



Department for
Communities and
Local Government

Changes to Temporary Stop Notices

Summary of responses and government response

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Revocation of the Town and Country Planning (Temporary Stop Notice) (England) Regulations 2005

Introduction

This document sets out the policy background to the government's intention to revoke Statutory Instrument 2005/206, which limits where local authorities may use Temporary Stop Notices in respect of unauthorised caravans used as main residences. It summarises consultation responses, and sets out how the measure will be taken forward.

Rather than provide the government's response to each question in the consultation document, the government's response is under two headings 'effectiveness of proposal' and 'impact of proposal' (incorporating any general points made in relation to question 7, which asked for any other comments that respondents would like to make in this context).

We have published an equalities statement alongside this document, and intend to publish guidance to assist local authorities in using Temporary Stop Notices effectively and with due consideration in line with the government's guidance review process, the intention of which is to produce a revised guidance suite in summer 2013. We have not undertaken an Impact Assessment as this measure would not impact on business.

Policy background

In December 2012, the government published a consultation which sought views on revoking the *Town and Country Planning (Temporary Stop Notice) (England) Regulations 2005* (Statutory Instrument 2005/206).¹ The effect of this revocation would be to give local authorities greater freedom to determine whether to use Temporary Stop Notices in respect of caravans that are used as main residences.

The government wants to see fair play throughout planning, with everyone treated equally and even-handedly and decisions on development and enforcement action taken at the local level. We also want to restore trust and confidence in the planning system by tackling unauthorised development in all its forms.

The government's overarching aim is to ensure fair and equal treatment for travellers, in a way that facilitates the traditional and nomadic way of life of travellers while respecting the interests of the settled community. We expect local authorities to assess and plan to meet traveller needs in their areas, in much the same way as they do to meet their community's housing needs. To support the traveller community and local councils we have:

- allocated nearly £60 million, through our Traveller Pitch Fund, to help local authorities deliver over 600 new pitches and around 400 refurbished pitches by 2015, plus £1.5 million allocated to the GLA for schemes in London;

¹ <https://www.gov.uk/government/consultations/changes-to-temporary-stop-notices-consultation>

- enabled local authorities to receive the New Homes Bonus for delivering new traveller pitches;
- funded training to help councillors with their leadership role around site provision and planning for traveller sites
- established a ministerial working group across Government, to address the inequalities experienced by Gypsies and Travellers. We published a progress report in April which includes commitments to:
 - identify ways of raising educational aspirations and attainment;
 - promote improved health outcomes;
 - tackle hate crime;
 - improve our knowledge of how Gypsies and Travellers engage with employment services.

Reducing the number of unauthorised developments and encampments, making enforcement more effective, and ensuring traveller sites are well designed and integrated are all aims of the government's planning policy for traveller sites.

Temporary Stop Notices allow local authorities to place an immediate block on development in breach of planning control. Currently, national regulations (Statutory Instrument 2005/206) restrict local authorities' ability to use Temporary Stop Notices in respect of caravans which are used as a main residence, in situations where it may be beneficial to use them.

Greater freedom to use Temporary Stop Notices in these circumstances would support local councils in taking early and effective enforcement action to prevent further unauthorised development occurring and guard against protracted, costly enforcement action.

Consultation was undertaken between 21 December 2012 and 13 February 2013, and on 29 March the government announced the intention to proceed with revoking Statutory Instrument 2005/206.²

Overview of consultation responses

A total of 67 responses were received to the consultation. Local authorities represented the largest group of respondents. There was also strong representation from membership and representative bodies which included a significant number of traveller groups as well as professional planning specialist groups. The following is a breakdown of the profile of responses:

- Local Authorities – 40% (included local/district councils; unitary authorities; and borough/county councils;
- Parish Councils – 11%;
- Membership/representative bodies – 28% (such as the Royal Town Planning Institute's National Association of Planning Enforcement Officers);
- Other types of organisation or individuals including those from or representing the traveller community – 21% (such as the Traveller Law Reform Project).

² <https://www.gov.uk/government/news/improving-councils-powers-to-tackle-unauthorised-development>

In addition, to ensure the consultation engaged effectively with travellers,³ the government also held three oral hearings attended by representatives of Gypsy and Traveller communities, lawyers and planning consultants. Although they have not been formally included in the statistical analysis of the consultation responses, outcomes from the oral hearings are included in this document where relevant issues were raised. Many of the participants also submitted responses directly to the consultation.

