



Llywodraeth Cymru
Welsh Government

Development Management Manual

Section 14 Annex: Enforcement Tools

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Section 14 Annex

Enforcement Tools

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1.0 Introduction

- 1.1 This annex provides guidance describing the legislative tools available to address unauthorised development, introduced since 2015. Guidance on existing enforcement tools continues to be set out in Welsh Office [Circular 24/97: Enforcing Planning Control: Legislative Provisions and Procedural Requirements](#).

2.0 The enforcement process

- 2.1 Section 14 of the [Manual](#) explains the decision making process depending on the acceptability of unauthorised development. There are number of tools provided by legislation that help determine whether development is unauthorised and enable a local planning authority (LPA) to take action where appropriate. A [flowchart](#) setting out how the enforcement process should function can be found at the end of this

annex. The guidance in the Manual is particularly important to complete the triage stage.

- 2.2 The flowchart was produced through research Welsh Government commissioned from Arup with Fortismere Associates, to undertake a review of the enforcement system in Wales. The report was published in 2013 and is available to view on the [Welsh Government website](#).

3.0 Power to decline to determine a retrospective planning application

- 3.1 A key finding of the Arup research in 2013 was the need to reduce delays and repetition in the enforcement process. LPAs are [now able](#) to use [section 70C](#) of the Town and Country Planning Act 1990 ('the 1990 Act') to decline to determine an application for planning permission where an enforcement notice has been issued before the application is submitted. This has the effect of giving the LPA the discretion, whether to consider the same issue twice. First in their decision to issue an enforcement notice. Second through the consideration of a retrospective planning application and can therefore avoid delay in the enforcement system.
- 3.2 The LPA must notify an applicant that they will be exercising the power to decline to determine their application so that the right to appeal to the Welsh Ministers against non-determination of the application is extinguished. The only option of appeal is under [section 174](#) of the 1990 Act against the enforcement notice.
- 3.3 A fee is payable for a retrospective planning application when submitted in the normal way. However, should the LPA decide not to determine the application, it does not have to provide a refund.
- 3.4 There may be instances where it is desirable that a retrospective application is submitted, for example, where the unauthorised development can be made acceptable with conditioned control. Where this is the case, it is best practice that the LPA will have first served an Enforcement Warning Notice (EWN) ([See Section 5](#)). If an enforcement notice has been issued following the expiry of the EWN compliance period but the developer subsequently submits a retrospective application, the LPA has discretion to decide whether they wish to either determine the application or proceed with enforcement action. The extent to which the development can be made acceptable through conditions will be the key consideration. If the retrospective application is unlikely to address the planning harm then the LPA can decline to determine it thereby preventing delay to the resolution of the enforcement case.

4.0 Temporary stop notice

- 4.1 If it is expedient that unauthorised development should be stopped immediately, yet the LPA requires time to arrange an effective enforcement response, a temporary stop notice (TSN) can require an activity which is a breach of planning control to stop immediately. [Section 171E](#) of the 1990 Act specifies what should be included within the notice while section 171F sets out the restrictions on what a temporary stop notice can prohibit.

- 4.2 TSNs do not have to be issued with an enforcement notice and their effect is immediate. They cease to have effect after 28 days (or any shorter period specified), after which there is a risk of the activity resuming if an enforcement notice and/or stop notice have not been served.
- 4.3 The decision to issue a TSN should not be taken unless a brief but comprehensive analysis of the likely consequences of the requirements within the notice has been carried out and that it is the most proportionate course of action. LPAs have a responsibility to comply with the [Human Rights Act 1998](#) and [Equalities Act 2010](#) and should ensure that they carefully consider their duties under these Acts when issuing a temporary stop notice.
- 4.4 Where the LPA is considering issuing a TSN in respect of a Gypsy or Traveller caravan site, the availability of alternative approved sites in the authority area will form a material consideration in their decision. Before serving a TSN the LPA must be satisfied that there is:
- clear public interest in taking rapid action (whilst considering their duties under the Human Rights and Equalities Acts);
 - a breach of planning control, and;
 - it is expedient that the activity is stopped immediately.
- 4.5 A model TSN can be found in [schedule 2](#).

