

NALC Planning Training Session #3

An Introduction to Enforcement

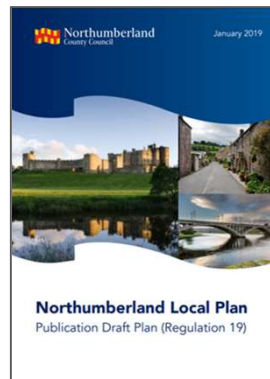
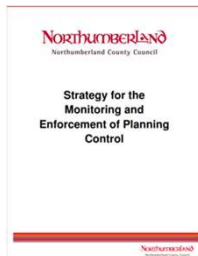
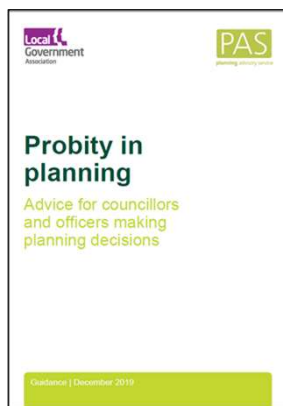
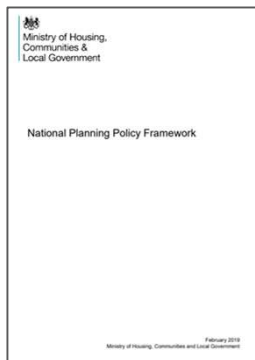
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Key documents ..for library



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All sites are not created (or looked after) equally



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**A problem after a planning decision,
or after no decision?**

ENFORCEMENT

UPON RECEIVING REPORT OF ALLEGED
BREACH OF PLANNING REGULATIONS
– LPA **MUST INVESTIGATE**

This causes raises proportionality issues

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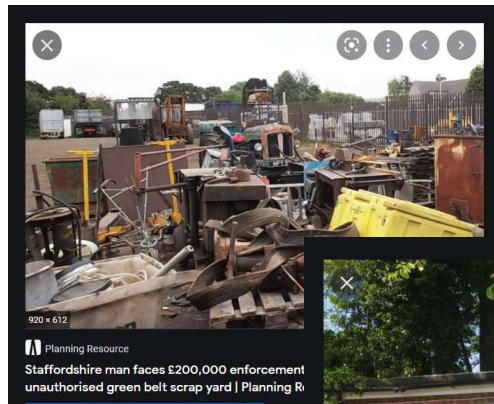
What is a breach of planning control?

Breach of planning control is defined in section 171A of the Town and Country Planning Act 1990 as:

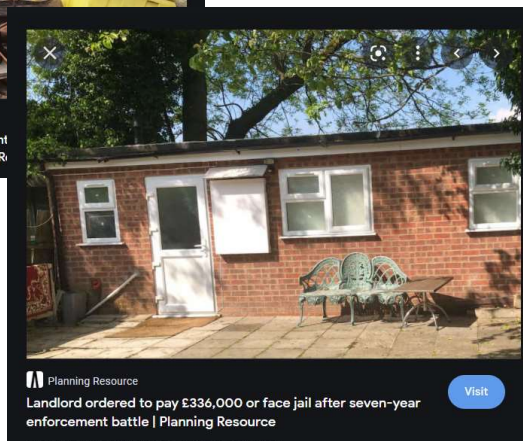
- Carrying out of development without the required planning permission;
- Failing to comply with any condition or limitation subject to which planning permission has been granted;
- Any contravention of limitations or conditions on permitted development rights

....constitutes breach of planning control against which enforcement action *may* be taken.


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Penalties potentially life changing...



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Investigation – series of steps
(investigation can end at any point, and case will be closed)

- Planning history checked to see if permission has been granted
- Site visit to check if planning permission is required
- Contact made with person in breach
- Retrospective application requested or breach resolved
- If application approved – case closed
- If application is not received/approved and breach is not resolved then enforcement action may commence, **if considered expedient to pursue**

The rule of 50%
Not planning > not breach > would grant > can amend > not expedient

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EXPEDIENCY

When a breach of planning control is investigated the guidance states that enforcement action is discretionary and Local Planning Authorities should act proportionately in responding to suspected breaches.

There is therefore a degree of subjectivity but the decisions are based taking into account local and national policy. In deciding whether it is expedient to take action **we must consider the harm** which the breach is causing and ultimately whether we believe the development would be supported in the event an application was submitted.

