of the site beyond the enforcement notice. The use of the site became criminally unlawful from the point at which the enforcement notice became effective, with the recoverable amount calculated from this point.

The POCA is clearly a useful tool for the planning enforcement system and provided some valuable learning. However, it is also just as clearly a tool that practitioners are turning to out of the failure of the current system to address their needs and to achieve the desired outcomes. Moving forward, the recommended system will meet and address these failures.

20 Aiding Implementation

20.1 Introduction

The research has included a review of a wide range of measures that should create a more efficient and streamlined enforcement system in Wales. A number of the recommendations will require changes to primary legislation and which could be included in the forthcoming Planning Bill, together with additional changes to secondary legislation, including the introduction of new statutory instruments to facilitate some of the enhanced recommended powers for LPAs. Amendments to both primary and secondary legislation will inevitably take time to introduce, both in terms of legal drafting, the passage of the Planning Bill through Parliament and the lead in time for preparing new statutory instruments.

However, a number of the recommendations are not dependant on primary and secondary legislation. Rather, they hinge around non-statutory elements including:

- The preparation of good practice guidance to encourage LPAs to use the existing tools in the enforcement armoury more effectively;
- Improved stakeholder engagement;
- Training and skills;
- The use of the proposed Planning Advisory and Improvement Body to drive up standards; and
- Better data collection, data sharing and monitoring.

These non-statutory recommendations could offer a number of 'quick wins' in facilitating more efficient and effective enforcement and could be introduced sooner, in advance of the legislation.

20.2 The standing of enforcement

The interviews with stakeholders and LPAs revealed that there is a common attitude that enforcement action is discretionary. This is a reflection of the legislation and the guidance provided in TAN 9[24]. Paragraph 9 states,

"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 control…"* (emphasis added).

In summary, while enforcement is a statutory function, there is no overall duty on an LPA to enforce against breaches of planning control. As a result, development management is prioritised by LPAs as part of its primary regulatory function. Conversely, enforcement can be regarded as a secondary requirement, with the service often suffering cuts in priority, staff and resources because it is regarded as non-mandatory. In this way, it is often described as a 'Cinderella service.' This is an unfortunate situation as enforcement is ultimately the 'teeth' of the system, and should not be a poor relation to development management.

[24] Technical Advice Note 9: Enforcement of Planning Control, October 1997.

It is essential that an effective enforcement system forms part of a coherent development management system. LPAs should be encouraged to prepare an enforcement policy setting out its priorities for enforcement, including a coherent enforcement practice framework, including development monitoring measures and procedures, with liaison with other authority departments and external agencies. This could be facilitated by the Welsh Government through the introduction of good practice advice.

New planning policy on enforcement should emphasise that the provision of an enforcement system is not discretionary. Rather, it is the decision on whether pursuing enforcement would be expedient that is the discretionary element.

20.3 Stakeholder engagement

Engagement with other regulatory departments of the surveyed local authorities was, on the whole, good. However, engagement with statutory consultees was more variable. Several LPAs commented that there was a good working relationship with statutory consultees and that they work closely together. However, there was a general perception that statutory consultees do not tend to get involved in enforcement cases in the same way as other development management matters. This is presumably because they are not automatically consulted and it is reliant on the enforcement officer to make contact with external agencies should the case warrant it. This may also be partly due to the fact that statutory environment bodies tend to pursue breaches of environmental control through their own extensive powers.

Natural Resources Wales (NRW) came into operation on 1 April 2013. NRW incorporates the environmental functions from the Environment Agency, the Countryside Council for Wales, the Forestry Commission and certain functions of the Welsh Government into a single organisation.

With the benefit of a 'one stop shop' for environmental matters and unified record keeping on environmental matters, there is now an important opportunity for LPAs to establish more formal engagement with NRW on enforcement.

20.4 Training and improving skills

The need to improve training and skills on enforcement has been identified through the stakeholder interviews, the case study assessments and feedback from the Planning Inspectorate on the quality of LPA enforcement notices. The need to enhance training is relevant for both officers and Members. Although some LPAs do provide training for Members, this is not universal.

