

## Annex 3: The Stop Notice

### The main statutory provisions

**3.1** The provisions of section 183 of the Town and Country Planning Act 1990 ("the 1990 Act") enable the local planning authority (LPA) to serve a stop notice, in certain circumstances, when they serve a copy of an enforcement notice, or afterwards. Section 183 was substantially amended by section 9 of the Planning and Compensation Act 1991 ("the 1991 Act"). Because the power to serve a stop notice only derives from the issue of a planning enforcement notice, this Annex does not apply to listed building or conservation control, hazardous substances control or control for protected trees.

### The power to serve a stop notice

**3.2** Where the LPA consider it expedient that any "relevant activity" should cease before the expiry of the compliance period specified in an enforcement notice, section 183(1) enables the LPA to serve a stop notice which prohibits the carrying out of that activity on the enforcement notice land, or any part of that land. A "relevant activity" is any activity required by the enforcement notice to cease, and any activity carried out as part of that activity or associated with it. A stop notice may not be served once the related enforcement notice has taken effect.

**3.3** A stop notice may be served on any person who appears to have an interest in the land to which the notice relates, or who appears to be engaged in any activity prohibited by the notice. The LPA must annex to the stop notice a copy of the related enforcement notice.

### Public notification of service of a stop notice

**3.4** The LPA may publicise the fact that a stop notice has been served by displaying a "site notice", in accordance with section 184(6), on the land to which the stop notice relates. If a site notice is displayed, it extends the effect of the stop notice to any person contravening it.

**3.5** A site notice, publicising a stop notice, must state:

- that a stop notice has been served;
- that any person contravening the stop notice may be prosecuted for an offence under section 187; and
- the date on which the stop notice takes effect and the LPA's requirements in the notice.

### Scope of the prohibition in a stop notice

**3.6** With the exceptions indicated in [paragraph 3.7](#) below, a stop notice may prohibit any, or all, of the activities which comprise the alleged breach of planning control in the related enforcement notice. Thus the prohibition may be directed at:

- a use of land which is ancillary, or incidental, to the main use of the land specified in the enforcement notice as a breach of control; or
- a particular activity taking place only on part of the land specified in the enforcement notice; or
- an activity which takes place on the land intermittently or seasonally.

A stop notice may be used to prohibit the use of land as a site for a caravan occupied by any person as his or her own or main residence.

**3.7** A stop notice may not prohibit:

- the use of any building as a dwellinghouse;
- the carrying out of any activity which is not "operational development", or the deposit of refuse or waste materials, if the activity has been carried out (whether continuously or not) for a period of more than four years ending with the service of the notice. (For this purpose, no account is to be taken of any period during which the activity was authorised by planning permission.)

### Power to withdraw a stop notice

**3.8** The LPA may withdraw a stop notice at any time (without prejudice to their power to serve another notice) by giving notification of the withdrawal to everyone who was served with the stop notice. If a site notice was displayed on the land specified in the stop notice, a notice of the withdrawal is to be displayed in place of the site notice.

### Cessation of the effect of a stop notice

**3.9** A stop notice ceases to have effect when

- the related enforcement notice is withdrawn by the LPA, or is quashed;
- the period the LPA have allowed for compliance with the related enforcement notice expires (at that point, instead of being an offence to contravene the prohibition in the stop notice, it will become an offence not to comply with the requirements specified by the LPA in the enforcement notice);
- notification is first given of the LPA's decision to withdraw the stop notice.

**3.10** When an enforcement notice is varied (for example, on appeal to the Secretary of State under section 174), so that the alleged breach of planning control no longer includes a particular activity which is prohibited in the related stop notice, the prohibition in the stop notice ceases to have effect in so far as it relates to that particular activity.

### Penalties for contravention of a stop notice

**3.11** Section 187(1), as amended, provides that, when a person contravenes a stop notice after a site notice has been displayed or the stop notice has been served on them, they shall be guilty of an offence. The offence may be charged by reference to any day or longer period of time and a person may be convicted of a second, or subsequent offence by reference to any period of time following the preceding conviction for such an offence. A

person guilty of this offence is liable, on summary conviction, to a fine not exceeding £20,000; and, on conviction on indictment, to an unlimited fine. In determining the amount of any fine to be imposed, the Court is to have regard to any financial benefit which has accrued, or appears likely to accrue, in consequence of the offence.

