

BREACH OF ENFORCEMENT/STOP NOTICE

Planning (NI) Order 1991

72. - (1) Where, at any time after the end of the period for compliance with an enforcement notice, any step required by the notice to be taken has not been taken or any activity required by the notice to cease is being carried on, the person who is then the owner of the land is in breach of the notice.
- (2) Where the owner of the land is in breach of an enforcement notice he shall be guilty of an offence.
73. - (1) Where the Department considers it expedient that any relevant activity should cease before the expiry of the period for compliance with an enforcement notice, it may, when it serves the copy of the enforcement notice or afterwards, serve a notice (in this Order referred to as a "stop notice") referring to, and having annexed to it a copy of, the enforcement notice and prohibiting the carrying out of that activity on the land to which the enforcement notice relates, or any part of that land specified in the stop notice.
- ...
- (7) If any person contravenes a stop notice after a site notice has been displayed or the stop notice has been served on him he shall be guilty of an offence.
- (7A) An offence under this Article may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence under this Article by reference to any period of time following the preceding conviction for such an offence.

Maximum Sentence:

Planning (NI) Order 1991, Art. 72(8)

(1) Offence under 72(2):

Indictment: Unlimited Fine

Summary: £30,000 Fine

Planning (NI) Order 1991, Art. 73(7C)

(2) Offence under 73(7):

Indictment: Unlimited Fine

Summary: £30,000 Fine

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
N/A	£5,000 Fine	Fine

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
<ol style="list-style-type: none">1. Offender initially breached planning laws for financial gain (whether profit or cost-saving)2. Continuing offence being committed for financial gain (whether profit or cost-saving)3. Offence being committed on a commercial basis4. Continuing offence causing harm or nuisance to third persons	N/A

Relevant Cases:

NI Cases:

Planning Service v Young [2010] NIMag 5

English Cases

R v Fehily (1985) 7 Cr App R(S) 82

R v Dunn (1990) 12 Cr App R(S) 225

R v Ayling [1996] 2 Cr App R(S) 266

Notes:

1. In determining the amount of any fine to be imposed on a person convicted of an offence under this Article, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence. – Articles 72(9) and 73(7D) of the 1991 Order