

**REPORT OF THE SCRUTINY PANEL - INVESTIGATION INTO THE CONDUCT AND USE OF ENFORCEMENT POWERS ACROSS THE COUNCIL'S SERVICES.**

**MODULE 1 - PLANNING ENFORCEMENT**

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## **1. BACKGROUND AND TERMS OF REFERENCE.**

This Planning Enforcement study is the first module of a three part investigation into the conduct and use of enforcement powers across the Council's services.

Work on the second module - Environmental Protection/Street Scene Enforcement - will commence at the start of the new 2006/07 civic year. This will be followed by the final module - Licensing Enforcement - starting in early 2007.

Our terms of reference for the Planning Enforcement investigation were as follows:-

A. To examine:-

1. how Planning Enforcement is organised and the legislative framework that applies;
2. how Planning Enforcement is resourced;
3. whether the Planning Enforcement activity is adequate and targeted appropriately and consistently;
4. the effectiveness of Planning Enforcement activity assessed against relevant policies/targets/best value performance indicators;
5. the links that the Planning Department has with other Council Departments and external organisations on the subject of Planning Enforcement.

B. To make recommendations to the Council's Cabinet on any improvements that can be made to the existing arrangements.

## **2. METHODOLOGY.**

In early August, the Scrutiny Manager wrote to:-

Alan Southerby, Head of Planning Control seeking information under a series of headings concerning the Planning Enforcement function;

David Whipps, Planning Solicitor, Messrs. Holmes and Hills, seeking information concerning the legal aspects;

Other Council Departments/Sections (Building Control; Environmental Services; Housing; Valuation and Estates; Forward Planning; Revenues Section) which have a link to Planning Enforcement from time to time, were asked to submit comments on their involvement;

District Councillors, Parish and Town Councils, and local Amenity Societies were sent a separate questionnaire to complete detailing their views and experiences regarding Planning Enforcement.

The following external organisations were also asked to comment on their involvement and experiences in the Council's Planning Enforcement function:-

Essex County Council (Planning Enforcement/Highways/Historic Buildings and Consents)  
The Local Police  
Environment Agency

An advert was also placed in the Local Press inviting the public and interested organisations to submit written comments.

The written submissions that were made to us are set out in Appendix A. From these submissions, we selected a list of internal and external witnesses who were invited to attend one of a series of Scrutiny Hearings held respectively on 16<sup>th</sup>, 21<sup>st</sup> and 28<sup>th</sup> November.

The witnesses who attended each of the Scrutiny Hearings were as follows:-

### **16<sup>th</sup> November 2005**

Alan Southerby, Head of Planning Control  
Brain Taplin, Planning Enforcement Officer  
David Whipps, Planning Solicitor  
Cllr. Eric Lynch  
Cllr. James Abbott  
Cllr. Wendy Scattergood, Cabinet Member for Planning and Rural Affairs

### **21<sup>st</sup> November 2005**

Parish Councillor David Lee, Chair, Bures Hamlet Parish Council  
Parish Councillor Tom McMillan, Gosfield Parish Council  
Parish Councillor Steve Slemmings, Great Bardfield Parish Council  
Parish Councillor Keith Hughes, The Henny's, Middleton and Twinstead Parish Council  
Parish Councillor Steve Race, Chair, The Henny's, Middleton and Twinstead Parish Council

### **28<sup>th</sup> November 2005**

Parish Councillor Helen Edwards, Chair, Feering Parish Council  
Parish Councillor Robin Dixon, Terling and Fairstead Parish Council  
Parish Councillor Bob Jones, White Notley and Faulkbourne Parish Council  
Tim Pailthorpe, Planning Secretary, Kelvedon and Feering Heritage Society  
John Palombi, Witham and Countryside Society

Appendix B contains transcripts of the oral evidence that was given at the hearings.

### **3. PLANNING ENFORCEMENT IN BRAINTREE DISTRICT.**

#### **(I) Introduction**

The Town and Country Planning Acts give the Council as local planning authority a **discretionary** power to take enforcement action in respect of unauthorised development. Breaches of planning control are viewed very seriously and the Council has a specialist enforcement team in the Planning Department to investigate and, when appropriate, to take action to remedy breaches of planning control.