**3.12** It is a defence for any person prosecuted for an offence under section 187 to prove that the stop notice was not served on them and that they did not know, and could not reasonably have been expected to know, of its existence. It is thus important for LPAs to observe the guidance in [paragraphs 3.16 to 3.18](#) of this Annex.

### Challenging the prohibition in a stop notice

**3.13** There is no right of appeal to the Secretary of State against the prohibition in a stop notice. The merits of the LPA's decision to serve a stop notice cannot be examined in the course of an appeal to the Secretary of State, under section 174, against the related enforcement notice. The validity of a stop notice, and the propriety of the LPA's decision to issue a notice, may be challenged by seeking leave of the High Court to apply for judicial review, in accordance with the Rules of the Supreme Court; but probably not by way of defence to a prosecution brought by the LPA under section 187 if the notice is valid on its face, by analogy with the judgement of the Court of Appeal (Criminal Division) in *R v Wicks* [1995] 93 LGR 377.

### The LPA's liability for compensation in consequence of a stop notice

**3.14** No compensation is payable in respect of the prohibition in a stop notice of any activity which, *at any time when the notice is in force*, constitutes or contributes to a breach of planning control, by virtue of section 186(5) of the amended 1990 Act.

**3.15** Section 186(5)(b) provides that, where a planning contravention notice, or a notice under section 330 of the 1990 Act or section 16 of the Local Government (Miscellaneous Provisions) Act 1976, has required information to be given to the LPA, no compensation is payable for any loss or damage the claimant has suffered which could have been avoided if they had provided that information, or had otherwise co-operated with the LPA when responding to the notice.

### Administrative procedures for dealing with stop notices

**3.16** Once the LPA have decided to serve a stop notice, it is essential to implement the decision speedily and effectively. There should always be a clear understanding (preferably stated in administrative instructions) about the respective responsibilities of the local authority's Planning Department and Legal Department for the necessary preparatory work, the formulation of the terms of the stop notice, the arrangements for serving it and how its practical effect will be assessed (including the need to bring a prosecution quickly if the notice is contravened). Since serving a stop notice is relatively infrequent for many LPAs, it will usually be best to maintain the essential knowledge and experience of stop notice procedures in a small group of planning and legal officers.

**3.17** The service of a stop notice should always be recorded immediately in the enforcement and stop notice register which LPAs are required, by section 188, to maintain.

**3.18** The procedures for service of notices, specified in section 329 of the 1990 Act, apply to the service of a stop notice. In particular, a stop notice should always be identifiable by the recipient as a communication of the first importance. If the notice is served by post, the envelope containing it should clearly state that it is an urgent and important communication; and it should be sent by recorded delivery service.

### Use of powers to serve a stop notice

**3.19** The effect of serving a stop notice will usually be to halt the breach of control, or the specified activity, almost immediately. LPAs should therefore ensure that a quick but thorough assessment of the likely consequences of serving a stop notice is available (preferably, when the decision is not delegated to officers, in the form of a report submitted by Planning or Enforcement Officers who are thoroughly familiar with the locality and the alleged breach of control) to the Committee or officer who will authorise service of the notice. The assessment should examine the foreseeable costs and benefits likely to result from a stop notice.

