Planning Enforcement England:

At the Crossroads
Abstract

Planning Enforcement as a service, profession and activity has historically enjoyed far less focus and resources than the other elements within the planning trinity. Despite a brief renaissance during the mid-noughties the unprecedented budget cuts facing local authorities and the structural, procedural, regulatory and resource changes that have been brought about by the coalition government’s reforms to planning generally, has once again forced planning enforcement out in to the cold. There is real concern that not only is the momentum of the positive changes made over the last decade being lost but that planning enforcement faces a very fundamental questioning of its worth. This report investigates the state of planning enforcement as perceived by both public and private sector planning professionals and whilst many consider that the wider planning profession, government and academia have failed to fully appreciate the value of planning enforcement, the system itself does not appear to be fundamentally flawed. Rather it is the continued under investment and current management of planning enforcement services across the country, which threatens to undermine the profession and those who work within it. The implications of this are serious, and include a degraded environment and abused planning system. Examples of good practice are emerging and organisationally the profession is beginning to raise the profile of enforcement. However, much more is needed to be done before the value of planning enforcement to the effective management of the built and natural environment is fully appreciated.
Contents

The Research Team and Acknowledgements

Chapter 1: Introduction 1

Chapter 2: Approach 4

Chapter 3: Results 6

Chapter 4: Options and Analysis 11

Chapter 5: Looking Forward 26

Figures

1. The Planning Trinity 1

Tables

1. Record of retrospective LDCs and RPAs received 9

2. Recommendations 28/29
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Planning Enforcement England: At the Crossroads
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CHAPTER 1: INTRODUCTION

The election (in 2010) of the coalition government in the United Kingdom has led to further and fundamental changes in the planning system in England. Structural, procedural, regulatory and resource transformations have all occurred and the implication of these has been felt across the broad spectrum of the planning profession. This includes planning enforcement (hereafter referred to as ‘enforcement’).

This report is the output of research undertaken with the support of RTPI NAPE to inform current and future thinking on enforcement in England. The research aim was to provide a robust insight into the position and condition of enforcement in England today, consider the potential opportunities and threats moving forward, and to make recommendations on the introduction of possible new measures to ensure that the English enforcement system is fit-for-purpose in the future.

Enforcement has always been a feature of the management of the built and natural environment. Over time, as a true system for town and country planning emerged in the UK, so too did a ‘system’ for its enforcement. Since the inception of the 1947 Act the enforcement system has evolved and grown, both in terms of its perspective and the scope of tools available.

In the wider planning landscape, enforcement is one part of the planning trinity (figure 1) but its emphasis and position within this structure has varied over time. The advent of the Planning and Compulsory Purchase Act 2004, and the associated emergence of the spatial planning approach and development management, established a different cultural context for planning and added renewed significance to enforcement.
The noughties also saw a growing recognition that enforcement had historically suffered from under-investment and that its position within the planning trinity merited further consideration. In 2006 the Department for Communities and Local Government (CLG) carried out a review of enforcement. This not only raised the profile of enforcement it also highlighted its importance within a ‘credible’ planning service.1

In 2008 the Planning Advisory Service (PAS) and the Advisory Team for Large Applications (ATLAS) published ‘Case Study: a stitch in time’. This document recognised the historic status of enforcement as a ‘Cinderella service’ which had not received adequate resources or attention. Issues around backlogs and complaints highlight clear symptoms of the aforementioned limitations, but the document also recognised the importance of enforcement within the development management approach and in the positive shaping of communities.

‘A stitch in time’ is based around a series of case studies which highlight key progressive changes that were bringing success and positive change. These include the establishment of the National Association for Planning Enforcement (NAPE – now RTPI an RTPI Network), the creation of robust policy frameworks, enhanced resources and training, integration, and the execution of a more pro-active, collaborative and solution orientated approach embracing compliance monitoring and negotiated solutions.

More recently the coalition government has further highlighted the importance of robust enforcement with the Localism Act 2011 establishing new powers that sought to remedy acknowledged shortcomings in the existing options available to local planning authorities (LPAs).

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The National Planning Policy Framework (NPPF) has now become the key national driver for enforcement moving forward. In line with the wider approach of streamlining planning policy the specific enforcement comment is brief, limited to a single paragraph, but what it does say is positive in respect of its role: -

“Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so.”

Today, enforcement continues to evolve in the face of a rapidly changing planning landscape and against a background of unprecedented local authority cuts. This report represents a timely opportunity to reflect upon the current state of enforcement and to consider its future. It is also an opportunity to propose a potential model for a system that can deliver the outcomes required within the context of the wider planning system for England.

