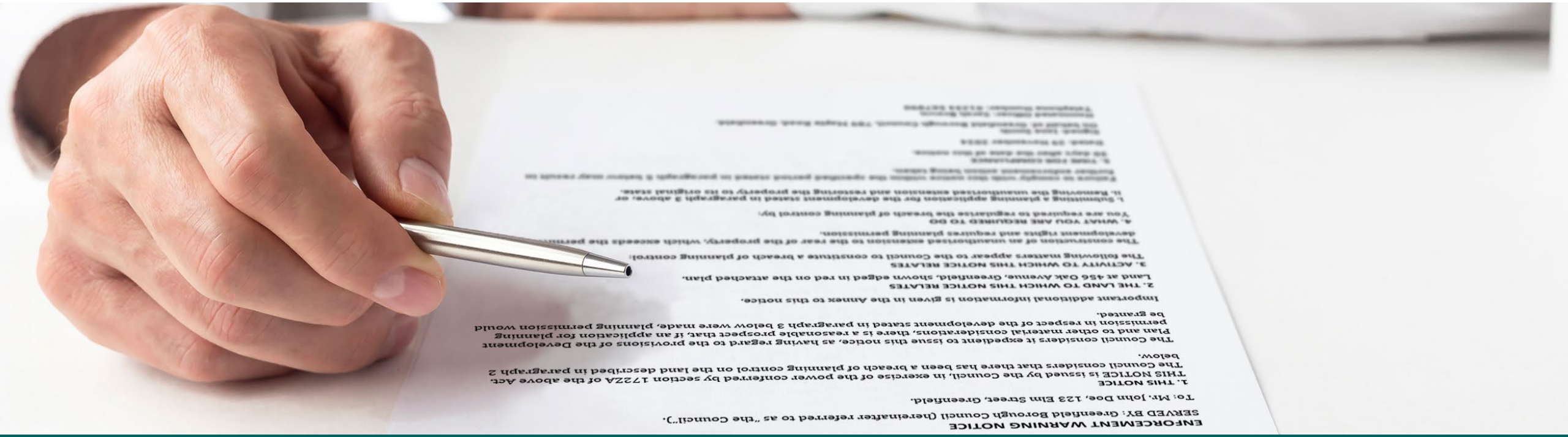
Planning Inspectorate



# Best practice in enforcement appeals

2 July 2025

Claire Sherratt, Jeanie Russell, John Murray

Planning Inspectorate

# Agenda

## Part 1. The Appeals Service
## Part 2. The Enforcement Notice & Grounds of Appeal
## Part 3. The Planning Unit, Primary, Incidental & Mixed Uses

Questions?

Submit your questions via the “Q&A” panel in Teams.
Use the “Upvote ⬆” button to vote for questions you want answered.

Planning Inspectorate

# Part 1

## The Appeals Service Enforcement

Planning Inspectorate

# The Appeals Service - Enforcement

Aim to provide a timely, high-quality and cost-effective appeals service

## Upon receipt of appeal / Notifications

We will check that:

- The appeal is valid
- Consider the most appropriate procedure

## Hearing procedure

- We aim to issue decision within 24-26 weeks of receipt of valid appeal
- Event normally held 13 – 16 weeks after receipt of a valid appeal
- Inspector appointed at outset

## Inquiry procedure

We aim to issue a decision within 26 weeks of receipt of a valid appeal

Event normally held 17 – 20 weeks after receipt of valid appeal / Case Management Conference held – around 8 weeks from start date.

Inspector appointed at outset.

## Written Representations procedure

- Focus is now on addressing backlog of appeals proceeding by WRs.
- We will not automatically link related planning & enforcement appeals for the time being.

Planning Inspectorate

# The Appeals Service - Enforcement

Appeal tips

## Is there scope to resolve matters locally?

- Consider effective date of Enforcement Notice to give sufficient time to resolve
- Consider alternatives
- Appeal should be last resort

## LPA Notifications / SV Attendance

- Check Notification to interested parties is correct & contains required information
- Accompanied Site Visits – If one of the parties does not attend an arranged SV the Inspector may proceed based on what they saw from public land / written evidence / s176 – dismiss.

## Seek to narrow the issues

- Continue discussions
- Set out areas of agreement / in dispute in Statement of Common Ground
- Planning merits – suggest & agree conditions

## Submitting Statements / Documents

- Be clear, focused and concise.
- Avoid repetition
- Core Documents can be helpful
- Adhere to the timetable.

Planning Inspectorate

# Part 2

## The Enforcement Notice and the Grounds of Appeal

Planning Inspectorate

# Issuing an Enforcement Notice

Under section 172(1) of the Town and Country Planning Act 1990 (**TCPA90**), a local planning authority (**LPA**) may issue an enforcement notice where it **appears** to them that there has been a breach of planning control **and** it is expedient to issue the notice, having regard to the provisions of the development plan and any other material considerations.

The word “appear” is important: the LPA does **not** need to be certain that:

- There has been a breach of planning control.
- Planning permission (**PP**) would never be granted.