The consultation asked 7 questions in relation to the effectiveness and impact of the proposals. These were:

Q1. Will this proposal improve local authorities' ability to use Temporary Stop Notices in respect of breaches of planning control related to using caravans as main residences?

Q2. Will the impacts of this proposal on caravan occupants be acceptable?

Q3. Would guidance assist local authorities in determining whether and how to use Temporary Stop Notices in respect of unauthorised development?

Q4. Are there other or alternative reforms that would make Temporary Stop Notices more effective?

Q5. Do you agree with the potential impacts of this proposal as set out above?

Q6. Do you have any evidence that is relevant to this proposal (in relation to use of Temporary Stop Notices, relating to caravans within unauthorised developments, impacts on caravan occupants, equalities implications, or any other impacts)?

Q7. Are there any other comments you wish to make as part of this consultation?

Effectiveness of the proposals

Question 1: Will this proposal improve local councils' ability to use Temporary Stop Notices in respect of breaches of planning control related to using caravans as main residences?

Approximately 70% of respondents, mainly local authorities, agreed that the proposal would improve local authorities' ability to use Temporary Stop Notices in respect of breaches of planning control related to using caravans as main residences.

Many local authorities reported use of injunctions for dealing with unauthorised development related to caravans, which can often be costly and take time to serve. Councils welcomed powers which enabled them to respond quickly and complemented

³ Defined in *Planning policy for traveller sites* as including Roma Gypsies, Irish Travellers and persons of nomadic habit of life 'including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently'.

existing powers to deal with alleged breaches of planning control. It was noted that use of Temporary Stop Notices enabled local authorities to take a considered view as to whether further enforcement action was a proportionate response.

Many local councils were also of the view that the ability, or potential ability, to take swifter action against unauthorised development related to caravans could at an early stage prevent further unauthorised development, guarding against costly and protracted enforcement action. More broadly the proposal would be consistent with one of the aims of Planning Policy for Traveller sites of reducing the number of unauthorised sites and making enforcement more effective, and with a planning system that returns decision-making to the local level.

Some respondents to consultation pointed to the difficulty in dealing with enforcement in respect of traveller sites as unauthorised development can occur very quickly, and therefore have potentially more significant impacts than building a permanent structure (where a Temporary Stop Notice could be used during construction). As such they viewed this proposed change to Temporary Stop Notices as beneficial to enable swift enforcement action to be taken.

Responses from travellers typically argued that unauthorised sites occur because there is a historical and continuing under-provision of authorised traveller sites across the country. Therefore, any increase in powers to tackle unauthorised development was not appropriate until the level of authorised site provision had risen to meet travellers' needs. In particular, an economic case was made for focussing efforts on improving the supply of authorised sites. Some respondents pointed to the disproportionate costs that are spent on successive attempts to enforce against or evict travellers suggesting that this could be better spent on the development of authorised provision.

Some respondents indicated that removing national regulation and enabling local authorities to determine whether to issue a Temporary Stop Notice in these circumstances would create greater ambiguity and inconsistency in taking account of Human Rights and Equalities considerations. This in turn could lead to an increase in Judicial Reviews against the issue of Temporary Stop Notices. Some felt that those most likely to be affected are unlikely to have the resources to pursue any such legal challenge.

However, many of the responses also demonstrated an awareness of local councils' responsibilities under Human Rights and Equalities legislation and the need to take full and proper account of these when determining whether to issue a Temporary Stop Notice.

RESPONSE

We believe that local councils are best placed to take decisions about whether to take enforcement action against unauthorised development, including whether that action is proportionate in response to local circumstances (and having due regard to all duties under Equalities and Human Rights legislation). Following the broadly positive response to proposals, the government is of the view that these new powers will improve councils' ability to deal with unauthorised traveller sites and complement other existing powers.

The government's aim is to increase the amount of authorised traveller site provision in appropriate locations to meet local needs and to reduce the number of unauthorised sites

which can lead to community tensions and undermines trust in the planning system. The existing level of site provision is capable of being a material consideration in determining individual applications for traveller sites. Giving local authorities powers to tackle unauthorised development where it does occur will support councils in taking effective action against those who choose to set up sites without planning permission whilst supporting those who apply for planning permission through the proper processes. This will help to ensure that the planning rules apply fairly and evenly to both the settled and traveller community.

Local authorities already have to take into account Equalities and Human Rights legislation in determining whether to exercise their enforcement powers.