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CHAPTER 2: APPROACH

This project aims to investigate the importance of an effective enforcement system to the delivery of a robust, effective, efficient, and delivery focused process of development. Enforcement is a relatively little explored area of planning and yet it supports the entire system. It plays an important role in post-decision project management and delivering the certainty and legitimacy required in a modern system of development delivery and place making. The project specifically intends to:

- Explore the role and significance of enforcement within the context of the development management approach, good planning practice and economic growth from a theoretical and practice perspective
- Identify the specific attributes and value of an effective enforcement service
- Consider the potential risks to best practice service delivery in the context of resources, skills, knowledge, processes and barriers to implementation
- Present recommendations on the introduction of possible new measures to ensure that the English enforcement system is fit-for-purpose in the future.

The project was underpinned by a comprehensive literature review and its outcomes informed through a methodology based around 3 distinct primary research tools; a survey, personal interviews and workshops.

1. Survey

Between the dates of 13 August 2013 and 25 January 2014 a survey was made available for completion on the Survey Monkey web-site. 136 surveys were completed. An e-mail was also sent to all LPAs across England with an invitation for Planning Officers, Enforcement Officers and Compliance Monitoring Officers to complete the survey. The Research Team also promoted the survey though publication in the NAPE Newsletter and at the NAPE Annual Conference.
2. Personal Interviews

Nine interviews were conducted with planning professionals from both the public and private sectors and Elected Members (Councillors).

3. Workshops

Four workshops were facilitated by the research group, as follows: -

1. University of the West of England, 3 February 2014 – 16 attendees
2. Stockport Metropolitan Borough Council Offices, 10 February 2014 – 9 attendees
3. London Borough of Haringey Council Offices, 17 February 2014 – 9 attendees
4. UWE / NAPE Conference, 10 April 2014 – 50 attendees

Each workshop was attended by a mix of local authority planning officers as well as professionals from private planning practices with discussions guided by a program designed by the research team.
CHAPTER 3: RESULTS

The statistical results presented in this chapter are drawn from the online survey and give an insight into the views of current enforcement and development management professionals within the private and public planning sector. An analysis of these results, and the comments submitted in association with the options selected, can be found in Chapter 4, alongside the comments noted from the interviews and workshops.

**Question 1: Which of the following best describes your planning enforcement service?**

- No dedicated service - Enforcement functions undertaken by development management team – 2.5%
- Dedicated team within the planning service – 77%
- Dedicated team (of planning enforcement specialists) within a wider enforcement team – 4.1%
- Enforcement function delivered in multi-function council enforcement team (with no specialist planning enforcement presence) – 2.5%
- Other – 13.9%
Question 2: Is your planning enforcement function under review?

- Yes – 25.7%
- No – 25.7%
- Pending - 7.1%
- Review already completed – 41.6%

Question 3: How do you feel your enforcement service is viewed and supported by your local authority?

- High Priority – 20.2%
- Priority – 39.4%
- Required but not a priority – 40.4%
- Not required and not a priority – 0.00%
Question 4: Does your enforcement service include a compliance/monitoring function?

- Yes – 46.7%
- No – 53.3%

Note: Post-survey discussion indicated that this question was broadly interpreted with many of the positive responses alluding to the role of dedicated Section 106 Officers undertaking the proactive monitoring of compliance with Section 106 agreements. The figure for proactive compliance monitoring of planning permissions (planning conditions and approved plans) is in reality considerably lower based upon the outcomes of the interviews and workshops.
Question 5: Approximately how many Lawful Development Certificates (LDCs) and Retrospective Planning Applications (RPAs) did you receive in the last 3 calendar years? (Completed survey responses only)

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Above: Table 1 – Record of retrospective LDCs and RPAs received
Question 6: Do you levy a charge for compliance/monitoring activities?

- No but we would consider it – 28.4%
- No and we would not consider introducing one at this time – 22.7%
- We do not have a compliance/monitoring function – 29.5%
- Yes we charge a levy – 19%

Note: The levied charges are again a reflection of the Section 106 interpretation and the monitoring charges already long-established for the practice of monitoring compliance with Section 106 agreements.
CHAPTER 4: OPTIONS AND ANALYSIS

The results of the online survey, interviews and workshops provide a clear picture of enforcement in England today and also give an insight into both best practice and the challenges being faced. In this chapter the results from chapter 3 are considered alongside the interviews and workshops held in the period immediately following the online survey.

An interesting outcome from the research is the general view that the policy and mechanisms available to enforcement professionals are broadly adequate. The transition to the NPPF and the associated reduction in national policy was highlighted by a number of respondents as problematic, but the profile of enforcement arguably appears to have increased since the Coalition Government came to power, notably with additional powers passed down by the Localism Act 2011.