5.0 Enforcement warning notice

- 5.1 An enforcement warning notice (EWN) is intended for use where the LPA considers that an unauthorised development could potentially be made acceptable with control. The serving of an EWN will provide a clear signal to the developer that, if a retrospective planning application is submitted, adequate control could be applied to the development to make it acceptable. Without planning conditions, the unauthorised development is unacceptable, further enforcement action is expedient and will be taken.
- 5.2 EWNs should not be issued as a means of obtaining an application fee where the LPA does not reasonably expect that planning permission will be granted. The LPA must believe that there is reasonable prospect of the development being granted planning permission. The fact that an EWN is issued in respect of an unauthorised development does not however guarantee planning permission will be granted, as new issues may come to light, or despite a recommendation for approval, a planning committee could disagree with the recommendation.
- 5.3 There is no right of appeal against an EWN, however if a retrospective application is submitted as a result of the EWN, an applicant does have the right to appeal either the refusal of planning permission, or the subsequent service of an enforcement notice.
- 5.4 Where an EWN is issued, it constitutes the taking of enforcement action under [section 171A](#) of the 1990 Act. Therefore, the LPA can take further enforcement action in respect of the breach within four years of the initial notice being issued.

- 5.5 An example of where it would be expedient to use an EWN would be to manage an unauthorised café or restaurant. In principle the use may be acceptable, but late night opening would cause adverse harm to the amenity of nearby residents. If the LPA consider that the use could be acceptable within the parameters of conditions, they should issue an EWN to encourage submission of a retrospective planning application. This is preferable to the service of an enforcement notice, which would result in over enforcement (thereby curtailing the use completely), or not enforcing, which would eventually result in an unconstrained utilisation of the premises for any use falling within the A3 Use Class.
- 5.6 Copies of an EWN are served on the owner and occupier of the land to which it relates and on any person with an interest in the land who would be materially affected by the taking of further enforcement action.
- 5.7 The EWN must enable every person who receives a copy to know exactly what, in the LPA's opinion, constitutes the breach of planning control. The notice must state that, unless an application for planning permission is made within a period specified in the notice, further enforcement action may be taken.
- 5.8 The notice must state the period within which a planning application should be submitted. The LPA must be reasonable when deciding what this period should be. The complexities and circumstances of each case should be taken into account by the LPA. An applicant is unlikely to be in a position to submit an application immediately and will need time to prepare plans, procure an agent and commission surveys if necessary.
- 5.9 The notice should be written using plain language. The use of over-elaborate wording or legalistic wording should be avoided where possible.
- 5.10 Within an annex of the EWN, the LPA may advise whether there are any local validation requirements or additional information that will need to be submitted with the application. This is intended to aid the submission of a suitably detailed planning application, which will assist the LPA to process and determine the application in a timely manner. The authority is not prevented from additional information at a later time if it is considered necessary during consideration of the planning application.
- 5.11 If the unauthorised development is potentially schedule 2 development as defined by the [Town and Country Planning \(Environmental Impact Assessment\) \(Wales\) Regulations 2016](#), an EWN should not be issued. The LPA cannot conclude that there is a reasonable prospect that planning permission would be granted without considering an Environmental Statement. An Environmental Statement is material to that conclusion, even where the conclusion is reached on a preliminary basis.
- 5.12 A model EWN is included in schedule 2.

6.0 Enforcement appeals

Ground (a) appeals

- 6.1 [Section 174\(2\)](#) of the 1990 Act, sets out seven different grounds under which an enforcement appeal may be lodged. Ground (a) is that planning permission should

be granted for what is alleged in the notice (or that the condition or limitation referred to in the enforcement notice should be removed). If the appellant would like the Planning Inspectorate to consider if planning permission should be granted, they must mark ground (a) on their appeal form and pay the relevant fee.