### Cost/benefit assessment for stop notices

**3.20** The costs arising from serving a stop notice will usually be confined to the firm, operator or landowner who is thereby prevented from carrying on the activity prohibited by the notice. There may occasionally be some costs to the local economy. The costs to a firm may vary from having to modify a production process, at little or no additional cost (at one extreme), to the complete cessation of a business (at the other), with consequent loss of jobs, failure to complete contracts, or bankruptcy. The effect of prohibiting a particular activity should always be carefully examined. For example, preventing storage in the open of raw materials or finished products may have an immediate and serious effect upon a production process relying on those raw materials, or on the availability of the storage area for the finished product. Even if the practical effect of the stop notice falls short of disrupting a production process, it may nevertheless add appreciably to a firm's costs, so that the finished product is priced out of its home market, or the firm can no longer compete effectively with other firms in a wider market. Since a stop notice can be directed at any activity specified in the enforcement notice, or any part of an activity, or any associated activity, the LPA should ensure that a stop notice's requirements prohibit only what is essential to safeguard amenity or public safety in the neighbourhood; or to prevent serious or irreversible harm to the environment in the surrounding area.

**3.21** Before deciding to serve a stop notice, the LPA's representative should discuss, whenever practicable, with the person carrying on the activity whether there is any alternative means of production or operation which would overcome the objections to it in an environmentally acceptable way. If an acceptable alternative means of production or operation would require the grant of planning permission, in order to carry it on lawfully, the LPA should take the initiative in inviting a planning application. However, since the purpose of a stop notice is to compel the activities specified in it to cease, any delay should be minimised.

**3.22** The benefits of serving a stop notice will usually be readily apparent as an improvement in amenity in the neighbourhood. The LPA should consider how many people are likely to benefit, and how adversely their amenities will be affected if a stop notice is not served (on the assumption that the enforcement notice will eventually take effect on expiry of the compliance period specified in it).

**3.23** In the High Court's judgment, on 12 October 1994, in the case of *R v. Elmbridge Borough Council ex parte Wendy Fair Markets Ltd* [1995] JPEL, p. B36, the Court considered the need for a cost/benefit assessment in circumstances where a Planning Inspector's appeal decision to uphold an enforcement notice, preventing the continuance of a Sunday market on land in the Green Belt, had been suspended by the appellant's further appeal to the High Court (under section 289 of the 1990 Act). Among other things, the Court held **in this case** that it was not appropriate to carry out a very detailed cost/benefit assessment: it was sufficient that, as a matter of commonsense, the LPA had realised that the stop notice would effectively prevent the operators and traders from continuing with the Sunday market. On the other hand, the LPA had also taken into account the seriousness of the Green Belt objection. The Court concluded that the LPA were entitled not to carry out any more detailed cost/benefit assessment than the simple exercise they had performed **in this case**.

**3.24** How the LPA may be liable for compensation in consequence of a stop notice is explained in paragraphs [3.14](#) and [3.15](#) of this Annex.

### Effective service of a stop notice

**3.25** The validity of a stop notice cannot be challenged on the ground that it has not been served on someone who ought to be served with it. Section 183(6) enables the LPA to serve a stop notice on any person who appears to them to have an interest in the land, or to be engaged in any activity prohibited by the notice. Thus, for example, when an enforcement notice is directed at a breach of planning control involving operations to rebuild a derelict rural dwellinghouse, and the owner of the land cannot be contacted, the LPA may serve the stop notice on anyone who is actually engaged in carrying out the building works prohibited by the notice. Normal administrative practice should be to trace any owner or occupier of the land and arrange for the stop notice to be served on them also.

**3.26** A stop notice is not invalid because a copy of the related enforcement notice was not served as required by section 172(2) and (3), if it is shown that the LPA took all such steps as were reasonably practicable to effect proper service.

**3.27** The provisions for the public notification of the service or withdrawal of a stop notice are outlined in paragraphs [3.4](#) and [3.8](#) of this Annex.

### Period in which a stop notice may be served

**3.28** Section 183(3) provides that a stop notice may not be served where the related enforcement notice has taken effect. (Section 173(8) requires the LPA to specify the date on which the enforcement notice shall take effect.) However, if there is an enforcement

appeal to the Secretary of State, section 17 5( 4) suspends the effect of the enforcement notice until the appeal against it is finally determined or withdrawn. It follows from these provisions that, when there is an appeal against the related enforcement notice, the LPA may serve a stop notice at any time during the currency of the enforcement appeal, including any further appeal, under section 289, to the High Court, unless the enforcement notice was quashed by the Secretary of State on appeal.