Structure

The survey initially sought to establish the extent to which enforcement exists as a defined and distinct service within LPAs. Traditionally, enforcement officers were often not qualified planners, but would be (and sometimes still are) ex-military or, particularly, ex-Police. Typically these teams existed as a functioning unit, usually within the same department as the development control/management team. More recently however, the cultural and organisational shift associated with the development management approach, resource challenges, and local government reorganisations, have led to a greater diversity of approaches, with enforcement being absorbed into other teams in some cases. In some LPAs the role of enforcement has been subsumed into a generic enforcement team; cross cutting teams responsible for anything from enforcing dog fouling legislation to issuing parking tickets.

When asked the question, which of the following best describes your enforcement service, the overwhelming majority did identify themselves as existing as a dedicated team within the planning section. The key advantages associated with such a structural approach were the concentration and preservation of knowledge and skills within a dedicated group.
The advantages of a strong team approach were also highlighted, together with the benefits of a robust and effective working relationship with other teams particularly Development Management. An interesting counterpoint to this model however is the potential risk of isolation and lack of effective integration and partnership working with other teams. This issue appears primarily dependent upon the wider structure and management approach realised within a given LPA; but clearly in some cases the enforcement teams felt isolated and poorly integrated to such a degree that service delivery was impacted.

A small number of respondents identified themselves as working within wider council enforcement teams, sometimes as a specialist enforcement officer, and in other cases acting as a generalist within a council-wide enforcement team. The latter of these raised significant concern from respondents, interviewees and workshops regarding the complexity and unique characteristics of planning enforcement. Due to the discretionary and legally interpretable characteristics of enforcement it was presented as absolutely necessitating a degree of specialist role identification; the risk of inadequate skills and knowledge, or indeed of fade for those previously working as specialists, was highlighted.

The management of the enforcement model is clearly key. Advantages can be found with distinct enforcement teams working effectively with other groups, and also with specialists working within combined enforcement teams. Clear synergies associated with areas such as Housing, Building Control, Anti-Social Behaviour, Policing and Environmental Health point to a need to ensure effective working relationships exist, to maximise cross-LPA and partnership effectiveness. Such synergies may exist within a given authority whereby appropriate groupings can be formed. That said, whilst such close relationships are vital, a 'tipping point' does exist; the creation of 'enforcement teams' without a (planning) enforcement specialism is a clear risk to the ability of the LPA to operate and provide a robust and effective (planning) enforcement service. The role of enforcement as a profession within such structures therefore needs to be carefully considered.
The option of development management officers undertaking the enforcement function provided for an interesting debate. From the perspective of delivery the debate centres around whether a development management officer would be in a position to deliver an enforcement service with the same degree of effectiveness as a dedicated enforcement officer; a key question raised concerned the ability to maintain the knowledge and skills in a scenario where erratic and potentially infrequent contact with enforcement tools may exist. The majority view was that the complexity and unique characteristics of enforcement make a distinct enforcement service desirable, but factors of scale and wider organisational questions will be relevant here.

### Case Study 1 – The Benefits of Cross Departmental and Partnership Synergies

A large industrial estate in Kingswood, South Gloucestershire had been progressively subjected to unauthorised sub-division over the period of a decade to cater for a whole range of unlawful B2 and B8 uses. The local authority received many formal complaints about working hours, the noise of vehicles, on-street parking, external storage, littering and the general visual deterioration of the site. It became apparent that a number these complaints had been submitted to various departments, who each held important knowledge. Consequently, a task force was formed headed up by the authority’s Environmental Health and Enforcement teams.

Following 6 months of planning and cooperation with a range of internal and external partners, a joint visit was prepared. That visit involved 20 Police Officers accompanied by officers from Environmental Health, Planning Enforcement, Building Control, Business Rates, Council Tax, the Fire Service, the Environment Agency and the Health and Safety Executive.

As a result of the local authority’s strategically driven cross departmental and external partnership working, problems were addressed by the most appropriate department, whilst some of the unlawful units were shut down by the fire and police services. Many other units became subject to Building Control action whilst Section 215 notices were issued to deal with the visual harm that was identified within the external areas.
A further area of concern highlighted by the research concerns the target driven performance of development management, when compared to enforcement, which has no compulsory targets. In a system where development management officers are responsible for delivering enforcement services, enforcement issues could become vulnerable to the pressures of development management priorities. Such a factor could risk the ability of the LPA to operate and provide a robust and effective enforcement service, and where it fails to do so, may leave the LPA vulnerable to findings of maladministration by the Local Government Ombudsman (LGO).