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“There is a range of ways of tackling alleged breaches of planning control, and local planning authorities should act in a proportionate way”

- LPAs have discretion to take enforcement action, when they regard it as expedient to do so having regard to the development plan and any other material considerations. This includes a local enforcement plan, where it is not part of the development plan.

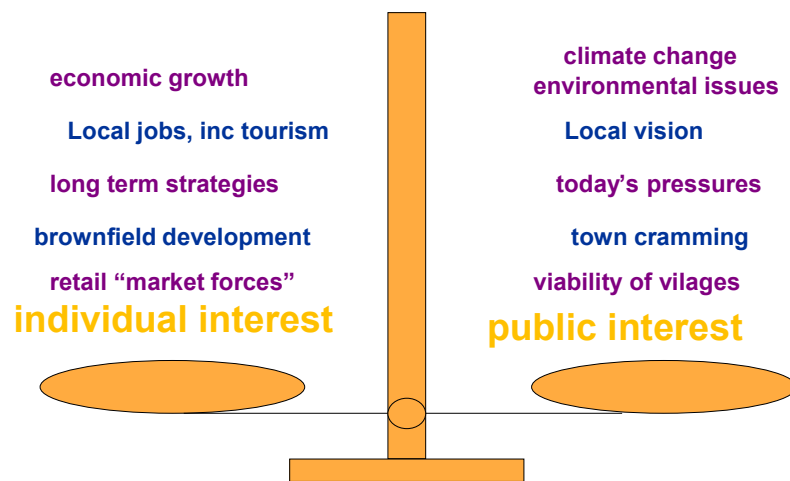
High priority - significant potential harm given a high priority in officer resources. Often means landowners/occupiers only get one opportunity to remedy breach before enforcement action considered.

Medium priority - Some potential harm, but landowners/occupiers will be encouraged to negotiate a remedy to breach either by retro application or mitigation or remediation of the breach.

Low priority - minor breach with minimal harm and majority of cases will not warrant further action.

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BALANCING ISSUES



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“Primacy of the Development Plan”

“If regard is to be had to the development plan... the determination must be made in accordance with the plan unless material considerations indicate otherwise”.

Not changed by 5 year supply or NPPF

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Ignore the Plan?

- Would be unlawful
- But can make decision which seems to *conflict* with the Dev Plan - If justified on the merits of case, in light of all other material considerations like

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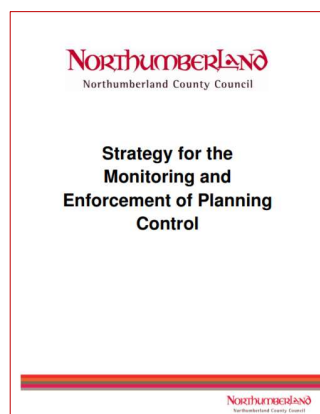
Law distinguishes between whether something is a **MATERIAL CONSIDERATION** and **WEIGHT** given

“The former is a question of law. The latter is a question of planning judgement which is entirely a matter for the planning authority. Provided that the planning authority has regard to all material considerations, it is at liberty (within the test of “reasonableness”) to give whatever weight the planning authority thinks fit or no weight at all.....”

Tesco Stores Ltd v Secretary of State for the Environment 1995.

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Complex, emotive area
– but we should not be proxy for neighbour disputes



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Many cases down to honest misunderstanding,
including complexity of PD/poor advice from builders
...but others

