

## **The Cabinet**

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**Planning & Economic Development**

# **REPORT**

**Cllr Noeken Cabinet Member for Planning & Economic Development**

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## **TOWN AND COUNTRY PLANNING ACT 1990: TEMPORARY STOP NOTICE PROVISIONS**

### **Report Summary:**

This report gives a brief summary of new, statutory powers which will shortly be available to the Council to deal with breaches of planning control, seeks Members views on the scope and adequacy of the new powers and recommends amendment to the Council's Constitution at the next available opportunity to ensure that the new powers are available when required.

### **Introduction:**

Part 4 of the Planning and Compulsory Purchase Act 2004 will, when it comes into force, insert additional sections (171E-171H) into the Town and Country Planning Act 1990 to allow Local Planning Authorities to issue a 'Temporary Stop Notice' at the beginning of unauthorised development, to speed up the process of enforcement.

The introduction of these powers is a response to the perceived failure of existing powers under planning legislation to deal quickly and effectively with some breaches of planning control in particular where ongoing operations/ activities and the requirement for delay in enforcement give the impression that the planning legislation is being disregarded, increases the difficulty of and time taken to resolve breaches of planning control, and also increases the likelihood of permission being given at some stage in future, for example because of Human Rights considerations.

It is expected that the new powers will come into force in the New Year. At the end of November the Office of the Deputy Prime Minister (ODPM) published draft Temporary Stop Notice Regulations and a draft circular, inviting comments before 26<sup>th</sup> January 2005. The draft Regulations limit the use of the new powers and specify activity not prohibited by such a Notice. The draft Circular gives guidance on the new provisions.

### **Scope of the New Powers:**

Where the LPA considers that there has been a breach of planning control and it is expedient in the interests of the amenity of the area that the activity that amounts to the breach should cease immediately, it will be able to issue a Temporary Stop Notice (TSN).

Unlike the existing Stop Notice powers, it is envisaged that it will come into effect immediately (instead of 3 days) and will not be predicated on the issue of an Enforcement Notice. A TSN will remain in effect for 28 days, during which the LPA must consider the expediency of issuing an Enforcement Notice.

There will be no right of appeal against the LPA's decision to issue a TSN. A person contravening the effect of a TSN will commit an offence potentially attracting a substantial fine. Compensation could be payable in

certain circumstances following issue of a TSN, for example if a Lawful Development Certificate is subsequently granted (but not of planning permission granted) Accordingly such action is not to be considered lightly; a cost/benefit analysis should be undertaken to ensure that only those activities which detract from public amenity, public safety or irreversibly harm the environment are prohibited by a TSN.

It is likely that LPAs will not be able to issue a repeat TSN, unless an Enforcement Notice has been issued. It is also likely that the TSN will be prohibitory, that is they will require works to cease or reduce but not require remedial works.

Use of the power is likely to be wide ranging, but limited so as not to prevent use of a building as a dwelling house. Also, it is likely to not normally be able to be used to prohibit the continued stationing of a caravan unless there are exceptional environmental or safety considerations. However, it may prohibit stationing of additional caravans and ancillary facilities (subject to certain safeguards) on the same site or activities on other parts of the same site related to the primary use.

**Comments:**

Officers consider that the power to issue a TSN will strengthen its enforcement powers and will enable a quicker and more effective reaction to some breaches of planning control. There are enforcement cases in the recent past where a TSN may well have been used whilst the expediency of enforcement action was considered.