Expediency is a matter for the LPA, but once they decide to issue the notice, its contents must comply with:

- s173 of the TCPA90.
- Regulations 4 and 5 of the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 (**the Enforcement Regulations**)

Advice and a model notice are set out in the Planning Practice Guidance (PPG) chapter: **Enforcement and Post-Permission Matters**.

I’m going to focus on the four most important parts of the notice from an appeal perspective, but the slides will also include information on other parts too.

Planning Inspectorate

# Boundaries of the Land: s173(10) and Regulation 4(c)

A notice must specify the precise boundaries of the land to which the notice relates, whether by reference to a plan or otherwise. Attaching a plan that shows the boundaries of the land is helpful, especially if the land associated with the address is not obvious. However, the plan is not essential. The starting point is to describe the address of the land correctly within the body of the notice.

> **2. THE LAND TO WHICH THE NOTICE RELATES**
>
> Land at [address of Land], shown edged in [a distinctive colour] on the attached plan.

It is not essential that the site = the planning unit. In material change of use (**MCU**) cases, however, the site should encompass the whole area occupied for one or more main purposes or primary uses.

Planning Inspectorate

# The Allegation: s173(1)(a) and (2)

A notice shall state the matters which appear to the LPA to constitute the "breach of planning control" (**BPC**). That term is defined in s171A(1) as having two limbs:

**(a) carrying out "development" without the required PP.**

The definition of development given in s55 of the TCPA90 is a good starting point for framing such an allegation:

- "The making of a material change of use of land from x to x+y"
- "The carrying out of engineering operations to form an access road".
- Building operations can be described more succinctly as "the construction of x".

**(b) failing to comply with any condition or limitation subject to which PP has been granted.**

That includes not only conditions imposed on any express PP granted by the LPA on application, but also conditions and limitations imposed on "permitted development" (**PD**). The allegation should set out:

- Details of the original PP, including the approved description of development (eg MCU to a takeaway)
- The text of the relevant condition(s) or limitations (open to customers no later than midnight)
- The reasons for the condition(s) where appropriate (to protect the living conditions of nearby occupiers)
- How the condition or limitation has not been complied with (by staying open until 2am).

Planning Inspectorate

# The Allegation: s173(1)(a) and (2)

The "matters which appear to constitute the BPC" will be described differently depending on whether the notice is concerned with development without PP or a breach of condition.

A single notice may allege that more than one development has taken place without PP, such as the making of an MCU of a dwellinghouse to flats plus the construction of an extension to the building.

A single notice may also allege that there has been a failure to comply with more than one condition.

Sometimes it is not clear whether the breach falls under (a) or (b). For example, an MCU may be development without PP and in breach of a condition. Development not carried out in accordance with the approved plans may be "without PP" and in breach of the plans condition.

Two notices can be issued in the alternative, but a single notice should not be used to tackle both kinds of BPC. I would call that a Schrodinger's breach and one problem would be the possibility for two deemed planning applications when only one fee is payable.

Planning Inspectorate

# The Requirements: s173(3)-(6) and (11)-(12)

A notice shall specify the steps which the LPA require to be taken or the activities which the LPA require to cease. The requirements apply in posterity; compliance with the notice does not discharge the notice – s181(1).

**The requirements must match the allegation!**

- If the allegation is an MCU, require the use to cease...
- If the allegation is an MCU to the parking of vehicles, require the cessation of parking (not storage!)
- If the allegation is the construction of a side extension, require the removal of the side (not rear) extension.
- If the allegation is a breach of condition, require compliance – eg, close to customers by midnight

The requirements can have different **purposes** under s173(4):
(a) To remedy the breach of planning control
(b) To remedy any "injury to amenity" caused by the breach.

The purpose of the notice is **not** the same thing as the reasons for issuing the notice. The reasons set out why the notice was issued, the planning harm that the LPA is concerned about. The purpose relates to the outcome that the LPA wants to achieve. It should be clear from the requirements.

Planning Inspectorate

# The Requirements: s173(3)-(6) and (11)-(12)

If the notice alleges the construction of an extension without PP:

- A requirement to remove the extension = purpose of remedying the breach
- A requirement to brick up a window in the extension = purpose to remedy the planning harm caused by the extension [through overlooking].


The requirements can be significant and include constructing a replacement building, as in the case of the Carlton Tavern. Remedying the BPC can mean putting the land back to its previous condition. But a notice cannot do more than that. It cannot take away lawful use rights or require improvements or resumption of the lawful use.

**Under-enforcement and s173(11)**

If a notice **could** have required removal of works or cessation of an activity [because they were alleged] but it does not do so and the [lesser] requirements of a notice are complied with, **PP is treated as granted** for the works or activities... Again, if the notice alleges an MCU to parking, but it does not require that the use is ceased, only that the cars are removed, then, once that is complied with, the parking use can resume.

Planning Inspectorate

# The Time for Compliance: s173(9)

The notice must set out one or more periods of time for compliance with the requirements. Each requirement can have its own period, or there can be a single period for compliance with the requirements collectively.