**Review, restructuring and staffing**

A clear issue currently is the restructuring and review of enforcement services as part of wider local authority changes. In the majority of cases, and against on-going cuts to local authority budgets, these are driven by the need to find efficiency savings. The majority of persons interviewed identified themselves as employed in departments that had been either restructured, were in the process of a restructure or had a restructuring planned. In addition, under-staffing was highlighted as a real and growing issue in the research undertaken.

Concerns exist that staffing and other cuts are impacting upon the ability of the LPA to deliver a viable service. The research identified a number of authorities where reductions had been significant and the remaining staff, sometimes a 'lone worker', voiced an inability to deliver a comprehensive service. Insufficient resources pose the risk of a failure to meet statutory requirements in enforcement service, in turn making the LA vulnerable to Ombudsman action. Even where basic service needs are met, the resource driven prioritisation of delivery appears to be severely compromising the ability of enforcement professionals to operate in a proactive manner. This can create more significant and resource demanding problems where formal action is required at a later stage.

There appears to be a very real risk to the effective management of the built and natural environment within local authority areas where resources are not optimum. This exists where resource savings are made through the wholesale reduction in staffing numbers or the creation of generic enforcement teams without adequate (planning) enforcement specialists.
Priorities

The research suggests that enforcement has a different status between authorities. Political and council support, as well as leadership, appears key to the extent to which enforcement is supported. The research suggests that around 40% of respondents believe that enforcement is a priority. Where this is the case, there is also evidence of a greater degree of resource support. In one case, engagement with Members to highlight the value of enforcement is believed to have led to a change in the planned levels of resource reductions to be applied to the service.

The question of political support is also significant. In some instances, enforcement is seen as being a useful ‘tool’, given its ability to address and remedy matters of concern to the electorate. In such cases the value of enforcement is recognised and whilst motives may vary, this can provide greater support for the enforcement service.

Reference has already been made to the longstanding onus upon LPAs to meet Development Management targets, which are closely monitored by national government. A clear issue here for enforcement is that there are no national Key Performance Indicators. Discussions at the workshop sessions suggest that there is a strong case for establishing local enforcement performance targets. Measuring performance can help establish a higher profile for the enforcement service both within the local authority and amongst wider stakeholders.

Compliance and monitoring

Compliance and monitoring proved to be an area of broad consensus in this research; it is important to the delivery of a comprehensive and robust planning enforcement service, but resource pressures make the realisation of these functions limited in some cases.
Ensuring compliance with planning rules and planning permissions has traditionally been overseen by the enforcement service. It is vital in ensuring authorities adopt a proactive, development management approach to enforcement. It can deliver the dual objectives of guaranteeing acceptable development on the ground while maintaining public confidence in the planning system. Compliance monitoring ensures that approved development is delivered in the terms of its consent, which may be the product of exhaustive negotiations and consultation. As such compliance monitoring reinforces the essential and democratic building blocks of the application process.

A worrying statistic from the research is that 53% of respondents identified their LPA as being without a compliance and monitoring function. This supports statements made through the interviews and workshops, which point to a lack of compliance and monitoring in a number of cases due to resource limitations. Such a position is contrary to the proactive stance that development management is modelled upon, and is furthermore perverse in that the absence of robust compliance and monitoring can lead to further and more significant issues at later stages.

The importance of compliance and monitoring appears to be recognised by all concerned but the ability to undertake it is quite a different matter. This issue is strongly linked to the financial challenge associated with enforcement but also reflects LPA approaches and priorities. The results of the study indicate that LPAs have utilised post decision monitoring to varying degrees. One argument made at the workshops was that LPAs need only ensure compliance with pre-commencement conditions, “If developers comply with pre-commencement conditions they can be trusted to complete the development in accordance with the planning permission.”

Compliance monitoring is also ideally placed to influence the forward planning and development management processes, thereby truly integrating the enforcement service into mainstream planning and allowing it to fully interact with the other actors within the planning trinity. It is able to do this by reacting to developments on the ground, for example by identifying where planning conditions are superfluous or overly onerous; issues which may otherwise only be discovered under the challenge of an appeal. It is therefore a tool which can be utilised to refine a LPA’s approach to granting consents.
Furthermore, compliance monitoring has a flexibility which makes it ideally tuned to addressing specific issues. In 2008, South Gloucestershire Council had a fundamental issue with developers failing to comply with pre-commencement conditions. Following the implementation of a focused compliance monitoring resource to address this issue that authority can now point to a greatly improved situation.