A particular concern, which has been highlighted by the Planning Inspectorate and LPA legal officers, is the issue of drafting notices and the potential for error therein. Improving the ability and confidence of officers in preparing draft notices would reduce internal LPA delays in preparing notices and the need for draft notices to go back to the legal department for final checking. Some of the areas where training would be of merit include:

- Is the breach accurately described in its entirety?;

- Is the site/location accurately defined?;
- Is the information on the enforcement notice accurate, thereby avoiding unintentional under-enforcement or planning permission inadvertently being granted if an enforcement notice was successful on appeal?;
- Is the notice capable of being complied with?;
- Is the notice capable of being enforced?; and
- Would compliance solve the breach?

Specific training and good practice examples would be beneficial in this regard, both in terms of improving the overall quality of LPA enforcement activity and improving the rate of LPA successes if notices are challenged on appeal. Training will also need to be provided to LPAs on the forthcoming Planning Bill, the new measures and any associated transitional arrangements.

Good practice examples would also be useful in terms of providing LPAs with guidance on which enforcement tool to use and when. This would assist in improving LPAs overall understanding of the shape of the enforcement system and how to take the most effective and appropriate action at the right time, thereby leading to more efficient enforcement action and fewer errors coming to light at appeal. Additional guidance on Court processes could be incorporated within a package to improve enforcement training and skills, with good practice on how to gather evidence, make a robust case and submit costs applications. Improved training for Magistrates on enforcement issues and appropriate levels of fines is also recommended.

Recommendation 14:

The Welsh Government should encourage and facilitate training on enforcement for Local Planning Authorities, with the aim of raising standards and promoting an effective and efficient system.

20.5 Guidance and good practice

There is a general consensus amongst LPAs that there is a need for new guidance and good practice advice on enforcement. A number of enforcement officers referred to the ODPM guidance on Section 215 notices as a valuable guidance document and were keen to see similar guidance published in Wales. New guidance on enforcement in Wales would fall into two categories:

- National planning policy on enforcement set out in Planning Policy Wales and a new enforcement Technical Advice Note and Circular;
- Good practice notes on the ‘toolkit’ available to LPAs.

National planning policy on enforcement

The existing Welsh policy guidance on enforcement is set out in Planning Policy Wales (PPW), TAN 9 and Circular 24/97. Guidance on making and enforcing planning decisions is provided in Chapter 3 (Sections 3.8 to 3.10) of PPW. The advice is limited to the merits and expediency of taking enforcement action, the

use of completion notices and revoking, modifying or discontinuing planning permission. Although PPW was updated in 2012, it is recommended that PPW is amended to reflect the more linear and streamlined approach to enforcement action that this study has sought to address.

More detailed guidance on the process and the proposed new powers should be provided in a new TAN and a new enforcement circular. Both TAN 9 and Circular 24/97 were published in 1997 and are in urgent need of updating. In particular, TAN 9 has been the subject of a number of comments from LPAs and stakeholders that its content is limited and lacking in practical guidance. The majority of planning policy documents are now published electronically by the Welsh Government. As a result, updating the guidance to provide new national planning policy on enforcement could be readily achieved.

Recommendation 15:

The Welsh Government should prepare new national planning policy on enforcement to reflect the proposed changes to the enforcement system, including an update to Planning Policy Wales, a new Technical Advice Note and Circular.

The new policy should seek to address the standing of enforcement as part of a coherent development management system, emphasising that the provision of an enforcement service is not discretionary, but rather it is the decision on whether pursuing enforcement would be expedient that is the discretionary element.

LPAs should be required to prepare an enforcement policy setting out its priorities for enforcement, including a coherent enforcement practice framework, including development monitoring measures and procedures, with liaison with other authority departments and external agencies.

Good practice guidance notes

The preparation of good practice advice notes would provide practical and meaningful advice and would be beneficial in a number of respects. They would:

- Complement the aim of driving up standards in enforcement and contribute to improving skills and knowledge for both officers and Members;
- Reduce the dependency of enforcement officers on the Legal Department and thereby speed up the preparation and issuing of some notices;
- Encourage a more joined up approach and promote joint working with statutory consultees;
- Assist LPAs in preparing and adopting corporate policies on enforcement, thereby establishing clear expectations for the service and providing a useful mechanism for monitoring performance;
- For existing enforcement powers, good practice notes could be swiftly prepared and would offer a ‘quick win’ of delivering practical guidance;
- Be aimed at both LPAs and the general public in order to provide greater clarity on the process for both LPAs and applicants.