Restrictions on appeals

- 6.2 Restrictions apply to some types of appeals to avoid consecutive decisions concerning the same development and to improve the effectiveness and efficiency of the planning and enforcement appeals system.
- 6.3 Where an enforcement notice is issued after a decision to refuse planning permission has been upheld at an appeal for a related development, [section 174\(2E\)](#) of the 1990 Act prevents an appeal being brought on the ground that planning permission should be granted for the breach identified by the enforcement notice i.e. ground (a). Furthermore, an appeal cannot be brought under ground (a) that a condition should be discharged if the enforcement notice was issued after a decision to grant planning permission subject the condition or limitation was upheld under [section 78](#).
- 6.4 The appellant retains the ability to appeal against a defective notice or under the other grounds that the steps proposed were too excessive or the time for compliance was too short.
- 6.5 Where an enforcement notice appeal under [section 174](#) is heard before an appeal is brought against refusal of a planning application, section 78 of the 1990 Act cannot be pursued if planning permission was not granted when ground (a) was considered. This restriction also applies where an enforcement notice is served in respect of a condition that ought to be discharged and it is not discharged under [section 177](#) at appeal.
- 6.6 The overall effect is that an appellant will have one avenue of appeal, either under section 78 of the 1990 Act against the LPA's decision to refuse planning consent (if applicable), or under section 174 against the enforcement notice.

7.0 Completion notice

- 7.1 Incomplete development can cause injury to amenity, economic uncertainty or otherwise frustrate the delivery of the development plan. Where a material start has been made but the development is not proceeding, LPAs have the power to serve a completion notice under [section 94](#) of the 1990 Act. Completion notices have two main effects. Firstly they can encourage the completion of a development, although the circumstances for the lack of progress, such as insufficient finance, will limit the success of this objective. Secondly they provide a means of ending the uncertainty over whether a development will be completed. This is particularly useful where economic regeneration or the delivery of large housing schemes is in doubt, allowing alternative developments to be pursued so that the development plan objectives are achieved.
- 7.2 The notice must be served on:
- a) on the owner of the land,
 - b) on the occupier of the land, and

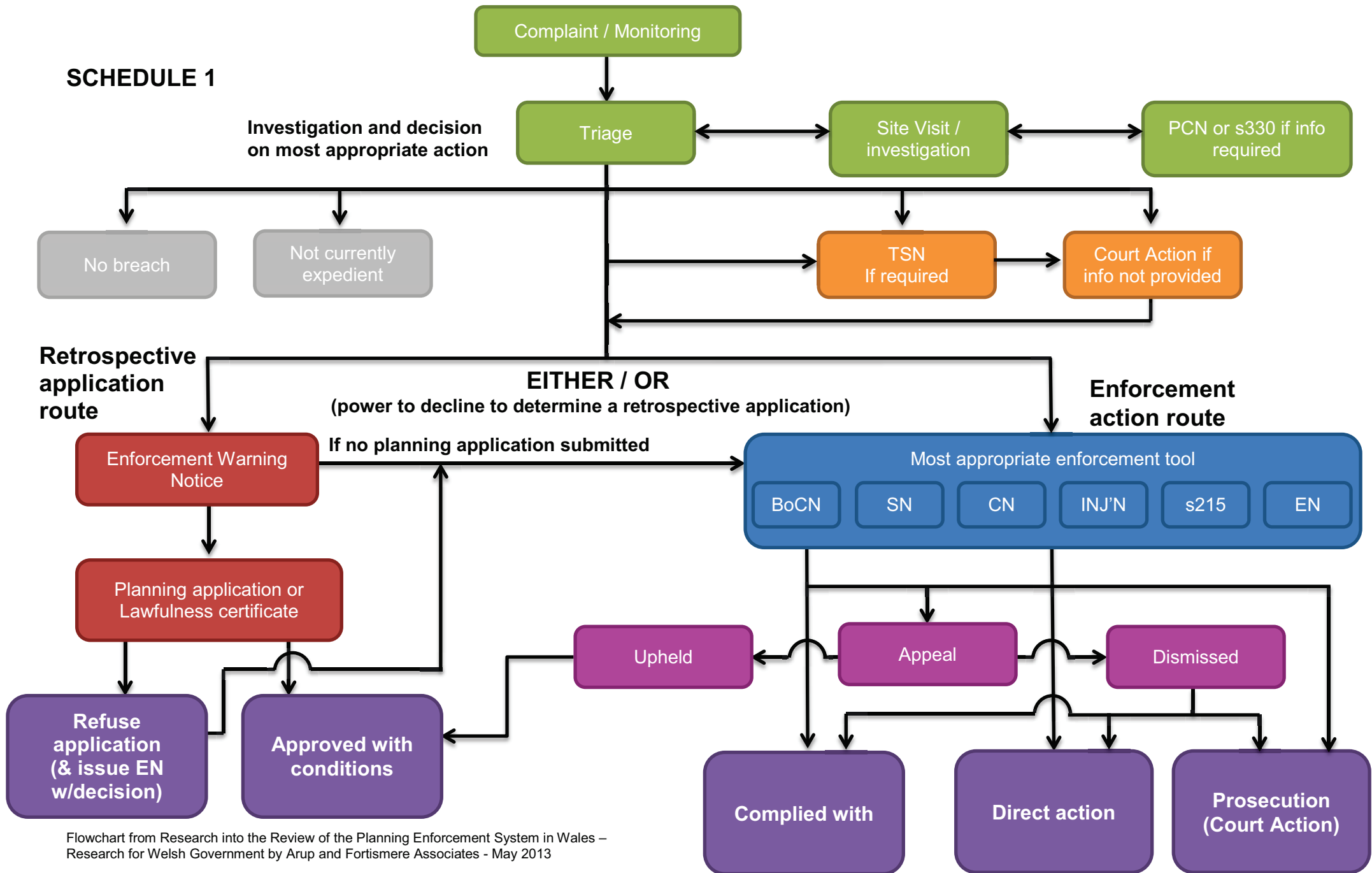
c) on any other person who in the opinion of the local planning authority will be affected by the notice.