There are however, certain comments that the Council should make and points of clarification that should be addressed in the final legislation and accompanying circular:

1. The Regulations as drafted will not prohibit the stationing of caravans, except in certain circumstances where there may irremediable harm to amenity if the development were not prohibited at once. The Circular indicates only limited circumstances where such a prohibition should be justified. However, it is considered that such a prohibition should also apply in nationally protected landscapes, such as the AONB and New Forest Heritage Area, where irremediable harm could be caused by development associated with the use of land as a caravan site;
2. The number of caravans may also be relevant to whether a prohibition should be justified. The environmental impact of a site occupied by up to 3 caravans, the associated development and traffic movements etc. is obviously different from a site where, for example 10 caravans are stationed with associated development. More than 3 caravans stationed on a site should also be prohibited, in particular in the above designated areas;
3. The need for some sort of time limit on the power to issue TSNs after works have commenced is noted. However, there is strong concern that the proposed 4-year time limit on issuing a TSN may push the burden of proof onto Councils to show in any subsequent proceedings that works began less than four years ago. In practice this may be difficult to do and could lead to limited use of TSNs unless the case was clear-cut and could encourage concealment on behalf of unscrupulous developers. A time limit should only therefore apply where a Lawful Development Certificate has been obtained to the effect that development began more than four years ago;
4. The requirement to pay compensation where the specified activity in the TSN is already the subject of a planning permission will prevent the effective use of TSNs in circumstances, where for example, planning permission has been granted subject to conditions which are being breached, but the

nature of the breach is such that irremediable harm could be caused if work s continue prior to a Breach of Condition Notice coming into effect (i.e. non-compliance with archaeology condition);

5. The draft Circular indicates that potential compensation claims can be minimised if a Planning Contravention Notice has been served but the developer is not being cooperative. The timescales given for returning PCNs and other requisitions for information (21 days minimum on PCN and Section 330, 14 days on Section 16) are incompatible with the often urgent need by a Council to give consideration to issuing a TSN. There is concern that Councils will therefore be cautious about using the TSN route as they could be exposing themselves to greater compensation claims.

### **Administrative Procedures:**

The draft Circular emphasises the need to respond quickly to breaches and ascertain whether issuing a TSN is expedient. It advocates LPAs putting in place efficient processes to prepare, consider and implement a decision to serve a TSN, to ensure that the TSN is clearly drafted, covering all the relevant breaches, and is properly authorised.

To enable the Council to be in a position to utilise the new powers immediately they come into force and enable it to respond promptly to breaches and consider whether issuing a TSN is expedient (in line with the draft Circular advice), it is important that that the relevant Officer has authority to issue a TSN.

The Council's Constitution under Part 6 (Officer Scheme of Delegation) currently gives delegated powers to the Head of Development Services to initiate enforcement action, including subsequent prosecutions, on behalf of the District Council (para 14.23(b)), subject to the Ward Member calling it in on behalf of the public or Parish Council, the HDS considering it expedient to exercise such powers and subject to the Head of Legal and Property Services being satisfied as to the evidence.

In order to clarify the extent of the HDS's delegated powers and to avoid the potential for future challenge to any decision to issue a TSN (or a Stop Notice under existing powers), it is considered that para 14.23(b) should be amended to include reference to a TSN as well as a Stop Notice.

The new paragraph would read:

“That the Head of Development Services be authorized to initiate enforcement action (including an Enforcement Notices and Temporary Stop Notices) and subsequent prosecutions, on behalf of the District Council subject to the Ward Member calling it in on behalf of the public or Parish Council, the HDS considering it expedient to exercise such powers and subject to the Head of Legal and Property Services being satisfied as to the evidence.”

### **Miscellaneous:**

Paragraph 14.29(a) 1 of the Constitution states that the HDS has delegated powers to approve planning applications provided:

“...They accord with the provisions of the appropriate structure or local plan, other adopted policy guidance or development brief”

In a legal sense the word ‘accord’ is open to interpretation and therefore in the interests of clarity the HDS would prefer the following amended wording to 14.29(a) 1 to allow the HDS to approve planning applications provided that:

"...In the opinion of the HDS the proposal is in general conformity with the Local Development Plan, other adopted policy guidance or development brief."

**Conclusion:**

The new powers to issue a Temporary Stop Notice will, once in effect, enable a speedier reaction to breaches of planning control, and prevent the Council being presented with a 'fait accompli' situation with the consequent potential for long and drawn out enforcement proceedings.