**Compulsory retrospective applications**

In terms of public perception this would be a welcome addition to the planning enforcement toolkit. LPAs will be all too aware of the complaint that retrospective planning permission is nothing more than a rubber stamping exercise, and that in some way, granting consent once development has taken place is an ‘easy way out’ for the authority and ‘less trouble’ than pursuing enforcement action. This is of course far from the truth and may well be a symptom that some complainants struggle to understand the complexities of the expediency test.

If this tool was to be considered for implementation it would require some form of penalty for non-compliance. This raises questions concerning the fundamental role of planning enforcement action, which is to deliver a remedial solution and is not intended to be punitive. In the case of unauthorised development, which is acceptable and so fails to satisfy the expediency test of harm, there can be little justification in compelling transgressors to apply for planning permission. To do so could be considered to be introducing a punitive exercise for what is essentially acceptable development.

**Finance**

Whilst it is important to recognise that this research has taken place during a time of unprecedented cuts to local authority budgets, documents such as ‘a stitch in time’ point to a history of under-investment in planning enforcement. Finance has therefore always been a challenging area with the research suggesting that in many cases enforcement is seen as solely a financial cost with no income generating capability. However, there is evidence that some authorities are taking progressive steps to remedy this with Brent Council a significant case in point. That authority has published figures showing planning enforcement has generated income in excess of £1 million through Proceeds of Crime Act (POCA) cases over a 36 month period.
The issue here appears to be twofold; firstly, the benefits realised from enforcement are not always, or at least obviously, financial. Rather they are environmental and social and therefore difficult to quantify fiscally. Secondly, income that is received as a result of enforcement activities such as retrospective planning applications and applications for Lawful Development Certificates (LDCs) vary significantly between authorities. Furthermore, many authorities appear to lack the skills or willingness to pursue POCA cases whilst there is evidence that many authorities are still coming to terms with the Community Infrastructure Levy (CIL), another potential source of finance for enforcement services.

In respect of retrospective planning application and LDCs resulting directly from planning enforcement intervention, the research suggests that these may be numerous. The extent to which income for such activities is identified against the enforcement service is varied however, with reports that it is being centrally allocated.

One further consideration is the extent to which LAs embrace the opportunity to secure income for pro-active enforcement; in particular in respect of compliance monitoring of planning permissions. The research suggests only approximately 50% of LPA currently charge, or plan to introduce, a levy for facilitating compliance and monitoring, with nearly 23% stating they had no intention to do so at this time. In the vast majority of cases this ‘levy’ would have been the 5% traditionally charged for the monitoring of Section 106 agreements rather than any levy agreed with a developer through a Planning Performance Agreement or other binding source.

Resource limitations appear to be a particularly significant and 'present' factor in planning enforcement today. It appears to be the case that not all LPAs maximise potential revenue streams such as POCA, planning gain contributions, and a direct levy. Similarly, some LPAs do not appear to be identifying income in a way that would support the presentation of a more financially viable service. Even allowing for this, it is the case that enforcement may be a service that runs at a deficit. In such a scenario the importance of identifying the environmental and social benefits of effective planning enforcement cannot be under-estimated.
Education and the profession

Education proved to be a divisive issue with some workshop attendees arguing that RTPI accreditation should be able to be achieved through an entirely job-based model. In addition, a common view expressed was that university education does not adequately prepare students for entry into the profession. However, it is accepted that the role of universities is to provide an academic education and it is not for such institutions to provide vocational training.

Perhaps the most vocal responses in this research concerned the position of enforcement within the planning profession, and indeed the extent to which it is recognised by the profession itself. A significant number of respondents suggested that non-enforcement planners and the RTPI fail to recognise the role, value and legitimacy of enforcement professionals. A general feeling of being a 'second class citizen' within the planning profession was clear.

Sharing Best Practice

NAPE publishes a monthly newsletter, with regular legal comment and a case of the month section, whilst its web-site offers an interactive forum for members. It also organises an annual conference in association with the University of the West of England dedicated to enforcement and runs its own conference, which is free to members. Other examples of best practice sharing include Planning Resource and Development Control Practice.

Tellingly, the above resources are provided outside of LPAs. An area where this deficiency can be bridged is in the area of statistical returns. Such information can play an important role in demonstrating work levels enforcement services face whilst reporting upon a wider selection of statistics, such as prosecutions and direct action procedures, could encourage a greater sharing of best practice.

Case Study 2 – Statistical Returns

An LPA in the South-West introduced a programme of monthly performance monitoring. Officers are monitored to ensure that an initial response is issued within 20 days of receipt of a complaint, followed by 6-weekly updates. Each update is recorded on the Uniform System and monitored by the Team Leader through a monthly report. The system has proved effective in preventing a backlog of cases and encouraging officers to take a proactive approach to case progression. It has also promoted the importance of good record keeping which is vital for ensuring the decision making progress is properly recorded.
Statutory Functions and the Local Government Ombudsman

The taking of planning enforcement action is a discretionary power; however the investigation of complaints from members of the public and the making of an expediency judgement is very much a statutory function of local government.