Typically, good practice notes could be usefully designed for:

- Enforcement Notices;
- Breach of Condition Notices;
- Completion Notices;
- Fixed Penalty Notices;
- Section 215 Notices; and
- Direct Action.

Good practice notes should not be unduly prescriptive, but could usefully provide:

- Examples of when a particular type of enforcement action is most appropriate, thresholds, timescales and when to use it;
- Flowchart diagrams of the process and procedure for each topic;
- Draft templates for notices;
- Guidance on how to write a notice; and
- Encourage improved interaction and liaison with Natural Resources Wales.

Recommendation 16:

The Welsh Government should prepare a series of good practice guidance notes to provide practical and meaningful advice on enforcement to Local Planning Authorities, including improved interaction with Natural Resources Wales.

20.6 The Planning Advisory and Improvement Body

Recommendations 37 – 40 of the IAG report referred to the establishment, by the Welsh Government, of a Planning Advisory and Improvement Body (PAIB). The IAG's recommendation for the remit of the PAIB was:

- To identify and disseminate good local planning authority practice;
- Gather and publicise data on the performance of the planning system;
- Promote and develop the use of mediation in the planning system;
- Identify training requirements for Members and officers and to work with stakeholders to ensure quality and consistency in the provision of training; and
- Keep the effectiveness of the planning system under review and the make recommendations for reform and adaptation to changing circumstances and demands.

An up to date record of relevant case law could usefully be incorporated into the remit of the Planning Advisory and Improvement Body so that enforcement officers have a central pool of knowledge to fall back on.

A useful model for the PAIB is the Planning Advisory Service (PAS) in England, which provides advice and support to local planning authorities, across the full range of planning functions. PAS is sponsored and funded by the Department for Communities and Local Government, and 'housed' by the Local Government

Association. PAS provides training events, an online information resource on development management as well as relevant case study examples. With regard to enforcement, its case study report, A Stitch in Time. Managing Planning Enforcement[25], examined the headline changes in a number of LPAs where improvements in enforcement, within a development management context, had taken place. PAS provides a dedicated resource with a focus on capacity building, which is designed to ensure long-term benefits from short-term expenditure, with the primary recipients being local authority officers and Members.

The aim of the PAIB, as recommended by the IAG, would be to drive up performance, improve the quality and consistency of planning services across Wales, and identify and build on best practice to develop and share standard approaches. The New Approach to Managing Development in Wales: Towards a Welsh Planning Act[26] report also recommended that a collaborative and planning-specific organisation should be established to:

- Raise capacity and disseminate good practice, and
- Support LPA functions and provide shared staff resources to deal with peaks and more specialist work.

Recommendation 17:

The proposed Planning Advisory and Improvement Body should provide a pivotal role in advocating good practice techniques in the use of enforcement and maintain a central role in the provision of a database of up to date case law and legal precedents on enforcement.

20.7 Data collection and performance monitoring

Data on enforcement is currently recorded on the planning statistics (PSF) return in England. The statistics contain quarterly and annual information on development control activities, including planning applications, decisions, consents and enforcement from district-level and county-level authorities. With regard to enforcement, data is available on the number of enforcement notices, planning contravention notices, breach of condition notices, stop notices, temporary stop notices, and injunctions on a quarterly basis.

The Review and Evaluation of the Development Control Statistics Monitoring Process[27] made a number of recommendations on the quarterly collection of enforcement data. Enforcement data specifically recommended for collection in England included:

- The number of enforcement complaints received;
- The number of enforcement complaints where further formal action was taken;

[25] A Stitch in Time. Managing Planning Enforcement, Planning Advisory Service
[26] A New Approach to Managing Development in Wales: Towards a Welsh Planning Act, Arup, the Cardiff School of City and Regional Planning and Liz Mills Associates, on behalf of the Welsh Government, September 2012.
[27] The Review and Evaluation of the Development Control Statistics Monitoring Process Final Report, May 2008, Arup on behalf of the Welsh Assembly Government.

- The number of applications where LPAs made use of section 70A powers to decline to determine applications;
- The number of applications for retrospective permission (including whether the application was granted or refused); and
- The number of enforcement actions taken against applications refused retrospective permission.