In most circumstances, current restrictions on the use of Temporary Stop Notices mean that they cannot be used in respect of caravans used as a main residence. Revoking Statutory Instrument 2005/206 will give more scope for local authorities to effectively use Temporary Stop Notices to quickly halt an alleged breach of planning control.

Local authorities in determining whether to use a Temporary Stop Notice in respect of a caravan used as a main residence will need to consider whether taking such action is necessary and proportionate in the circumstances, having due regard to the requirements of the Human Rights Act 1998 and Equalities Act 2010. In particular, they will need to consider whether taking such action could simply lead to displacing the occupants to other unauthorised sites which could potentially be less suitable.

Question 3: Would guidance assist local councils in determining whether and how to use Temporary Stop Notices in respect of unauthorised development?

The overwhelming majority, 80%, of respondents felt that guidance would help local councils in determining whether and how to use Temporary Stop Notices in these circumstances.

In particular, most respondents indicated that guidance would be useful in assisting local councils to assess and then balance human rights and equalities considerations with the impact of unauthorised development of caravans on the amenity of the local area and public health and safety concerns.

Several respondents also asked for guidance on the procedure for issuing and ensuring compliance with a Temporary Stop Notice. This included advice on whom the notice should be served where the occupants were unwilling to identify themselves; the length of time allowed for compliance; and when effective compliance has been secured before further enforcement action might be appropriate.

Local councils felt that guidance along these lines would support councils in their assessment of whether the issue of a Temporary Stop Notice is proportionate and appropriate as well as mitigate the risk of legal challenge to the council's decision. Some other respondents were of the view that guidance would not help to reduce any negative impacts on travellers.

RESPONSE

The vast majority of responses demonstrate strong demand for the development of guidance to support the regulatory changes to the use of Temporary Stop Notices and assist councils to exercise these new powers effectively and with due consideration as well as mitigating the risk of legal challenge to local authorities' decisions to issue Temporary Stop Notices. Any such guidance should be light-touch; careful to avoid central prescription and support authorities to make decisions about whether to use Temporary Stop Notices which respond to their local context and best meet the needs of their communities. The aim of the guidance will be to assist councils in:

- taking account of human rights and equalities considerations;
- balancing these considerations against the impact of the unauthorised development on the local area;
- determining whether action is proportionate and appropriate;
- understanding the procedure for issuing a Temporary Stop Notice.

Question 4: Are there other or alternative reforms that would make Temporary Stop Notices more effective?

53% of respondents felt that there were other or alternative reforms that would make Temporary Stop Notices more effective.

Some respondents advocated linking giving local councils' greater freedoms to use Temporary Stop Notices with authorised site provision (*Planning Policy for Traveller Sites* asks local authorities to establish a supply of sites against traveller needs consistent with planning policy as a whole).

Several local authorities were of the view that the current 28-day period for which a Temporary Stop Notice applies is too short and effectively means that steps have to be taken immediately after its service towards further enforcement action such as an injunction or Enforcement Notice/Stop Notice. Extending the time period beyond 28 days would enable the local authority to fully consider whether to take further enforcement action on the unauthorised development in conjunction with other consultees e.g. the Highways Authority and the Environment Agency.

Some responses showed support for strengthening powers on retrospective planning permission: limiting the ability to apply for retrospective planning permission in the Green Belt or removing the right of appeal where retrospective planning permission has been refused.

RESPONSE

We believe that local authorities are best placed to take decisions about whether enforcement action is appropriate and necessary as well as how to maximise best use of their resources.

Our Planning Policy for Traveller Sites supports developers to apply through the proper channels for planning permission to develop traveller sites. Since 27 March this year, if a local authority cannot demonstrate that it has identified a suitable five-year supply of

traveller sites, then this will be a significant material consideration in determining whether to grant temporary planning permission.

We believe that the 28-day period for which a Temporary Stop Notice applies strikes the right balance between giving local authorities sufficient time to fully consider and then decide whether to take further action and mitigating the negative impact on the occupants. If after the 28-day period, the council then decide to take further enforcement action in the form of a Stop Notice/Enforcement Notice, then the occupants are able to exercise their right of appeal.

We have already introduced strong enforcement powers through the Localism Act 2011 which limit the opportunities for retrospective planning permission in relation to any form of unauthorised development. The provisions allow local authorities to refuse to consider a retrospective planning application for development where an enforcement notice has already been served.

Impact of the proposals

Question 2: Will the impacts of this proposal on caravan occupants be acceptable?