Either way, the recipient should have reasonable time to do **everything** required of them considering, for example, whether works could take place before the use has ceased. If the notice alleges a change of use from a dwellinghouse to flats, there should be reasonable time to cease the use (allowing the occupiers to look for new homes) **and, after they have gone,** putting the building back to its previous state by removing the extra walls, doors, kitchens and bathrooms.

The "time" must be expressed as a period. An expression such as "immediately" is not a period. Calendar months are usually fine.

Planning Inspectorate

# Other Contents of Enforcement Notices

**"IMPORTANT – THIS COMMUNICATION AFFECTS YOUR PROPERTY"** – required by s329 of the TCPA90

**Whether the notice is issued under s171A(1)(a) or (b)** – whether the BPC is development without PP or a failure to comply with condition

**Reasons for issuing the notice** – Enforcement Regulations 4(a) and (b) – why the LPA considers it expedient to issue the notice and all relevant policies and proposals in the development.

**When the notice takes effect** – s173(8)

- A specific date not less than **28 days** after the date of **issue**
- That is the deadline for making an appeal against the notice
- If there is no appeal, the time for compliance is counted down from the date of taking effect.

**Date and Signature of the Authorised Officer of the LPA**

**Annex**

- Explanatory note on the right of appeal – s173(1) and Enforcement Regulation 5
- Information sheet from the Planning Inspectorate – PPG 17b-019-20180222
- Any plan, drawings and/or photographs attached to the notice.

Planning Inspectorate

# Corrections and Variations, Null and Invalid Notices

S173A of the TCPA90 allows an LPA to withdraw an EN after it is issued, waive or relax any requirement, or extend the time for compliance. However, that is not for an Inspector.

If the notice is appealed, s176(1) of the TCPA90 allows the appointed Inspector to:
**(a) correct any defect, error or misdescription** in the enforcement notice – meaning any part of the notice.
**(b) vary the terms** of the notice – the terms being the requirements and/or time for compliance.

The only limitation on the power to make corrections or variations is that doing so must not **cause injustice to the appellant or the LPA.** There is no rule about what would cause injustice. Widening the scope of the notice so that it relates to a larger site or more uses will often cause injustice, but it depends on the circumstances.

If correcting any "error, defect or misdescription" **would** cause injustice, the notice is invalid. Simple as! It is usually necessary to read the evidence to identify the error and scope for correction – eg, if the allegation and requirements don't match, more information will be needed to show which is wrong and the implications.

A notice is null if it is so defective **on its face** that it does not amount to an enforcement notice in law at all and the question as to whether corrections would cause injustice cannot arise. That might be the case if the notice is hopelessly ambiguous and uncertain, or its contents do not include what is required under s173.

Planning Inspectorate

# Grounds of Appeal – s174(2)

**"Legal Grounds"**

**Grounds (e), (b), (c) and (d)**

- Onus on the appellant
- Balance of probabilities

**"Planning merits"**

**Ground (a) and the deemed planning application**

**"Mitigating the notice"**

**Grounds (f) and (g)**

Planning Inspectorate

# Ground (e) – copies of the notice were not served as required by s172

S172(2) requires that a copy of the notice shall be served (a) on the owner(s) and the occupier(s) of the land to which the notice relates, and (b) on any other person having a "materially affected" interest in the land.

- **In practice, any owner or occupier except a trespasser**

S172(3) requires that service of the notice shall take place (a) not more than 28 days after its date of issue and (b) not less than 28 days before the date specified in it as the date on which it is to take effect.

- **The recipient must have 28 days to make an appea**l.

S329 of the TCPA90 and the Town and Country Planning General Regulations 1992 also set out requirements for service.

Ground (e) is taken first because, if the notice was not properly served, it should be quashed **except** where s176(5) applies: if it would otherwise be a ground for [allowing an appeal] that a person was not served, that may be disregarded if neither the appellant nor that person has been **substantially prejudiced**. If you should have been but were not properly served...and yet have made an appeal and put forward your case...you were probably not substantially prejudiced by the failure to serve you properly. Ground (e) would not succeed.

Planning Inspectorate

# Ground (b) – the matters have not occurred

The next ground to be considered is (b) and whether what is alleged has occurred as a matter of fact (and degree). Ground (b) is concerned strictly with the accuracy of the allegation – and whether it **had** occurred by the date of the notice.

For example: alleged MCU of land to a residential caravan site:

- If caravans are stationed for human habitation – ground (b) will fail.
- If caravans were so stationed but the use has ceased – ground (b) will still fail. The notice will be upheld so the use cannot resume.
- If the use was in fact storage (of caravans) – ground (b) will succeed.
- If caravans were never even there – ground (b) will succeed.

If there is success on ground (b), the outcome will be that the notice is quashed, unless more than one development is subject to the allegation, and there is only partial success – then the notice will be corrected. The same applies for grounds (c) and (d).

What if the appellant thinks the allegation is inaccurate because the change of use was not material? This takes us to ground (c)!

