



# RTPI Networks

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## NAPE News—October 2013 Annual Report

This report forms part of NAPE's Annual Meeting, which in itself will be part of the NAPE conference, taking place on 4th November in Gateshead.

As in previous years, the report is being circulated to all members by email in order to allow those who are unable to attend to raise any comments (please send to NAPE' Network Management [nape@rtpi.org.uk](mailto:nape@rtpi.org.uk)). The report is also available on the [NAPE website](#).

This is my second annual report as Chair and I am pleased to report that the reputation and influence of NAPE continues to grow, much like our membership, which has risen by almost 100 over the last 12 months and now stands at 763.

Planning is in interesting times, with seemingly never-ending proposals to change legislation. Such changes have the potential to impact the workload of Enforcement Officers and therefore NAPE has been active in responding to Government consultations and proposals, including the latest on changes of use for buildings in England.

To all of you who have contributed to consultations, I would like to pass on my thanks. If you have not yet contributed to a consultation response, then please do so when the opportunity arises as NAPE's opinion is respected and taken into account and the more members that take part in the consultations, the stronger our voice will be.

Separately, we sent a briefing note to the Planning Minister, Nick Boles, on our views of the current planning enforcement system and the changes that members said they would like to see.

In England, NAPE Management Committee (MC) members have also been involved in the compilation of the new guide to documents, especially in relation to enforcement, adverts and appeals. While we did not get everything we wanted included (largely due to the Taylor Review requiring them to be short guides, with

the responsibility on LPAs to produce more detailed guidance), we did ensure the retention of the suite of model notices,

UK-wide, NAPE has also been involved in the review of powers of entry required by the Protection of Freedoms Act. This review revealed a couple of powers that were redundant or had been superseded but were on statute. These powers will be withdrawn, however, as a result of the evidence provided it has been determined that our powers of entry are relevant, robust and provide protection to property owners.

NAPE is, of course, also here to help you in your work, by signposting you to training and events. We know that free or low cost events are always of interest, particularly in the current economic circumstances; we always try to obtain discounts for NAPE members where appropriate. One example of this is the £100 discount we negotiated for members who wished to attend the RTPI's Annual Enforcement Conference.

Regarding resources available to members, the Enforcement Handbook continues to be updated and is available to all members via the website. The NAPE online discussion forum has also been updated and is now more user friendly. NAPE news has also been reformatting, and we always open to receiving member input for Hot Topics and other items.

I would like to thank the members of the MC for their hard work over the last 12 months, working tirelessly with you and on your behalf across the regions and Nations of the UK

NAPE continues to make progress in raising the profile of planning enforcement both at local and national level. Much of this has been made possible thanks to the support we have received from the RTPI.

Finally, I would like to thank you all for your continued support and contributions.

Dave Westhead—NAPE Chairman

# NAPE

RTPI NETWORK FOR  
PLANNING ENFORCEMENT

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### The Website

Don't forget, keep up to date with the latest news, events and information on the NAPE [web-site](#).

### Contact Us

Please do not hesitate to get in touch if you have any queries for the management or about the output of NAPE. Our address is [NAPE@rtpi.org.uk](mailto:NAPE@rtpi.org.uk)

### The Forum

Also on the website is the [NAPE live forum](#) where members can discuss pressing issues amongst the community and tap into the knowledge and expertise across our membership.

### Your NAPE MC Committee

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# NAPE Conference 2013

**This is the last chance to book your free place with a handful of places still left!**

The Conference will be an all-day event, with a range of excellent and engaging speakers, held at **Gateshead Civic Centre on 4th November**

For further information, including a detailed programme, and to book your place at the Conference, please visit the [NAPE website here](#) and download the booking form. Return all completed booking forms to [NAPE@rtpi.org.uk](mailto:NAPE@rtpi.org.uk)

We look forward to seeing you in Gateshead!

NAPE Management Committee

## Member Item

### IHBC Listed Buildings - Prosecutions Database

The National Database of Listed Buildings was set up by NAPE member Bob Kindred in 1996.

This [Database](#) is available online to NAPE members. Please forward details of cases (irrespective of the success of the outcome) to either [government@ihbc.org.uk](mailto:government@ihbc.org.uk) or [bob.kindred@bobkindred.demon.co.uk](mailto:bob.kindred@bobkindred.demon.co.uk) preferably in the format in the main table, i.e.: size of fine; costs awarded; the nature of the offence; address; grade of building; type of court (Magistrates or Crown); any other information which would be informative (e.g. a guilty plea or observations by the court).

A link to the database is also on the [resources page](#) of the NAPE website. This will also direct you to a commentary on, and illustrations of a number of past cases compiled by IHBC following a request from the Judge during his deliberations in a case in Twickenham in 2011 where he considered more detail of specific cases beyond those in the Tables would have been of assistance in determining sentencing.

## NAPE North West

The RTPI held a regional enforcement update for planners in the North West of England on 01/10/2013.

Please visit the NAPE website at the [this link](#) to view the presentations from the event

## Hot Topic — Rights of Entry

With an increase in the number of Enforcement complaints and increased political interest in planning enforcement, Enforcement Officers are under more time pressure than ever before. Exercising their Right of Entry (without a warrant) is one of the tools Enforcement Officers can apply to make more efficient use of their time when carrying out site visits.