7.3 The period for compliance must not be less than 12 months.

7.4 The LPA can withdraw a completion notice at any time before the expiration of the compliance period. If they do so they shall immediately give notice of the withdrawal to every person who was served with the notice.

7.5 Where a completion notice takes effect, the works already carried out are lawful. Consequently, the authority will need to consider making a Discontinuance Order if it wants to have these existing works removed.

SCHEDULE 1



Flowchart from Research into the Review of the Planning Enforcement System in Wales – Research for Welsh Government by Arup and Fortismere Associates - May 2013

Flowchart Abbreviations

BoCN Breach of conditions notice

CN Completion notice

EN Enforcement notice

INJ'N Injunction

PCN Planning contravention notice

SN Stop notice

TSN Temporary stop notice

s215 Power under section 215 of the 1990 Act to require proper maintenance of land

s330 Power under section 330 of the 1990 Act to require information as to interests in land

SCHEDULE 2

Model Temporary Stop Notice

**IMPORTANT - THIS COMMUNICATION AFFECTS YOUR PROPERTY
TOWN AND COUNTRY PLANNING ACT 1990
(As amended by the Planning and Compulsory Purchase Act 2004)**

TEMPORARY STOP NOTICE

SERVED BY: [name of Council] herein after referred to as “the Council”.

To: [name of intended recipient of the notice]

1. The Council considers that there has been a breach of planning control on the land described in paragraph 3 below. The breach of planning control is ...
2. This temporary stop notice is issued by the Council, in exercise of their power in section 171E of the 1990 Act, because they think that it is expedient that the activity specified in this notice should cease on the land described in paragraph 4 below. The Council now prohibits the carrying out of the activity specified in this notice. Important additional information is given in the Annex to this notice.

3. THE REASONS FOR ISSUING THIS NOTICE

[Briefly specify the reasons why the temporary stop notice has been issued. There is no requirement to outline specific policies from the Local Development Plan.]

4. THE LAND TO WHICH THIS NOTICE RELATES

Land at [address of land, or description of relevant part of the land to which the temporary stop notice relates], shown edged in a distinctive colour on the attached plan.