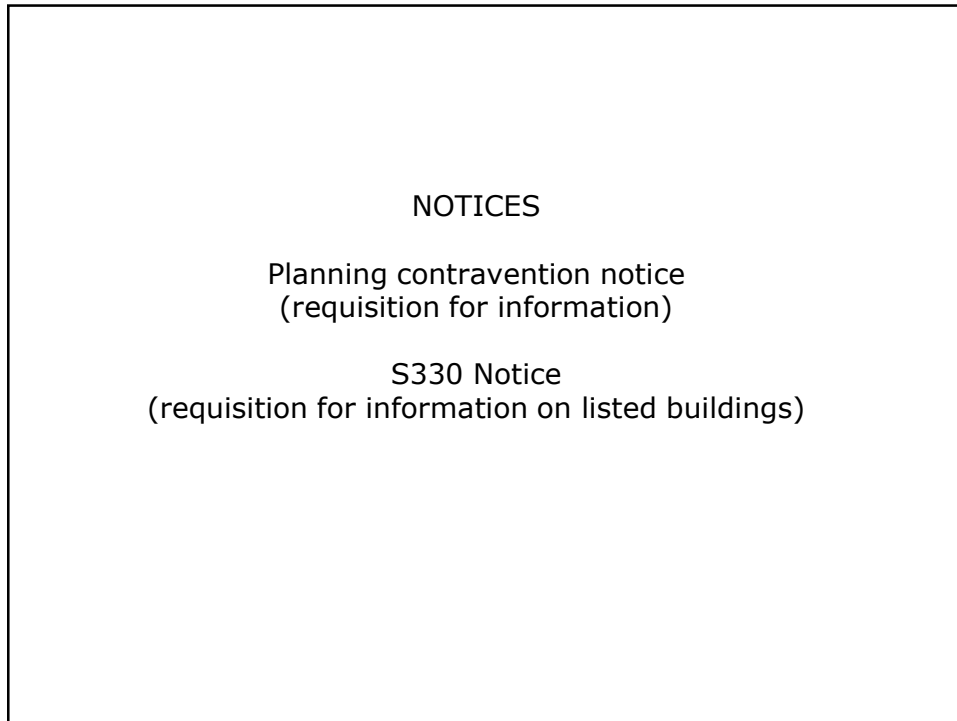


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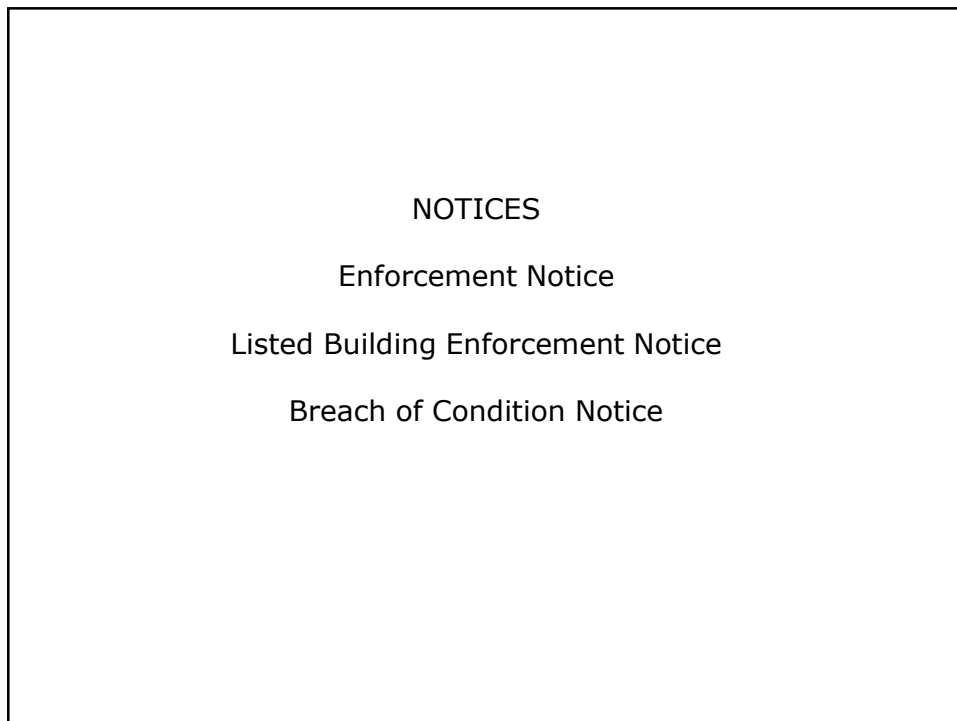
6 year legal process, lead to clarification of
“concealment” issue



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NOTICES

Temporary Stop Notice

Stop Notice

Injunction – Stop Notice not permitted on a Listed Building

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NOTICES

S215 – Untidy Land

S225 – Unauthorised Advertisement

S225 (a) – Removal of structure on unauthorised advertisement

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Tree Preservation Orders and trees in conservation areas

Unauthorised tree works – prosecution and/or tree replacement

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Retrospective applicationsextremely unpopular

- LPA can invite a retrospective application, in circumstances where considered that application is the appropriate way forward to regularise the situation,
- Either full or s73
- Although LPA may invite application, cannot be assumed that permission will be granted, and LPA should not fetter its discretion prior to the determination of any application for planning permission – **such an application must be considered in the normal way...**



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Questions..



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Next Steps

- For detailed questions please contact Rob
- Future sessions will be arranged on the Local Plan policy approach to planning decisions and s106 etc
- The Northumberland Local Enforcement Strategy is being reviewed in 2022 and NALC, PCs and TCs will be consulted

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