As part of this research an interview was undertaken with the Local Government Ombudsman (LGO), who was keen to advise that “the duty to consider breaches of control is implicit in the Act...if you decide to enforce, you have to say why, and if you decide not to enforce you have to say why too, because you have a general duty in public law to give reasons for all decisions”. It was suggested to the research team that the LGO would expect to see evidence of a decision on how the LPA is intending to proceed in respect of any alleged breach of planning control by no later than 6 months into an investigation.

### Case Study 3: Ombudsman Case 05/C/13355 v Carlisle City Council 2007

**Finding against the Council for failure to enforce a planning condition:**

“There is no point in including a condition in a planning permission if the Council has no intention of enforcing it. There is a distinction between exercising a discretion not to take enforcement action for minor breaches of a landscaping scheme that are capable of informal resolution, and taking no action over the failure to produce a scheme in the first place. The failure to ensure that a landscaping scheme was in place was, in my view, maladministration.”

A common complaint from the LGO is in respect of the quality of LPA’s record keeping. Written evidence of the decision making process is a vital component of any planning discipline. Failure to adequately maintain the record of an enforcement investigation could bring into question the robustness of the LPA’s decision making process.
Enforcement Plans

The NPPF has recommended LPAs ‘...consider publishing an enforcement plan...to manage enforcement proactively, in a way that is appropriate to their area”. This can be delivered as a free-standing adopted plan or as a Development Plan Document within an emerging Core Strategy. Another option is to adopt the plan as a Supplementary Planning Document, although this option would result in a plan which carries less weight. This is a vital consideration as the weight afforded to the plan is important to the image that the enforcement service projects.

A concern voiced at the workshops was that the failure of the NPPF to make Enforcement Plans statutory represents a missed opportunity to confirm the importance of enforcement and raise its profile as an activity, service and profession.

Case Study 4: Ombudsman Case 06/B/00102 v South Hams District Council 2007

Council criticised for poor record keeping: -

“In his decision letter the Planning Inspector noted that there was no CLEUD in respect of the flat. This begs the question of whether it needed one and whether the Council should have taken enforcement action following the Inspector’s refusal of the appeal...the Council’s poor record keeping here is maladministration...No enforcement action was taken; and neither is there any record of officer consideration of this important issue after the appeal was dismissed. This was maladministration.”
Section 215 Notices, Fixed Penalty Notices and Start Notices

The majority view appears to be that the system is not in itself an issue; rather it is the management and resourcing of enforcement which most significantly impacts upon its effectiveness. However, the issue of Section 215 action, already a tool for the enforcement officer, along with potential new tools in the form of fixed penalty notices and start notices were discussed in detail at each workshop. Section 215 action appears to be an underused enforcement tool whilst the proposal to introduce start notices and fixed penalty notices was strongly supported by delegates at the workshops. The research team therefore consider that each of these areas warrant further discussion.

Section 215 Notices

Section 215 of the Town and Country Planning Act falls outside of the scheduled ‘Planning Enforcement’ Chapters. It affords the LPA power to take action where it ‘appears’ that the amenity of a part of their area, or of an adjoining area, is ‘adversely affected by the condition of land’. The notice affords no right of appeal through conventional planning channels with the recipient having to refer the case to the Magistrates Court if it is disputed.

The power to serve the notice is very clear and its administration can be streamlined. At South Gloucestershire Council a standard letter is issued by administration staff for almost all sites attended following a complaint about untidy land. If the site is deemed detrimental to amenity, specified measures are set out within the letter to resolve such issues. Only if there is continued non-compliance with the LPA’s request to remedy the harm identified by the condition of the site will the matter be referred back to an enforcement officer to serve a formal notice. Removing the initial administrative burden from enforcement officers can benefit the service, freeing up time for officers to concentrate on other cases in their workload.

South Gloucestershire Council also benefit considerably from the advent of a direct action budget, which has tripled within three years of its introduction on account of the successful results the authority has enjoyed. Section 215 cases have proved the most common focus of spending in respect of that budget. In one instance the authority funded work to clear vegetation across an entire estate where segregated rear car parking areas were overgrown and in a condition detrimental to the visual amenity of the area.
### Advantages of Section 215

- Considerable flexibility and scope
- No conventional right of appeal
- Promotional opportunity for the service

### Disadvantages of Section 215

- Wording the notice can be complicated if faced with a large site suffering many issues
- Expectation that planning enforcement is responsible for clearing all untidy land
- May need to be supported by some form of direct action budget

### Fixed penalty notices

Fixed penalty notices are available as a tool to enforcement officers in Scotland. The research team interviewed Council Members and Parish Councillors during the course of the project, and identified that there was, initially, little doubt that they welcomed the idea of fixed penalty notices. However, their implementation and delivery provokes a debate on the fundamental fairness of the planning system.