The report concluded that this would be a useful data set that it worthy of collection and that guidance would need to be provided to LPAs on the definition of 'complaint' for the return of data.

The report, A Quality Local Development Management Service[28] also considered a range of data to cover the development management function in England. This report noted that, following a number of pilot studies with LPAs, the median time taken to record enforcement complaints should be recorded, in order to provide data as part of the post-decision aspect of development management. Again, it was noted that implementing this indicator would be helped by a consistent definition of both what constitutes a complaint and when a complaint is considered to be resolved. This reflected the feedback from the pilot LPAs and the fact that LPAs use different definitions. The use of a standardised definition was recognised as being beneficial both in terms of data recording and benchmarking performance across different LPAs.

Some data on enforcement is recorded in the planning statistics return in Wales, namely the percentage of appeals determined that upheld the authority's decision in relation to planning application decisions and enforcement notices and the percentage of enforcement cases resolved during the year within 12 weeks of receipt. The Planning Officer's Society Wales (POSW) also records some data on enforcement.[29] This data includes the percentage of enforcement cases resolved within 84 days, i.e. where no further action is required to pursue the case, the percentage of enforcement cases that were proactive and the percentage of enforcement appeals that were successfully defended.

In line with the research's findings on the need to improve the quality and consistency of enforcement in Wales, it is recommended that the planning statistics return for enforcement is made on a more detailed basis, with quarterly results on the outcome of enforcement action.

Recommendation 18:

The planning statistics return for enforcement should be made on a more detailed basis, with quarterly results on the outcome of enforcement action.

[28] A Quality Local Development Management Service, Final Report, Addison and Associates with Arup, on behalf of DCLG, 2011
[29] Planning Officers Society Wales, Wales Programme for Improvement. Management Information Survey 2011/12, November 2012.

21 Summary of Recommendations

The recommendations that have emerged from the research are summarised in Table 11:

Table 11: Summary of Recommendations

No.	Recommendation
1	It is recommended that the Planning Bill removes the time limits for enforcement action.
2	The Planning Bill should include the power for LPAs to serve a temporary stop notice to put an immediate halt to breaches of planning control for up to 28 days. There should be no right of appeal against a temporary stop notice. An LPA should be able to serve a second temporary stop notice in respect of the same activity, but only if the LPA has first taken some other enforcement action in relation to the beach of planning control that was required to be stopped by the earlier notice.
3	a) Existing Section 94 completion notices should be retained. The Welsh Government should consider issuing guidance, outlining the range of circumstances where completion notices could be used. Section 94 notices should continue to be approved by the Welsh Ministers. b) The Planning Bill should include a provision for a new Section 215 hybrid notice. This would provide LPAs with an additional power over and above that which is already available under Section 215. Appeals against a Section 215 hybrid notice should be determined by the Planning Inspectorate.
4	No additional notification requirements are proposed by the study. The preparation of guidance on better integration and use of data resources by LPAs should be considered by the Welsh Government.
5	The Sentencing Council, in conjunction with the Magistrates Association, should be asked to incorporate guidelines and training on planning enforcement to justices within its benchbook and a national database of fines should be established.
6	Existing powers, under Section 102, should be more widely promoted by the Welsh Government. The arrangements for the approval of notices by the Welsh Ministers should be streamlined in order to expedite the process.

No.	Recommendation
7	The Planning Bill should include the power for LPAs to require the submission of a retrospective planning application.
8	The Planning Bill should include the power for LPAs to serve fixed penalty notices, with the ability to serve subsequent daily fixed penalty notices for as long as the breach remains. Recipients of fixed penalty notices should have the right of appeal. A statutory instrument should set national fine levels for fixed penalty notices.
9	The Welsh Government should prepare good practice guidance to remind LPAs of their obligation to maintain an up to date register of enforcement action.
10	The Planning Bill should include a provision so that a ground (a) appeal is the only route to planning permission (if discretion has been exercised by the LPA not to accept a retrospective application) once an enforcement notice is served and can only be used where there has not been a previous appeal against the refusal of an application for planning permission for a development which is substantially the same.
11	The Planning Bill should include the power for LPAs to decline to determine a retrospective planning application after an enforcement notice has been issued.
12	The Planning Bill should include a provision so that the Planning Inspectorate should hear Section 217 appeals rather than the Courts. Good practice guidance should be provided to both the Courts and LPAs on appropriate fine levels for subsequent prosecutions.
13	The Welsh Government and Local Planning Authorities should establish direct action funds.
14	The Welsh Government should encourage and facilitate training on enforcement for Local Planning Authorities, with the aim of raising standards and promoting an effective and efficient system.
15	The Welsh Government should prepare new national planning policy on enforcement to reflect the proposed changes to the enforcement system, including an update to Planning Policy Wales, a new Technical Advice Note and Circular. The new policy should seek to address the standing of enforcement as part of a coherent development management system, emphasising that the provision of an enforcement service is not discretionary, but rather it is the decision on whether pursuing enforcement would be expedient