Planning Inspectorate

# Ground (c) – the matters do not constitute a BPC

Ground (c) is written in the present tense and concerns whether, on the date of the notice:

- What **is** alleged (as corrected) = "development" as defined by s55? Does it require PP? Is there a lawful development certificate (**LDC**)?
- Has PP been granted by the GPDO or on application? Is the PP extant?

Going back to the previous example:

- Ground (b) is whether a caravan is stationed for residential use on the land.
- Ground (c) could be whether the stationing of the caravan represented an **M**CU that requires PP.

It may be necessary to interpret a previously granted PP, to decide whether it encompassed what is alleged. This is often the case where something has been built which does not accord with the approved plans. The approach to interpretation should be **straightforward, purposive and pragmatic**. Look at the ordinary meaning of the words on the PP in their statutory context and the other circumstances.

If there is a question as to whether a PP is "implemented", **s56** sets out tests for when development was begun. Identify similarities and differences between what was approved and built, and their significance overall.

In failure to comply with condition cases, ground (c) may concern whether the condition was complied with, given its wording, and the validity of the condition – so again there may be questions of interpretation.

Planning Inspectorate

# Ground (d) – no enforcement action could be taken

Ground (d) concerns whether it was too late to take enforcement action on the **date of the** notice, such that the development is "immune" from enforcement. Under s171B, no enforcement action may be taken:

| Operational development | Beginning with the date of substantial completion | Ten (10) years if that date was on or after 25 April 2024 | Four (4) years if that date was before 25 April 2024 |
|---|---|---|---|
| Change of use of any building to use as a single dwellinghouse (or failure to comply with a condition preventing such) | Beginning with the date of the breach | Ten (10) years if that date was on or after 25 April 2024. The breach should take place for the period without significant interruption. | Four (4) years if that date was before 25 April 2024. The breach should take place for the period without significant interruption. |
| Any other breach ( = any other MCU or failure to comply with condition or limitation) | Beginning with the date of the breach | Ten (10) years. The breach should take place for the period without significant interruption. | |

Planning Inspectorate

# Ground (d) – no enforcement action could be taken

Some key terms for ground (d):

**The period of x years beginning with the date** – the clock does not run back from the notice; it runs forward from the BPC. The development may be immune from enforcement action even if it is not taking place on the date of the notice.

**Substantial completion** = "a fully detailed building of a certain character". A building may not be substantially completed even if the only outstanding works would not, alone, require PP.

**Date of an MCU** – consider the two factors of "the physical state of the building" and "actual, intended or attempted use". Neither is necessarily decisive.

**Significant interruption** – in MCU and condition cases, the breach must have probably continued throughout the whole period, such that the LPA could have taken enforcement action at any time.

Development that is immune from enforcement action is lawful although, where non-compliance with a condition has been become immune, it is only lawful to continue the same non-compliance. The condition is not discharged. If it is complied with again, another breach would need another ten years.

Planning Inspectorate

# Ground (a) and the deemed planning application

Pleading ground (a) gives rise via s177(1) to a deemed planning application (**DPA**). A fee is payable; planning merits cannot be considered if ground (a) is not ticked or the fee is not paid. The Inspector can then:

- **Grant PP in respect of the whole or any part of the matters or...the whole or any part of the land.**
- **Discharge any condition or limitation subject to which PP was granted.**

The description of development is taken from the allegation (as corrected). The Inspector cannot consider an alternative scheme that is not "part of the matters" or correct the notice for the purpose of granting PP. It is not possible to tie any PP granted to any plans. If the evidence shows the development could be modified within its description to make it acceptable, PP may be granted subject to a condition which requires that details are submitted to the LPA for approval and implemented within specified time frames. So that the LPA could enforce against any non-compliance with the condition, it should include a sanction akin to the requirements of the notice – perhaps to remove the building or cease the use – if the stipulations are not met.

The DPA is considered like any other retrospective planning application: with regard to the provisions of the development plan and any other material considerations. The human rights of the appellant and/or interested parties, and/or the public sector equality duty are not engaged in the legal grounds but may be in (a).

Success on ground (a) will mean the notice is quashed, unless there is a split decision. If PP is granted in part , the notice will be upheld but cease to have effect insofar as it is inconsistent with the PP – s180(1).

Planning Inspectorate

# Ground (a) cannot always be accepted – s174(2A)

Where the Enforcement Notice was issued in England on or after 25 April 2025

**1 Related Application?**

**Has there been a related planning application?**

- No – accept ground (a)
- Yes – go to next question.

**2 When?**

**When did the related application (including any appeal) cease to be under consideration?**

- Two+ years prior to the EN being issued? Accept ground (a).
- <Two years prior to the EN being issued? Decline ground (a).

**! What is a related application?**

**A related application is one where, if PP was granted for the development applied for, PP would be granted for what is specified in the notice as constituting a BPC.**

Planning Inspectorate

# Ground (f) – the requirements exceed what is necessary to remedy the BPC or injury

The starting point is to ascertain the purpose of the notice, that is, what the LPA wants to achieve. Ground (f) is not about "overcoming objections" or about the alleged development at all. It only concerns the requirements.