In order that the Council can exercise the new powers properly and efficiently, it should be made clear in the Constitution that authority to issue a TSN has been delegated to the Head of Development Services, subject to certain caveats.

Amendment to the wording of the HDS's power of delegation to approve application is also considered necessary, to avoid the possibility of future challenges to decisions taken using such powers.

**Recommendation:**

- A: That the Council generally welcomes the proposed introduction of Temporary Stop Notices;
- B: That the above, together with the following comments at 1- 5 above are communicated to the ODPM as this Council's response to the Consultation Paper:
1. The Regulations as drafted will not prohibit the stationing of caravans, except in certain circumstances where there may irremediable harm to amenity if the development were not prohibited at once. The Circular indicates only limited circumstances where such a prohibition should be justified. However, it is considered that such a prohibition should also apply in nationally protected landscapes, such as the AONB and New Forest Heritage Area, where irremediable harm could be caused by development associated with the use of land as a caravan site;
  2. The number of caravans may also be relevant to whether a prohibition should be justified. The environmental impact of a site occupied by up to 3 caravans, the associated development and traffic movements etc. is obviously different from a site where, for example 10 caravans are stationed with associated development. More than 3 caravans stationed on a site should also be prohibited, in particular in the above designated areas;
  3. The need for some sort of time limit on the power to issue TSNs after works have commenced is noted. However, there is strong concern that the proposed 4-year time limit on issuing a TSN may push the burden of proof onto Councils to show in any subsequent proceedings that works began less than four years ago. In practice this may be difficult to do and could lead to limited use of TSNs unless the case was clear-cut and could encourage concealment on behalf of unscrupulous developers. A time limit should only therefore apply where a Lawful Development Certificate has been obtained to the effect that development began more than four years ago;
  4. The requirement to pay compensation where the specified activity in the TSN is already the subject of a planning permission will prevent the effective use of TSNs in circumstances, where for example, planning permission has been granted subject to conditions which are being breached, but the nature of the breach is such that irremediable harm could be caused if work s continue prior to a Breach of Condition Notice coming into effect (i.e. non-compliance with archaeology condition);

5. The draft Circular indicates that potential compensation claims can be minimised if a Planning Contravention Notice has been served but the developer is not being cooperative. The timescales given for returning PCNs and other requisitions for information (21 days minimum on PCN and Section 330, 14 days on Section 16) are incompatible with the often urgent need by a Council to give consideration to issuing a TSN. There is concern that Councils will therefore be cautious about using the TSN route as they could be exposing themselves to greater compensation claims.

C: With effect from the date that the power to issue a Temporary Stop Notice comes into force, Part 6, paragraph 14.23(b) of the Constitution is amended to read:

“That the Head of Development Services be authorized to initiate enforcement action (including an Enforcement Notices and Temporary Stop Notices) and subsequent prosecutions, on behalf of the District Council subject to the Ward Member calling it in on behalf of the public or Parish Council, the HDS considering it expedient to exercise such powers and subject to the Head of Legal and Property Services being satisfied as to the evidence.”

D: Paragraph 14.29 (a) should be amended to allow the HDS to approve planning applications provided that:

“...In the opinion of the HDS the proposal is in general conformity with the Local Development Plan, other adopted policy guidance or development brief.”

#### **Background Papers:**

Temporary Stop Notice: A Consultation Package –ODPM November 2004. See [www.odpm.gov.uk](http://www.odpm.gov.uk).

#### **Implications:**

- **Financial** : Set out in the report.
- **Legal** : The legal implications are set out in the report. The purpose of the planning system is to regulate the use and development of land in the public interest.
- **Human Rights** : This report does not have any direct Human Rights implications. Any interference would be proportional and in the public interest.
- **Council's Core Values:** Protection of the environment; fairness and equality; excellent service.
- **Ward(s)** : Affected: All