5. ACTIVITY TO WHICH THIS NOTICE RELATES

[Specify the activity required by the temporary stop notice to cease, and any activity carried out as part of that activity, or associated with it.]

6. WHAT YOU ARE REQUIRED TO DO

Cease all the activity specified in this notice.

7. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on [date] when all the activity specified in this notice must cease. This notice will cease to have effect on [date 28 days after it takes effect].

Dated: [date of notice]

Signed: [Council's authorised officer]

On behalf of: [Council's name and address]

Nominated Officer: [Name of contact officer]

Telephone Number: [of Nominated Officer]

ANNEX

WARNING

THIS NOTICE TAKES EFFECT ON THE DATE SPECIFIED IN PARAGRAPH 7. THERE IS NO RIGHT OF APPEAL TO THE WELSH MINISTERS AGAINST THIS NOTICE.

It is an offence to contravene a temporary stop notice after a site notice has been displayed or the temporary stop notice has been served on you (section 171E(4) of the 1990 Act). If you then fail to comply with the temporary stop notice you will be at risk of **prosecution** in the Magistrates' Court, for which the maximum penalty is £20,000 on summary conviction for a first offence and for any subsequent offence.

The fine on conviction on indictment is unlimited. If you are in any doubt about what this notice requires you to do, you should get in touch **immediately** with [Council's nominated officer to deal with enquiries, address and telephone number].

If you need independent advice about this notice, you are advised to contact urgently a lawyer, planning consultant or other professional adviser specialising in planning matters.

If you wish to contest the validity of the notice, you may only do so by an application to the High Court for judicial review.

Model Enforcement Warning Notice

**IMPORTANT – THIS COMMUNICATION AFFECTS YOUR PROPERTY
TOWN AND COUNTRY PLANNING ACT 1990
(as amended by the Planning (Wales) Act 2015)**

ENFORCEMENT WARNING NOTICE

SERVED BY: [name of Local Planning Authority] (“the Authority”).

TO: [name of intended recipient of the notice]

1. THIS NOTICE is issued by the Authority, in exercise of the power conferred by section 173ZA of the above Act. The Authority consider that there has been a breach of planning control on the land described in paragraph 2 below. The Authority consider it expedient to issue this notice, as having regard to the provisions of the Local Development Plan and to other material considerations, there is a reasonable prospect that, if an application for planning permission in respect of the development stated in paragraph 3 below were made, planning permission would be granted. Important additional information is given in the Annex to this notice.

2. THE LAND TO WHICH THIS NOTICE RELATES

Land at [address of land, or description of relevant part of the land to which the notice relates], shown edged in a distinctive colour on the attached plan.

3. ACTIVITY TO WHICH THIS NOTICE RELATES

The following matters appear to the Authority to constitute a breach of planning control: [Specify the development/use which requires planning permission, and any activity carried out as part of that activity, or associated with it.]

4. WHAT YOU ARE REQUIRED TO DO

You are required to regularise the breach of planning control by:

- i. Submitting a planning application for the development stated in paragraph 3 above;
- or
- ii. [specify development to be removed/activity to cease]

Failure to comply with this notice within the specified period stated in paragraph 5 below may result in further enforcement action being taken.

5. TIME FOR COMPLIANCE

[insert deadline in days] after the date of this notice.

Dated: [date of notice]

Signed: [Authority authorised officer]

On behalf of: [Authority name and address]

Nominated Officer: [Name of contact officer]

Telephone Number: [of Nominated Officer]

ANNEX

WARNING

THIS NOTICE TAKES EFFECT IMMEDIATELY

THERE IS NO RIGHT OF APPEAL TO THE WELSH MINISTERS AGAINST THIS NOTICE.

If you are in any doubt about what this notice requires you to do, you should get in touch **immediately** with [Authority nominated officer to deal with enquiries, address and telephone number].

If you need independent advice about this notice, you are advised to contact urgently a lawyer, planning consultant or other professional adviser specialising in planning matters.

Informative [optional]

[Provide links to relevant local and national validation requirements]