No.	Recommendation
	that is the discretionary element. LPAs should be required to prepare an enforcement policy setting out its priorities for enforcement, including a coherent enforcement practice framework, including development monitoring measures and procedures, with liaison with other authority departments and external agencies.
16	The Welsh Government should prepare a series of good practice guidance notes to provide practical and meaningful advice on enforcement to Local Planning Authorities, including improved interaction with Natural Resources Wales.
17	The proposed Planning Advisory and Improvement Body should provide a pivotal role in advocating good practice techniques in the use of enforcement and maintain a central role in the provision of a database of up to date case law and legal precedents on enforcement.
18	The planning statistics return for enforcement should be made on a more detailed basis, with quarterly results on the outcome of enforcement action.

Appendix A

Steering Group

A1 Steering Group Members

The Welsh Government has convened a Steering Group to ensure that the project benefits from the views and contributions of key stakeholders. The Steering Group comprises the following members:

Name	Role & Organisation
Sophie Berry	Planning Division, Welsh Government
Hywel Butts	Planning Division, Welsh Government
Andrew Ward	Planning Division, Welsh Government
Sarah Feist	Team Leader Development Management, Rhondda Cynon Taf County Borough Council
Justina Moss	NAPE Representative for Wales / Principal Appeals and Enforcement Officer, Vale of Glamorgan Council
James Ellis	Planning Inspector, Planning Inspectorate Wales
Alwyn Nixon	Principal Planning Inspector and Wales Sub-group Leader, Planning Inspectorate Wales

Appendix B

Stakeholder Interviews

B1 List of Stakeholder Interviews

A series of face-to-face and telephone interviews have been undertaken to explore enforcement practices and the use of existing tools. Interviews were used to test potential measures that could help to improve the enforcement system in Wales, whilst participants were also encouraged to share examples of best or poor practice and experiences as case studies. Detailed interviews were undertaken with officers and members of six local planning authority as well as other stakeholders.

Local Planning Authority Case Studies
Carmarthenshire County Council
Denbighshire County Council
Newport City Council
Rhondda Cynon Taf County Borough Council
Snowdonia National Park Authority
Vale of Glamorgan Council

Other stakeholders, who agreed to take part in the research, included:

Organisation
Confederation of British Industry
Countryside Council for Wales (now Natural Resources Wales)
Department for Communities and Local Government
Environment Agency Wales (now Natural Resources Wales)
Independent Advisory Group
Network for Planning Enforcement (NAPE)
Planning Aid Wales
Planning Inspectorate
Public Service Ombudsman for Wales
RPS Planning & Development
Scottish Government
Welsh Government

A number of other organisations were contacted, but declined to take part due to insufficient knowledge or experience of the enforcement system.

Appendix C

Local Planning Authority Survey

WALES PLANNING ENFORCEMENT BASELINE SURVEY

Please use this spreadsheet to form the basis of the survey return for your authority. **Unless otherwise stated, data for each question should be provided for the last 30 months - the first six months of the 2012/13 financial year and the whole of the 2010/11 and 2011/12 financial years.**

Please do not alter the layout or cell contents, including formulae, as this spreadsheet has been designed so that it can be readily incorporated into an overall database. Please also type only numbers into blue cells - a description can be added in green cells. Text in blue relates to a definition supplied alongside the question.

O**nce complete this survey should be emailed to dan.evans@arup.com. Please return this survey by 04 January 2013 at the latest.** If you have any queries in relation to the research or the completion of this survey please contact Dan Evans using either the email address above or via 020 7755 4544. Many thanks in advance for your co-operation.