**Cease the use, remove the building, restore the site, comply with condition = remedy the BPC**

- Plead ground (f) if the requirements exceed what is necessary to remedy the BPC.
- Requirements are likely to be excessive if they remove lawful use rights, require improvements on the pre-existing condition of the site, or require resumption of a lawful use.
- Cease the use, remove the building, restore the site or comply with the condition are rarely excessive.
- Where development did not accord with approved plans, the notice can give a choice of requirements: demolition or compliance with the terms and conditions of the (extant) PP.

**Modify the use or building ("under-enforcement") = remedy the injury to amenity**

- For example, if the notice requires the bricking up of a window (rather than removal of an extension) to protect the privacy of adjoining occupiers, it may be that obscure glazing would suffice to the same end.
- But, even with "amenity" notices, an Inspector cannot consider planning merits which can only be considered via ground (a) if that is pleaded and accepted, and the fee is paid.
- Another constraint to variation is that a notice cannot require the carrying out of a scheme. It must tell the recipient what they have done wrong and must do to put things right.

Planning Inspectorate

# Ground (g) – the time for compliance falls short of what is reasonable

The word "reasonable" shows that the Inspector has discretion. However, planning merits are not considered under (g); by the time we get here, all opportunities to obtain PP, quash the notice or modify the allegation or requirements have gone. The question of what period for compliance is reasonable must be considered on balance between the harm caused by the development (as set out in the notice or in reasoning on ground (a)) and the interests of the appellant(s) and any (other) occupiers in respect of compliance with the requirements.

- Where the alleged development causes immediate and/or grave harm, perhaps in relation to highway safety, that could weigh against extending the period for compliance.
- Where upholding the notice means making people homeless, that might weigh in favour of extending the period. Ground (g) is the only ground in addition to (a) where human rights considerations apply.

An Inspector may decide that a reasonable period falls somewhere between what the notice said and what the appellant wants. There is no limit to what the period may be, but Inspectors generally resist giving more than one year unless there are exceptional circumstances. The route to gaining temporary PP is again ground (a).

NB – I mentioned that an Inspector can vary the terms of the notice, so long as doing so would cause no injustice. If there is no appeal on ground (f) or (g), we will only deal with anything obviously awry. Don't rely on our exercising the s176(1) power if you have a particular case to make for varying the requirements or period!

Planning Inspectorate

# The Planning Unit Primary, incidental & mixed Uses

Planning Inspectorate

1

**Why is the identification of the Planning Unit  important?**

2

**What to consider when identifying the PU?**

3

**Primary, incidental and mixed uses**

4

**Particular implications for enforcement**

Planning Inspectorate

# 1. The importance of the Planning Unit.

**Why is the identification of the Planning Unit (PU) important?**

The expression “planning unit” (PU) does not appear in the TCPA 90 or the GPDO.

As the EPLP states in P55.44:

“The planning unit is a concept which has evolved as a means of determining the most appropriate physical area against which to assess the materiality of change, to ensure consistency in applying the formula of material change of use.”

For there to be a material change of use, there must be some significant difference in the character of the activities from what has gone on previously as a matter of fact and degree.

Significance can change dramatically, depending on the physical area you choose to look at. The bigger the area, the less likely it is, that a change in the use of part of it will constitute a material change in the whole.

Planning Inspectorate

# 2. What to consider when identifying the PU?

*Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207.

The starting point is the “unit of occupation.”

“It may be a useful working rule to assume that the unit of occupation is the appropriate planning unit, unless and until some smaller unit can be recognised as the site of activities which amount in substance to a separate use both physically and functionally.”

The unit of occupation may coincide with but is not defined by ownership or tenancy. It is the area occupied for one or more primary uses.  We’ll come back to that.

Planning Inspectorate

# 2. Practical application – the unit of occupation

Don’t forget the starting point.

Don’t just assume the area of freehold or long leasehold ownership, or even the area covered by a planning permission is necessarily the unit of occupation for our purposes.

A classic illustration of this, and the significance of the PU, is provided by *Church Commissioners v SSE* [1996] JPL 669

A single shop (unit B12) in a shopping centre comprising over 300 units, that was occupied by an individual trader, was held to be a separate planning unit with its own primary use, even though it was located within a shopping mall, and it could be said that the whole centre was occupied for retail purposes by the landowners.

So, if a discrete unit is under the control of an individual, that will be the unit of occupation.

Planning Inspectorate

# 2. Practical application – the unit of occupation (cont)

In *Johnston & Johnston v SSE* [1974] 28 P&CR 424 individual garages or blocks of garages within an overall complex of 44 units were treated as separate planning units on the basis of the occupancies.

Widgery LCJ:

On the face of things, “the planning unit is the area occupied as a single holding by a single occupier...I would not for a moment wish to suggest that that is an absolute rule admitting of no exceptions." However, the court had not been shown "any reported case in which the planning unit has been settled as being an area of land comprised in two different holdings or occupations.”