Approximately, 58% felt that the impact of the proposal on occupants would be acceptable, whilst 42% did not. Those that supported that the impacts would be acceptable pointed to Equalities and Human Rights duties remaining and safeguards on the use of Temporary Stop Notices.

Question 5: Do you agree with the potential impacts of this proposal as set out above?

58% of respondents agreed with the potential impacts of this proposal as set out in the consultation document.

Those that felt it would be unacceptable argued that although the change in regulations applied to caravans generally, the impact would disproportionately affect Gypsies and Travellers and may therefore be discriminatory on the grounds of racial discrimination under the Equality Act 2010.⁴ Others also felt that the revocation may be in breach of the Human Rights Act 1998, through contravening Articles under the European Convention of Human Rights (ECHR) including:

- Article 1 of the First Protocol - right to peaceful enjoyment of property;
- Article 6 - right to a fair hearing;
- Article 8 - right to respect for private and family life; and
- Article 14 - prohibition of discrimination.

A number of responses raised concerns that travellers already experience poor outcomes across a range of indicators including health; education; deprivation. There were fears that the proposal could further exacerbate insecurity of accommodation problems for travellers,

⁴ Romany Gypsies and Irish Travellers a racial groups, a protected characteristic under the Equality Act 2010

forcing them to relocate to other, sometimes less appropriate sites (for example roadside sites which lack basic sanitary facilities, access to education and healthcare services; increase health and safety concerns and heighten tensions within the community). It was noted that stress related to lack of security over accommodation can often manifest itself in mental health issues and has a particularly significant impact on children.

Responses were mixed as to whether the proposal would ensure that planning law applied equally and fairly to all. Some pointed out that Temporary Stop Notices cannot be used against buildings used as dwellinghouses in any circumstances. Here, some questioned the proposition that the impact of unauthorised development of a dwelling was less than that associated with a caravan(s). It was argued that to define impact in visual terms only was restrictive, and that unauthorised development of a dwelling could have a significant and detrimental impact on an area in terms of traffic and protected species for example. Others felt that it would help to ensure that planning rules apply evenly to both the settled and traveller community.

Several respondents pointed to the lack of an appeal process against a Temporary Stop Notice, which may in itself discourage local authorities from using Temporary Stop Notices as it may be easier to demonstrate robust consideration of Human Rights implications by securing an injunction granted by the Courts. This would be more expensive but mitigate the risk of legal challenge.

RESPONSE

Revoking these regulations will only remove national prescription, and it will of course remain for local authorities to consider whether taking enforcement action is necessary and proportionate in the circumstances, having due regard to the requirements of the Human Rights Act 1998 and Equality Act 2010.

It is notable that most local authorities that responded supported this proposal whilst recognising their responsibilities under Human Rights and Equalities legislation. Respondents were broadly of the view that in determining whether to serve a Temporary Stop Notice, local authorities would need to have undertaken inquiries into the impact on the occupants especially where children were involved.

Whilst a caravan is immediately a home once occupied, a house under construction is not a home until it has been completed and subsequently occupied. Unauthorised development of caravans can occur very quickly whilst its impact can be significant when compared with buildings where there are opportunities to take effective action during the lengthy construction process. Where a suspected breach of planning control relates to a building's change of use, the impact on the local area is likely to be less significant as the building is already in place.

Temporary Stop Notices are designed to be responsive to alleged breaches of planning control. The ability of local authorities to react quickly to block further unauthorised development for a short period (Temporary Stop Notices apply for 28 days), while considering whether further enforcement action is necessary and proportionate is critical to preventing protracted and costly enforcement proceedings. If a local council does decide to take further action, then occupants would have the opportunity to appeal through the normal channels as is currently the case.

Furthermore, the Judicial Review process would continue to provide a check, as any decision by a local council to issue a Temporary Stop Notice could be subject to legal challenge under this process. Inappropriate use of Temporary Stop Notices by local authorities may result in compensation to the occupants where the activity specified in the temporary stop notice:

- has already received planning permission;
- has permitted development rights;

Or:

- the local planning authority later issue a lawful development certificate confirming that the development was lawful;
- the local planning authority subsequently withdraws the temporary stop notice.

How this measure will be taken forward

The government intends to revoke Statutory Instrument 2005/206 via a new Statutory Instrument which would come into force in May 2013. The intention is to publish guidance to assist local councils use Temporary Stop Notices effectively and with due consideration, in line with the government's guidance review process, the intention of which is to produce a revised guidance suite in summer 2013.