Local Authority **Date**

Name of officer making this return

Job title of officer making this return

Telephone **Email**

1. ENFORCEMENT CASES

1.1 Number of enforcement cases registered

An enforcement case is an enforcement complaint received and investigated about an alleged breach of planning control.

a = Number of cases resulting from complaints made by officers

b = Number of cases resulting from complaints made by members

c = Number of cases resulting from complaints made by the public

Total number of cases 0

1.2 Outcome of enforcement cases closed in each period

		a = 'No breach'	b = 'Not expedient'	c = Retro-spective application
a =	10/11			
b =	11/12			
c =	12/13			

1.3 Number of retrospective planning applications made

a = Number of retrospective planning applications granted

b = Number of retrospective planning applications refused

c = Total fee income from retrospective applications:

i. 2010/11

ii. 2011/12

iii. 2012/13 (Months 1-6)

2. NOTICES

2.1 Number of Planning Contravention Notices (PCNs) issued

a = Total number of PCNs issued

2.2 Number of Enforcement Notices served

a = Total number of Enforcement Notices served

b = Number of Enforcement Notices that should have been complied with within the period and were complied with by the deadline (i.e. the original compliance period applied by the LPA, or any period otherwise agreed by the LPA):

i. 2010/11

ii. 2011/12

iii. 2012/13 (Months 1-6)

c = Number of Enforcement Notices served and subsequently withdrawn on the

LPAs' own volition due to errors in the drafting of the notice (including withdrawal after an appeal has been lodged)

2.3 Number of Breach of Condition Notices served

a = Total number of Breach of Conditions Notices served

b = Number of Breach of Condition Notices that should have been complied with within the period and were complied with by the deadline (i.e. the original compliance period applied by the LPA, or any period otherwise agreed by the LPA):

i. 2010/11
ii. 2011/12
iii. 2012/13 (Months 1-6)

2.4 Number of Stop Notices served

a = Total number of Stop Notices served
b = Number of Stop Notices that were complied with by their deadline

2.5 Number of Section 215 Notices served

a = Total number of Section 215 Notices served

2.6 Number of Completion Notices served

a = Total number of Completion Notices served

2.7 Number of Discontinuance Notices served

a = Total number of Discontinuance Notices served
b = Number of Discontinuance Notices that were complied with by their deadline

3. OTHER POWERS

3.1 Number of Discontinuance Order (under Section 102) served

a = Total number of Discontinuance Order (under Section 102) served

3.2 Please give details of the last 10 cases where direct action has been taken (not further back than 30 months).

	Date (mm/yy)	Brief description (10 words maximum)
a =		
b =		
c =		
d =		
e =		
f =		
g =		
h =		
i =		
j =		

3.3 Number of injunctions

a = Total number injunctions sought
b = Total number of injunctions granted

4. PROSECUTION, FINES, COSTS AND COMPENSATIONS

4.1

Please give details of the last 10 prosecutions resulting from various forms of enforcement action taken under either the Advertising regulations, the Town and Country Planning Act, or the Planning (Listed Buildings and Conservation Areas) Act (not further back than 30 months).

	Date (mm/yy)	Brief description (10 words maximum)
a =		
b =		
c =		
d =		
e =		

f =		
g =		
h =		
i =		
j =		

4.2 Number of appeals cases with costs awarded

a = Total number of cases where costs were applied for by the LPA
b = Total number of cases where costs were awarded to the LPA
c = Total value of costs awarded to the LPA (£)

d = Total value of cases where costs were applied for against the LPA
e = Total value of cases where costs were awarded against the LPA
f = Total value of costs awarded against the LPA (£)

4.3 Please give details of the last 10 fines levied in the last 30 months (not further back than 30 months).

	Date of final hearing (mm/yy)	Level of fine, excluding LPA costs (£)	Brief description (10 words maximum)
a =			
b =			
c =			
d =			
e =			
f =			
g =			
h =			
i =			
j =			

4.4 Number of appeals made to Magistrates' Court against Section 215 notices

a = Total number of appeals made to Magistrates' Court against Section 215 notices
b = Number of appeals upheld

4.5 Please outline the last 10 incidents of compensation incurred as a result of Stop Notices being served and other types of enforcement action (not further back than 30 months).