He also commented:

“I would have thought that in almost every case of a block of flats, the flats being let to separate and different tenants, the planning unit would be the flat in question.”

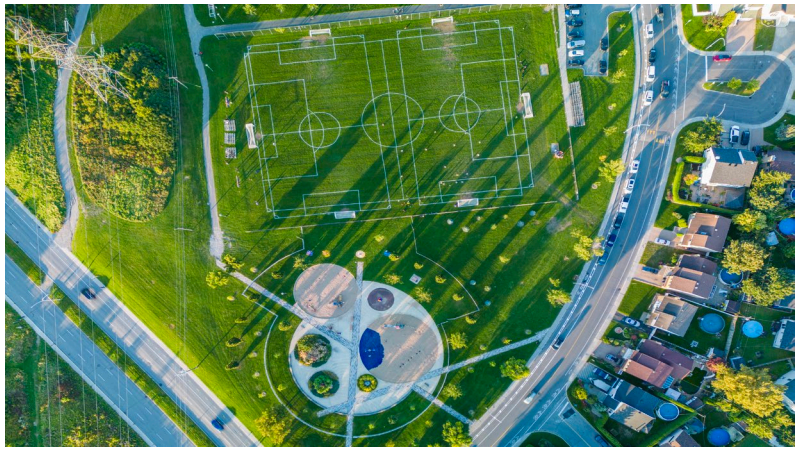
Planning Inspectorate

# 2. Practical application – physical separation

Sometimes this will be very clear, as there will be walls, fences, hedgerows or other physical barriers, but it could be more subtle.

Bridge J's expression in *Burdle* is useful. He talked about "a recognisably separate area."

It remains a question of fact and degree in any case, but different surface treatment, for example, might give rise to a recognisably separate area and therefore, sufficient physical separation.



Planning Inspectorate

# 2. Practical application – physical separation (cont)

- Enforcement appeal concerning permanent residential occupation of a boat on the14.5-mile long Driffield Navigation - a single waterway, managed by the Driffield Navigation Trust. It could be regarded as a single unit of occupation and the appellant argued the whole canal was the PU.
- The notice targeted a 0.6 km stretch, which could be identified as a physically distinct section of the canal, where the stationing of boats in significant numbers, was possible through the provision of mooring facilities.
- As a matter of fact and degree, I found that area to be the planning unit against which the materiality of any change of use could be assessed. (It was still a large area, and the great majority of moorings were used ‘in the course of navigation’, or as ‘home moorings’, for the storage of boats rather than residential occupation, so I still found no material change).

Planning Inspectorate

# 2. Practical application – functional separation

A physically (recognisably) separate area will not form a separate PU unless it is also occupied for different and unrelated purposes.

Consider the example of the unit of occupation comprising a dwellinghouse with a garden and garage.

If the householder starts carrying out car repairs on a significant scale in the garage, the whole unit of occupation will be a single PU in a mixed use as a dwellinghouse and for car repairs. This is because the functional relationship remains although there might be a degree of physical separation between the uses.

However, if the householder lets the garage to a different operator for car repairs, the dwellinghouse and garage will constitute different planning units. The garage will be a separate unit of occupation, and its use will be physically and functionally separated from that of the house.

Planning Inspectorate

# 2. Practical application – unit of occupation; physical & functional separation

Another of my own cases required consideration of the unit of occupation, physical and functional separation.

A notice alleged the material change of use from one lawful mixed use to another more complex unlawful mixed use.

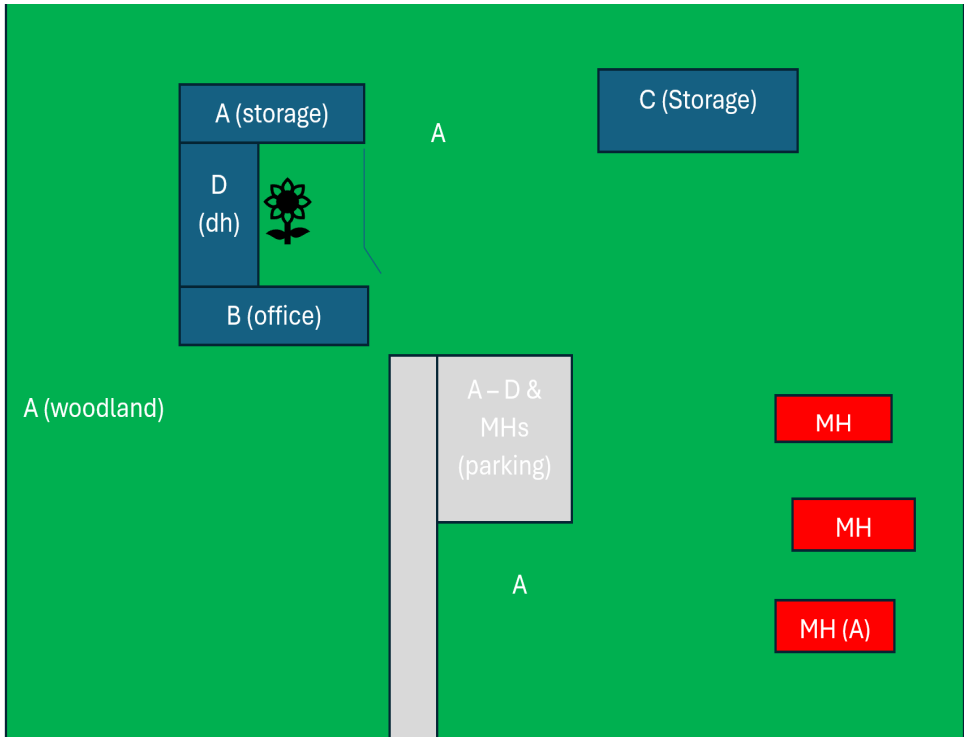
The overall site, edged red on the notice plan, was owned by the appellant A, but he let parts of it to others.

