



## INSTITUTE OF HISTORIC BUILDING CONSERVATION

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Dear Sirs

### **Review of the Planning Enforcement System in England**

I refer to the current review of planning enforcement.

The Institute of Historic Building Conservation is the professional institute, representing conservation professionals in the public and private sectors in the United Kingdom and the Republic of Ireland. It has around fourteen hundred members divided between fourteen branches. The Institute exists to establish the highest standards of conservation practice and to support the effective protection and enhancement of the historic environment.

The IHBC strongly agrees that the current enforcement provisions need to be simplified and, most of all, made much quicker. While strongly supporting the review in principle, the IHBC is most concerned that:

**1. There is no reference to the historic environment, and in particular the statutory duties imposed by sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.** Given the special weight that these provisions afford to the historic environment in the exercise of powers under the Town and Country Planning Act 1990, this must be considered a serious omission.

**2. There is no mention of enforcement of the provisions relating to conservation area and listed building controls.** These provisions are generally administered by the same officers that deal with planning enforcement, with technical advice from conservation officer colleagues. In some instances, unauthorised works would breach both planning and historic building controls.

**3. The lack of 'joined up' thinking in the review of enforcement is particularly disappointing.** The IHBC is very disappointed that past failures (the Carnwath Review) to take a joined-up approach have been repeated, and the promise to review listed building enforcement has not been honoured. What is even more worrying is that this failing in the current review has come at a time when the new draft Planning Policy Statement to replace PPGs 15 and 16 is imminent: where is the joined-up approach promised in the Heritage Policy Review?

**4. The review is too narrowly focused (on breaches of control, rather than securing quality).**

The review tends to look at enforcement as being about resolving breaches that are brought to the attention of the local planning authority. The IHBC would prefer to see the planning process being reformed to give a more pro-active emphasis on quality assurance. Enforcement is part of this quality assurance function.

Turning to the detail of the document, the IHBC would make the following comments:

**Chapter 4: Better Enforcement – Fundamental Principles of Planning Enforcement**

**Local Planning Authorities’ Discretionary Duty**

The IHBC would agree with the continuation of the discretionary approach towards enforcement by local planning authorities.

**Resources and Proactive Approach by Local Planning Authorities**

Resources for enforcement are clearly inadequate in most local authorities. Effective enforcement would require a substantial increase in the number of enforcement staff employed by the average local authority.

**Retrospective Planning Permission**

The Institute has strong concerns in relation to “retrospective” applications. It considers that, as a matter of principle, such applications should only be able to legitimise a development **from the date on which permission is granted (i.e. not retrospectively)**. It considers that it is inevitable that retrospective applications will be considered more leniently than general applications for planning permission. There are various reasons for this:

- i. Negotiations on planning applications can help to lift the quality of development well above minimum acceptable standards, often to the benefit of the developer as well as the public. Where the development is already constructed, there is much reduced scope for suggesting beneficial alterations.
- ii. The consequences of refusing retrospective consent can be far-reaching, involving controversy, time consuming appeals, and potentially high costs to the developer (perhaps even threatening the viability of the company).
- iii. Where the case for approval or refusal is finally balanced, there is likely to be a tendency to accept development even if on balance it causes some harm.

The IHBC considers that a much firmer stance needs to be taken on retrospective applications. Local Planning Authorities should be advised to treat retrospective schemes with the same rigour as other applications. It may be appropriate to consider limiting the developer’s rights of appeal where they have developed retrospectively.

**Possible Approaches to Dealing with Retrospective Planning Applications**

The IHBC strongly agrees with the proposals to require a fee where developers refuse to apply for retrospective planning permission.

**Retrospective Planning Permission and Higher Fees**

It is agreed that higher fees for retrospective applications would act as a disincentive to applying. However, where the developer refuses to apply, the certificates referred to in 4.20 should require a double or even higher fee to be paid. This would then act as an incentive to apply retrospectively.