	Date (mm/yy)	Level of compensation (£)	Brief description (10 words maximum)
a =			
b =			
c =			
d =			
e =			
f =			
g =			
h =			
i =			
j =			

5. STRUCTURE

5.1 Alongside this survey, please provide/attach a copy of your enforcement team structure and how it fits into the wider local authority e.g. a diagram showing staff numbers, grade and service area in the local authority.

5.2 Please explain how legal support is provided e.g. dedicated personnel, service level agreement, shared services with other local authorities, outsourced etc.

5.3 **Please explain how the enforcement team liaises with building control and other regulatory services within the authority.**

5.4 **Do you have an enforcement policy or adopted enforcement procedure?**

a = Yes/No

If yes, please provide a copy or link alongside the return of this survey

5.5 **Is there an adopted 'priority system' within your enforcement policy?**

a = Yes/No

b = If no, please explain how enforcement work is prioritised once a complaint has been received.

5.6 **Is there an agreement for delegated officer powers for enforcement?**

a = Yes/No

b = If yes, please provide details and the extent of delegated powers for enforcement. If no, please explain how enforcement is undertaken e.g. preparing a report to Committee for enforcement action.

6. SERVICE COSTS

6.1 **Please estimate the costs of providing an enforcement service (where possible, please apportion e.g. 0.5FTE)**

Overhead cost refers to the costs incurred in delivering the enforcement service over and above the direct staff costs (expressed as salaries). Relevant overheads include expenditure relating to:
- salary on-costs (such as superannuation and pension contributions)
- cost components of the planning service (including accommodation, telephone, ICT equipment, stationary and reprographics, postage, publications, copyright, travel, training, etc.)
- bought-in service costs from other areas of the local authority (such as finance, environmental health, personnel/recruitment, etc.)
- outsourced service costs from external parties (such as consultants or other local authorities)
- core/democratic costs (core costs relate to costs central to the existence of a local authority but not to a particular service area and would be incurred even if the enforcement function did not exist; democratic costs would not be incurred in the absence of elected members)

Staff type	Salary cost (£)	**Overhead cost** (£)	Total (£)
Enforcement staff			-
Admin/technical			-
Management			-
Legal			-
Other			-
			-

Appendix D

Discussion Seminars

Attendance List

D1 Discussion Seminars Attendance List

The organisations who attended the South Wales Discussion Seminar, which was held on 26 March 2013 at the Welsh Government Office, QED Centre, Treforest are:

- Blaenau Gwent County Borough Council;
- Brecon Beacons National Park Authority;
- Bridgend County Borough Council
- Cardiff School of Planning and Geography, Cardiff University;
- City and County of Swansea;
- Merthyr Tydfil County Borough Council;
- Monmouthshire County Council;
- Neath Port Talbot County Borough Council;
- Newport City Council;
- Pembrokeshire Coast National Park Authority;
- Planning Inspectorate;
- Rhondda Cynon Taf County Borough Council;
- Torfaen County Borough Council;
- Vale of Glamorgan Council;
- Welsh Government.

The organisations who attended the North Wales Discussion Seminar, which was held on 27 March 2013 at the offices of Denbighshire County Council, are:

- Isle of Anglesey County Council;
- Conwy County Borough Council;
- Denbighshire County Council;
- Gwynedd Council;
- Snowdonia National Park Authority;
- Welsh Government.

Appendix E

Glossary

E1 Glossary of Terms

BOCN	Breach of Condition Notice
CN	Completion Notice
CCW	Countryside Council for Wales
CPLAN	Department of City and Regional Planning, Cardiff University
DCLG	Department for Communities and Local Government
EWCA	England and Wales Court of Appeal
FPN	Fixed Penalty Notice
IAG	Independent Advisory Group
LPA	Local Planning Authority
NAPE	Network for Planning Enforcement
NRW	Natural Resources Wales
ODPM	Office of the Deputy Prime Minister
PACE	Police and Criminal Evidence Act 1984
PdW	Planning: Delivering for Wales 2002
PINS	Planning Inspectorate
POCA	Proceeds of Crime Act 2002
POSW	Planning Officer Society for Wales
PPW	Planning Policy Wales
TAN	Technical Advice Note
TPO	Tree Preservation Order