It has come to my attention that Enforcement Officers from a certain prominent London Council make repeat unsuccessful attempts to enter land (not used as a dwellinghouse) apparently without being aware of their powers to demand entry. And so I thought it may be useful to restate the position on Rights of Entry to encourage Enforcement Officers to be confident of their right to enter land.

Section 196A of the Town and Country Planning Act 1990 says that if there are reasonable grounds for entering land, an authorised planning officer can enter the land at a reasonable hour to ascertain whether there has been a breach of planning control, determine whether and how the Council's powers should be exercised and to ascertain whether there has been compliance. A similar power is granted in respect of listed buildings in s.88 of the Listed Buildings Act.

Addressing each of the elements in turn:

**Reasonable grounds for entering the land.** This is a judgement to be made by the Enforcement Officer but a *bona fide* complaint of a potential breach would no doubt suffice.

The 'reasonableness' of a visit may become more problematic when repeat visits are made. In backlogged Enforcement departments, site visits are all too often repeated because of the time elapsed since the previous visit. Enforcement officers would be well advised to ensure their visits are thorough the first time round and should try to progress that matter to the next stage as soon as possible, whether the next stage is taking further action or not. Repeat visits should only be made if circumstances have changed or to check compliance.

**2. Authorised planning officer:** this must be a person duly authorised in writing by the local planning authority to enter land. An Enforcement Officer is required by S196C of the TCPA to carry the authorisation on his/her person and also state the purpose of him/her entering the land before so entering. Most planning enforcement officers carry such authorisation in the form of a card or letter.

Note that an authorised person may take other persons with him/her 'as may be necessary'. An example of this could be where a Heritage Officer who is not necessarily authorised to enter the land, accompany the Enforcement Officer.

**3. Reasonable hour:** again this is a judgment for the Enforcement Officer, but visits undertaken during normal office hours are likely to be 'at a reasonable hour'. Where it is necessary to visit a site at other times when the breach is suspected of taking place, the Enforcement Officer should exercise his/her good judgement.

**4. The purpose of entry** facilitated by s196A is drafted wide enough to include every instance where an Enforcement Officer would need to access land, i.e. to

- ascertain whether there has been a breach of planning control;
- determine whether and how the Council's powers should be exercised; and
- ascertain whether there has been compliance.

Note however that there may be additional RIPA requirements when evidence is gathered for a planning prosecution.

The procedure for gaining entry to any building used as a dwellinghouse, can only be demanded as of right if 24 hours' notice of the intended entry has been given to the occupier of the building. Note that the wording of this section specifically refers to 'any building used as a dwellinghouse', thereby catching outhouses, office buildings etc., where such a building is used as a dwellinghouse. Note that the requirement to give 24 hours' notice is just that; often Enforcement Officers think the position on accessing dwellinghouses is more complicated. By giving notice there is of course a risk that the breach will temporarily cease; in those cases the Council should consider obtaining a warrant.

A word of caution: if damage is caused to land or chattels in the exercise of a right of entry, compensation for the damage may be recovered from the Council in the Lands Tribunal. Practically speaking, it would be a difficult and drawn-out process for a landowner to recover such damages from the Council, but the Council will receive adverse press for such damage and so any damage should be avoided where possible.

Also, Enforcement Officers should not share trade secrets they learn when visiting sites; to do so is an offence and can carry a fine of up to £5,000. However, if they share such trade secrets in the course of their duties as Enforcement Officers, they would not be committing an offence.

On leaving the land, an authorised officer must, if the owner/occupier is not present, leave the property as effectively secured against trespassers as he found it.

Enforcement Officers should be very clear on their rights and duties around this powerful Right of Entry for use in the appropriate circumstances. Any person who wilfully obstructs an Enforcement Officer exercising his/her right of entry shall be guilty of an offence and liable on summary conviction to a fine of £1,000. In the unfortunate cases where an Enforcement Officer is obstructed, careful consideration should be given to prosecuting the person causing the obstruction and publicising a successful outcome to act as a deterrent to other would-be obstructers.

For the sake of completeness, Officers should be aware that where entry is refused or reasonably apprehended, or where the case is urgent, the Council may apply for a warrant to enter land. One example where warrants are successfully used is in investigating 'Beds in Sheds' complaints.

Please email suggestions for future newsletter topics to [izindi@ivylegal.co.uk](mailto:izindi@ivylegal.co.uk).

By Izindi Visagie—  
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## In the news:

### [Appeal launched over gypsy site in Fordingbridge](#) **24 October 2013**

TWO brothers who want to turn a field in Fordingbridge into a permanent home for travellers are appealing against New Forest District Council's decision to refuse planning permission.

### [Carharrack couple ordered to demolish home](#) **22 October - Falmouth Packet**

A couple from Carharrack have pleaded guilty to failing to comply with a planning enforcement notice after building a residential property on land near the village without planning permission

### [Finchley man fined for failing to apply for planning permission](#)

#### **22 October - Hendon & Finchley Times**

A businessman who split two houses into flats without planning consent and earned more than £5,000 in rent has been fined.

## And finally:

- If you would like to participate to NAPE news by writing a Hot Topic article or producing a Case of the Month, please get in touch with [NAPE@rtpi.org.uk](mailto:NAPE@rtpi.org.uk).