Planning Inspectorate

# 2. Practical application – unit of occupation; physical & functional separation

Within the overall site:

- Part of a U-shaped building complex, used as an office, was a recognisably, separate unit of accommodation and was separately occupied by B under a written tenancy.
- A storage compound was also a recognisably separate unit, occupied by C for the purposes of their business and subject to the payment of rent.
- Another part of the U-shaped building complex, a dwelling in the old stables and its adjoining fenced garden, also constituted a recognisably separate unit, occupied by D, subject to the payment of rent.
- Another part of the U-shaped building complex was occupied by A, but was also a recognisably separate area, and used by him for commercial storage in connection with his off-site catering business.




- The remainder of the site was used as woodland and for the stationing of 3 mobile homes for residential purposes. It was occupied by A, but other individuals also lived in 2 of the mobile homes. The mobile homes could be stationed anywhere in this area.
- The parking/manoeuvring area was in A's overall control, but was shared by everyone on the site; it was functionally separate from the rest of the site and physically, recognisably separate, due to its hard surface contrasting with the surrounding grassed areas of the remainder of the site.

I found that there were 6 PUs, one of which was in mixed use.

Planning Inspectorate

# 2. Three broad categories of distinction

In *Burdle*, Bridge J suggested the following broad categories of distinction:

A single planning unit where the unit of occupation has one primary use, and any other activities are incidental or ancillary;

A single planning unit that is in a mixed use because the land is put to two or more activities, and it is not possible to say that one is incidental to another; and

The unit of occupation comprises two or more physically separate areas which are occupied for different and unrelated purposes. Each area that has a different primary use ought to be considered as a separate planning unit.

So, it's also important to understand what is meant by "primary" and "incidental."

Planning Inspectorate

# 3. Primary, incidental & mixed uses

Put simply, a primary use is a main use, and incidental uses will be subsidiary activities, which are functionally related to the primary use.

Incidental uses may fluctuate, without there necessarily being a material change of use of the PU. For example, there may be various subsidiary activities at a factory, such as canteens, offices and staff/visitor car parks. Those activities will usually be incidental, and the primary use will be as a factory.

Planning Inspectorate

# 3. Mixed uses

This is where two or more primary (main) uses exist within the same PU.

Staying with the factory scenario if, for example, the office element expands to serve the business' factories world-wide, that may become a primary use, such that a mixed use as a factory and offices arises.

Activities carried on within a single PU cannot be incidental to activities carried on outside that unit. (*Essex Water Co v SSE* [1989] JPL914).

Planning Inspectorate

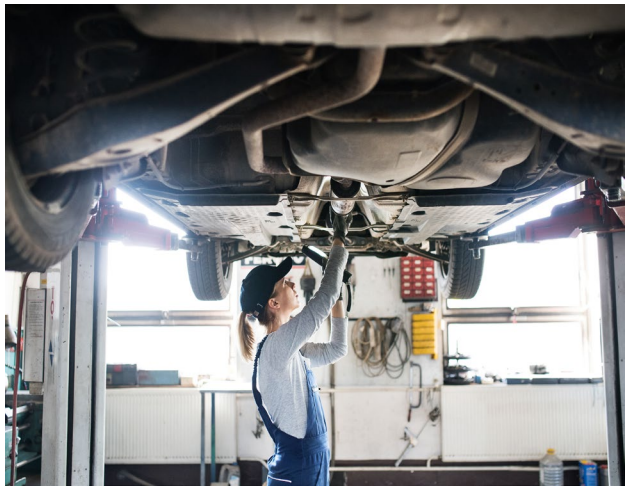
# 3. Mixed uses (cont)

I refer again to the example of a domestic garage. The parking of and occasional repairs to the family car will be incidental to the dwellinghouse use of the PU.

If the occupier starts carrying out car repairs on a significant scale, that will become a primary use, and the PU will be in mixed use as a dwellinghouse and for car repairs.