Once a transgressor satisfies the FPN, the issue with which it is concerned is brought to an end. In the case of unauthorised development, the payment of a fine pursuant to an FPN would prevent an authority from later serving a notice to remedy the harm, whether or not the unauthorised development and that harm still exists. As such there is a real and very significant danger that the FPN can be seen as a way of ‘buying’ unauthorised and unacceptable development.

Furthermore, the fines attached to FPN’s are typically nominal (£2000) when measured against the context of the maximum fine for non-compliance with an Enforcement Notice (£20,000). Tellingly, in an interview with a Fife Council Planning Enforcement Officer it was confirmed that no fixed penalty notices have been issued since their introduction in 2009.
Advantages of Fixed Penalty Notices

- Imposes a simple and immediate punishment
- Requires a fraction of the resource that has to be devoted to a prosecution action

Disadvantages of Fixed Penalty Notices

- The FPN could be conceived as a means of ‘buying’ unauthorised development

Start Notices

The Start Notice is a very simple tool that could be used as a trigger for LPA’s to monitor development. In its simplest form it might be a pro-forma attached to the Notice of Decision detailing the site, the development and the relevant planning permission.

In Scotland, start notices take the form of Notices of Intention of Development where the requirement for developers to notify the local authority upon commencement was introduced by the Planning etc. (Scotland) Act 2006. The implication of this legislation seems to be an expectation that local authorities would be checking compliance with all planning conditions as developments proceed through the building phase, a process that few Scottish authorities were resourced to deliver.

An Interview with an Enforcement Officer for Fife Council revealed that despite an uptake in the use of the start notices by developers, there is awareness that there is no obligation to submit them. With no penalty to compel their submission to the LPA they are effectively a voluntary scheme. Furthermore, the officer expressed some concern that anything approaching “100% compliance would overwhelm [their] shrinking resources”.

Whilst some authorities rely on their Building Control colleagues as a source of commencement notification, there are planning permissions which will be exempt from Building Control, such as material change of use applications with no associated operational development. Yet, these may still be subject to pre-commencement or other conditions and for these developments the Start Notice may be the only way the LPA will be aware the development has commenced.
Advantages of Start Notices

- Simple concept likely to be understood by most users of planning services
- Relatively inexpensive to produce
- Can help to deliver pro-active enforcement in line with the Development Management approach and NPPF

Disadvantages of Start Notices

- Complaints that they are too onerous and create further bureaucracy
- If not compulsory then return could be very low
- Expectation that the LPA will monitor every site for which a return is made

Media and Relationships

The research identified significant variation in the manner and extent to which the media is engaged with by local authorities. The positive role of enforcement in the management of the built and natural environment is a powerful message. The positive change that enforcement can bring about should not be underestimated and the perception of the service, and indeed of planning more widely, is associated with this. A number of enforcement teams have strong media links and these have been used to positive effect.

Wider relationship management, including with Councillors, the private sector, and the local community directly, can be an important part of ensuring that the enforcement service is understood and appropriately supported. As with media relations, the degree to which enforcement teams acted in a proactive manner in this regard varied significantly. The positive impact of such relationships, including political and community support, were highlighted.

The research also identified that a number of authorities have experimented with Enforcement Newsletters in recent years. Where this was reported the evidence suggests that sharing success stories with other authorities, departments and elected members had promoted positive engagement with the service and a sense amongst enforcement staff that their work was being given the recognition they felt it deserved.
Summary

In this chapter, key points from the research undertaken have been highlighted. The intention of the research, as set out in the introduction, is not to provide an absolutely definitive picture of enforcement in every LPA in England, but rather to express the trends, issues and attitudes currently found in LPAs who engaged in this research.
CHAPTER 5: LOOKING FORWARD

This research has enabled a clear idea to be formed of the state of planning enforcement in England in 2014. Planning enforcement is under great strain; it appears under-resourced in many cases and lacking in profile and emphasis; issues of management and organisation are also present. These factors are impacting upon the effectiveness and robustness of planning enforcement services.