**Chapter 5: Better Enforcement – Enforcement Powers**

One reason that local planning authorities are reluctant to take enforcement action is that they do not have adequate staffing resources. However it should be noted that formal enforcement action may be taken only after efforts to resolve the problem by negotiation have failed. To use the number of formal notices as an index of enforcement activity will at best be a partial indication of a planning authority’s work in this field, when resolving problems by negotiation can be both more expedient and a far more constructive use of scarce resources.

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## Enforcement Notices

It is essential that the Government undertake research into the reasons for the decline in the number of enforcement notices being served before making any decisions on reforming the system. The IHBC believes that understaffing resulting from pressures to continually reduce expenditure is a likely factor behind this trend.

## Handling of Enforcement Appeals

The IHBC is extremely concerned over the Government's current targets for handling appeals. These are far too lax, and create uncertainty over long periods for developers, the public and local planning authorities. There is a vast contrast between the times local planning authorities have to determine applications and the targets for dealing with appeals. The IHBC welcomes the undertaking to tighten these deadlines. The aim should be to adopt the following targets within three years: written representations within 16 weeks, hearings within 20 weeks, inquiries within 24 weeks. Tighter deadlines than these should be possible in the longer term.

## Stop Notices

The compromise would perhaps be to greatly limit the level of compensation payable in respect of stop notices. However, on balance the IHBC would support the removal of the compensation provisions altogether (ultimately the developer chooses to develop unlawfully). It should be possible to serve a stop notice without an accompanying enforcement notice. Note: The continuing lack of a Listed Building Stop Notice remains the IHBC's single greatest concern in relation to Listed Building Enforcement, given that failure to stop unauthorised works immediately can lead to partial or complete loss of the building.

## Conditions and Breach of Condition Notice

The IHBC agrees that rights of appeal should not be introduced for BOC notices.

## Monitoring the Implementation of a Planning Permission and compliance with Conditions

Departure from approved plans and non-compliance with conditions are responsible for substantial degrading in the quality of development in some instances. The IHBC supports the suggestions to introduce *notices on site* and *self-certification* in relation to general development. For historic buildings, a *certificate of compliance* should be introduced. This would be issued by the local planning authority to confirm that alterations were of an appropriate standard, in accordance with consents and conditions.

## Planning Contravention Notices

The provisions of Planning Contravention Notices should be extended to provide for a power to require the submission of a planning application.

## Time Limits

The IHBC agrees with the arguments for the abolition of the 10 year rule.

## Tackling Delays

It is clearly desirable for enforcement notices to be issued soon after retrospective planning permission is refused. Government guidance should strongly encourage this. Local planning authorities should have the discretionary right to decline to determine applications for lawful planning permission once an enforcement notice has been issued.

## The Double Deemed Fee

The entire fee should be paid to local planning authorities. However, this alone will not properly fund effective enforcement.

## Training and Experience

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There is a serious need for magistrates to receive training on planning, historic building law, and enforcement. Training would also be useful to help establish a more 'street-wise' approach to dealing with flagrant breaches of planning control. Such training should emphasise the serious nature of breaches of listed building law, especially where the destruction of historic fabric is concerned. Emphasis also needs to be given to the training of enforcement officers to develop a better understanding of the kind of issues that can arise in relation to the historic environment.

## **Penalties**

The IHBC would support a substantial increase in the maximum level of fines and would encourage clear guidance that serious breaches of planning control are best dealt with by Crown Courts.

## **Deferment and Delay**

There is no doubt that deferment is used as a tool for delay in some instances. The suggestion of limiting deferments to one is welcomed.

## **Chapter 6: Review of PPG18**

The emphasis of PPG18 should be changed, reflecting the issues raised above, to ensure that flagrant breaches of planning control are less readily accommodated.

PPG18 neglects considerations of enforcement where unauthorised works impact on the historic environment and therefore Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 would apply. Whilst enforcement provisions relating to listed building and conservation area controls have been best dealt with in PPG15, general planning enforcement involving the historic environment must be fully dealt with in PPG18. The new Planning Policy Statement on the Historic Environment will need to be cross-referenced to PPG18 (and vice versa). IHBC would be pleased to work with the ODPM to develop appropriate guidance.

I trust that these comments are helpful.

Yours faithfully

Dave Chetwyn  
Consultations Secretary