It's important to remember that a mixed use is a single use, in planning terms, and the allegation in an enforcement notice should refer to all components of any mixed use, even if only some elements are required to cease. (*East Sussex CC v SSCLG* [2009] EWHC 3841 (Admin).

In a complicated mixed-use site, if the allegation refers to primary and incidental uses, it should make clear which is which.



Planning Inspectorate

# 3. Mixed uses (cont)

**Other consequences of a mixed use being a single use include**:

- You cannot succeed on a ground (d) enforcement appeal, or a s191 LDC application or appeal, if only some elements of the mixed use have been carried on for the requisite period; and

- Whilst materiality must always be considered, the intensification of one element of a dual or mixed use to the exclusion of the other may amount to an MCU of the unit as a whole.

Planning Inspectorate

# 4. Particular implications for enforcement

Strictly speaking, **an enforcement notice does not have to be directed at the whole PU**, nor indeed does it need to identify it: *Hawkey and Others v SSE & anor* [1971] P &CR 610 and *Richmond upon Thames LBC v SSE et al* [1987] JPL 396.

In *Richmond,* the deputy judge said:
"…the question as to what or what is not a planning unit is not critical at the stage of the allegation by the authority contained in an enforcement notice, but it becomes critical at the time when it has to be established as to whether or not there is a material change of the planning unit on the facts of the particular case."

**But,** he added: "Of course, any prudent authority would ask itself that question before it issued and served an enforcement notice."

You need a good reason for not seeking to direct a material change of use notice at the relevant, entire planning unit, and you may get into difficulties if you have not properly addressed that issue.

Planning Inspectorate

# 4. Particular implications for enforcement (cont)

**Correction of the notice to reflect the PU(s)?**

It may be possible to correct a notice to refer to the correct PU, but increasing the area of land to which the notice relates is likely to cause injustice.

Furthermore, where one larger area covered by the notice really comprises several smaller PUs, correcting the notice to reflect that may require a very extensive re-writing of the notice, including the requirements and the periods for compliance.

It may be that such substantial alterations cannot be made without causing injustice, given the implications for how the parties submitted their cases. Indeed, that was my conclusion in the appeal I referred to earlier and at least one other I can recall, where the necessary corrections would have resulted in a notice very different from the one served on the appellant.

Planning Inspectorate

# 4. Particular implications for enforcement (cont)

**The further significance of the PU**

Creation of a new PU

A use which is authorised by PP, or which became lawful through the passage of time, is capable of being extinguished by the creation of a new PU in respect of the land in question. (*Stone & Stone v SSCLG & Cornwall Council* [2014] EWHC 1456 (Admin)).

Planning Inspectorate

# 4. Particular implications for enforcement (cont)

The implications for s57(4) - *Titchfield Festival Theatre Ltd v SSHCLG & Fareham BC* [2025] EWHC 883 (Admin)

The relevant facts :

There is a large building on the site comprising 3 distinct areas, A, B and C.

The enforcement notice was directed at Areas B and C.

The appellant sought to rely on a lawful use right for Areas A and B as a theatre, such that the notice should not require the cessation of the use of Area B as a theatre.

**S57(4)**:

“Where an enforcement notice has been issued in respect of any development of land, planning permission is not required for its use for the purpose for which (in accordance with the provisions of this Part of this Act) it could lawfully have been used if that development had not been carried out.”

Planning Inspectorate

# 4. Particular implications for enforcement (cont)

So, the service of an EN may allow a landowner to revert to the previous lawful use. However, *Tichfield* confirmed, following *Stone & Stone v SSCLG & Cornwall Council* [2014] EWHC 1456 (Admin), that an existing lawful use is capable of being extinguished by the creation of a new PU in respect of the land in question.

The judge said:

"40…it is clear that the exception created by section 57(4) relates to the land which is the subject of the enforcement notice." (So, if the lawful use rights relate to a different PU, s57(4) won't preserve them).
"79…

(i) The inspector was right to say that land which is subject to the enforcement notice was Areas B and C and that the lawful use relied upon relates to Areas A and B…

(ii) The inspector was right to say that the land subject to the enforcement notice did not have a lawful use as the lawful use does not include Area C.

(iii) Given her findings on the creation of a new planning unit… the inspector was right to say that Areas A and B no longer exist as a planning unit."

Planning Inspectorate

# 4. Particular implications for enforcement (cont)

**An aside:**

Section 57(4) provides a right to revert to a use which is lawful in accordance with Pt III.

Taken in isolation, this might suggest you don't have the right to revert to a use which has become lawful through the passage of time, rather than through a grant of PP under Pt III. However, s191 defines lawfulness, "for the purposes of this Act", so that must include Pt III.

Furthermore, *Titchfield* concerned lawful use rights acquired through the passage of time and there was no suggestion that this alone deprived the appellant of the right to revert under s57(4)).

Planning Inspectorate

# Questions

Planning Inspectorate

# Thank you for attending!

Please complete the webinar evaluation form

## Future webinars

Coming up....Local Plans (September)

See our webinars page on GOV.UK/PINS for all past recordings and to be notified of future webinars.