The planning system itself does not appear fundamentally problematic; the overwhelming opinion of the participants in this research was that the legal construct is sound and the necessary tools are available to deliver a proactive and robust planning enforcement function operating in support of the development management approach. There are, however, the issues associated with the aforementioned management, organisation and resourcing of the service and these are compromising the ability of LPAs to deliver a robust and effective service in many cases. The implications of this are severe, with the potential for the planning system and the effective management of the built and natural environment considered to be at risk. Very real environmental and social harm is a likely result.

Table 2, which commences on page 28, presents a set of recommendations proposed by the research team in response to the six key issues established by the survey questions (see chapter 3). The issues that arose out of the workshops and interviews have been discussed in detail under the analysis section of this report and the research team have made recommendations regarding those areas therein.
Table 2: Recommendations

<table>
<thead>
<tr>
<th>Area</th>
<th>Recommendation</th>
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<tr>
<td><strong>Structure</strong></td>
<td>It is recognised that one size does not fit all. Local authorities have diverse structural approaches and varying forms of relationships with other authorities. Prescribing a structure is therefore neither practical nor appropriate. What is important that an effective structure exists that is suitable for the local context. Regardless of structure, it is necessary for the Planning Enforcement Officer to be a distinct role and for there to be an effective relationship with the wider Development Management team. The knowledge and skill requirements of the planning enforcement function are such that dedicated staff are required; such staff can operate within distinct or integrate council enforcement teams, but to ensure necessary competences the role must be distinct. Effective functional links with the Development Management service must be ensured and supported.</td>
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<tr>
<td><strong>Review, Restructuring and Staffing</strong></td>
<td>The research points to a constant state of flux within planning enforcement. It is important that an environment of stability is created to allow teams to consolidate and deliver within the preferred structural arrangement. As part of this, staffing arrangements must be modelled to ensure the effective resourcing of the planning enforcement function.</td>
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<tr>
<td><strong>Priorities</strong></td>
<td>Resourcing is a clearly identified issue highlighted by this research. It is recognised that resource pressures exist across local government, but planning enforcement requires greater prioritisation than is currently found. The robustness and functionality of the entire planning system, and therefore the management of the built and natural environment, is dependent upon an effective planning enforcement function. The risk of ombudsman issues should also not be overlooked when considering the priority and resources associated with planning enforcement.</td>
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<tr>
<td><strong>Compliance and Monitoring</strong></td>
<td>The research suggests that compliance and monitoring activities are not as extensive as should be the case. This often appears to be due to resource pressures. The impact of this is a limit on the proactive stance of the service, and in turn a scenario where issues arise which would not have occurred with more extensive compliance and monitoring arrangements. Local authorities should ensure that the enforcement service model embraces a proactive stance.</td>
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| Tools | Section 215 Notices – Greater use of these should occur. Direct Action can bring significant environmental benefits and authorities should ensure funding exists to support such actions.  
Start notices – Start Notices should be introduced in association with all planning permissions. A simple notice sent in to local authorities will support compliance and monitoring activities.  
Enforcement Plans – These are essential requirements for a robust planning enforcement service. Where these are not in place, this should be prioritised. |
| Finance | Local authorities should undertake a review of their financial arrangements to ensure that the income associated with planning enforcement activities is correctly identified. Opportunities to secure further income from POCA and planning gain should also be explored |
| Governance and sharing best practice | A clear role exists for RTPI NAPE in supporting effective sharing of best practice. This should include sharing of statistical returns. Strong regional and sub-regional relationships can facilitate positive change and RTPI NAPE should be pro-active in leading this. Further engagement with the enforcement profession by the RTPI to support sharing of best practice and facilitating knowledge transfer is also encouraged. |
| Education and the profession | The planning enforcement profession requires more visibility and the RTPI has a role to play in realising this. Ensuring a clear identification and valuing of the enforcement profession within RTPI activities and outputs is important. A greater presence in The Planner is one way this could be supported.  
From the perspective of education, planning enforcement officers should be encouraged to pursue RTPI accredited planning education. Opportunities for flexible learning, such as via online learning, should be highlighted to enforcement professionals. |
| Media and relationships | Planning enforcement teams should work closely within their authorities to ensure that external (media, private sector planners, local communities) and Councillor relationships are maximised. |
Suggested Further Research

This research has identified that planning enforcement in England is in a vulnerable condition; many services are under resourced and not as effective nor robust as could be the case. This work has identified a number of recommendations which are considered necessary moving forward to ensure that planning enforcement can move into a stronger position; further research should explore how these recommendations can be implemented, including necessary legislative changes to enable the introduction of measures such as Start Notices. The majority of the recommendations above do not, however, necessitate significant further work but rather require reflection, internal review and action by local authorities, the RTPI, and RTPI NAPE.