### Date on which stop notice takes effect

**3.29** The LPA must specify in the stop notice the date when it is to take effect. Section 184(3) (as amended) specifies that the effective date must normally not be earlier than 3 days (or later than 28 days) after the date when the notice is served. But, when there are special reasons for specifying an earlier date, a stop notice may take effect before 3 days, or immediately. If the notice is to take effect earlier than three days, a statement of reasons must be served with it. For example, it may be considered essential to protect an area of special landscape value, or a conservation area, from operational development (such as buildings, roadways or other hard surfaces) which, if it continued, would be especially harmful.

### Prosecution for an offence

**3.30** When a site notice has been displayed for a stop notice, it is an immediate offence for anyone to contravene, or to cause or permit the contravention of, the prohibition in a stop notice, once the stop notice takes effect. When a site notice has not been displayed and the stop notice has been served on a person, it is an offence for that person to contravene, or to cause or permit the contravention of, the prohibition in the stop notice immediately after the stop notice has been served on them. Prosecution for an offence under section 187 is usually in the Magistrates' Court, but may take place in the Crown Court if the Magistrates decline jurisdiction because of the seriousness of the offence, or the defendant elects for jury trial.

**3.31** Prosecuting authorities should always be ready to give details, if obtainable, about the proceeds resulting from the offence, so that the Court can take account of them in determining the amount of the fine.

### Cautioning alleged offenders

**3.32** When investigating the facts, prior to initiating any proceedings, LPAs should have regard to the provisions of sections 66 and 67(9) of the Police and Criminal Evidence Act 1984 in relation to cautioning alleged offenders.

### Model stop notice

**3.33** A model stop notice is appended to this Annex.

## Appendix to Annex 3

### Model Stop Notice

Important - This Communication Affects Your Property

Town And Country Planning Act 1990  
(as amended by the Planning and Compensation Act 1991)

Stop Notice

Served By: [name of Council]

To: [name of intended recipient of the notice]

1. On [date], the Council issued an enforcement notice (of which a copy is attached to this notice) alleging that there has been a breach of planning control on [description of the land to which the notice relates].

2. **This Notice** is issued by the Council, in exercise of their power in section 183 of the 1990 Act, because they consider that it is expedient that the activity specified in this notice should cease before the expiry of the period allowed for compliance with the requirements of the enforcement notice on the land described in paragraph 3 below. The Council now prohibit the carrying out of the activity specified in this notice. Important additional information is given in the [Annex](#) to this notice.

### 3. The Land To Which This Notice Relates

Land at [address of land, or description of relevant part of the land to which the enforcement notice relates], shown edged red on the attached plan.

### 4. Activity To Which This Notice Relates

[Specify the activity required by the enforcement notice to cease, and any activity carried out as part of that activity, or associated with it]

### 5. What You Are Required To Do

Cease all the activity specified in this notice.

### 6. When This Notice Takes Effect

This notice takes effect on [date] when all the activity specified in this notice shall cease.

Dated: [date of notice]

Signed: [Council's authorised officer]

On behalf of  
*[Council's name and address]*

## **Annex**

### Warning

**This Notice Takes Effect On The Date Specified In Paragraph 6.**

**There Is No Right Of Appeal To The Secretary Of State For The Environment Against This Notice.**

It is an offence to contravene a stop notice after a site notice has been displayed or the stop notice has been served on you. (Section 187(1) of the 1990 Act). If you then fail to comply with the stop notice you will be at risk of **immediate prosecution** in the Magistrates' Court, for which the maximum penalty is £20,000 on summary conviction for a first offence and for any subsequent offence. The fine on conviction on indictment is unlimited. If you are in any doubt about what this notice requires you to do, you should get in touch **immediately** with *[Council's nominated officer to deal with enquiries, address and telephone number]*. If you need independent advice about this notice, you are advised to contact urgently a lawyer, planning consultant or other professional adviser specialising in planning matters. If you wish to contest the validity of the notice, you may only do so by an application to the High Court for judicial review.