The Council is responsible for enforcing control for all planning matters other than “County Matters” (e.g. minerals and waste disposal) which are the responsibility of Essex County Council.

The essential law and/or guidance is contained in:

- (a) The Town and Country Planning Act 1990 (as amended);
- (b) Listed Building Act 1990;
- (c) Planning Policy Guidance Notes;
- (d) Central Government Circulars;
- (e) The Development Plan;
- (f) Decisions of the Planning Inspectorate and the Courts.

#### **(II) The Objective of the Council’s Planning Enforcement Service**

This is to investigate and bring under control breaches of planning legislation that cause demonstrable harm to the amenity and/or quality of the District’s environment, in accordance with the Council’s adopted policies and procedures.

#### **(III) Government Guidance**

Government guidance is set out in Planning Policy Guidance Note No. 18 and Circular 10/97.

The advice from the Government can be summarised as follows:-

- \* The decisive issue for the Council should be whether the breach of control would unacceptably affect amenity or the existing use of land and buildings which merit protection in the public interest.
- \* Enforcement action should always be commensurate with the breach of planning control to which it relates.
- \* Negotiations should not be allowed to hamper or delay whatever formal enforcement action may be required to make the development acceptable on planning grounds, or to compel it to stop.
- \* Enforcement action should not be taken solely to ‘regularise’ development which is acceptable on its planning merits, but for which permission has not been sought.

\* If a breach of control is causing serious harm to public amenity, the Council should normally take vigorous action.

#### **(IV) The Council's Planning Enforcement Team**

The Planning Enforcement Section is part of the Planning Control Service, and the section currently consists of:-

2 full time Enforcement Officers (Grade 3)  
1 full time Enforcement Assistant (Grade 2)

(This is a slight increase in previous staff resources which consisted of 1 full time and 2 part time Enforcement Officers plus an Assistant)

The Section reports direct to the Head of Planning Control.

#### **(V) Costs of the Planning Enforcement Service**

For 2005/06, the Planning Enforcement function costs £72,500. This represents approximately 11.5% of the Head of Planning Control's controllable budget.

#### **(VI) The Role of Parish and Town Councils, and Amenity Societies**

Parish and Town Councils, and Amenity Societies have a crucial role to play in the planning enforcement process as they act as the local "eyes and ears" in the community. They alert the Planning Enforcement Team to possible breaches of planning control and the contribution of Parish and Town Councils, and Amenity Societies is greatly appreciated.

#### **(VII) What Constitutes a Breach of Planning Control?**

A breach of planning control is defined in the Town and Country Planning Act 1990 as:

**"the carrying out of a development without the required planning permission, or failing to comply with any condition or limitation subject to which planning permission has been granted."**

There are three potential breaches of planning control that may be the subject of enforcement, as follows:-

- (a) Material change of use of the land;
- (b) Operational development (i.e. buildings, engineering operations etc.) in, on or under land;
- (c) Breach of an express condition attached to an earlier grant of planning permission.

Enforcement legislation is complex. Often, members of the public may think that certain activities could, or should, be halted by the Council when, in fact, they are outside the scope of planning control. Unless the breach falls within

one of the three above-mentioned categories the Council cannot take any action.

There are also time limits in taking enforcement action. Generally, the Council would be prevented from taking action against any development that is more than 4 years old or a change of use which took place more than 10 years previously.

It should also be noted that it is not an immediate criminal offence to carry out development without planning permission. An offence, in law, only occurs if the development involves unauthorised adverts, works to protected trees or listed buildings, or if a formal Notice is not complied with (See paragraph (XII) for types of Notice).

## **(VIII) The Main Stages Of The Planning Enforcement Process**

### **A. Reporting a Breach of Planning Control**

Complainants are encouraged to write to the Head of Planning Services giving as much information as possible about the alleged breach, and to provide their contact details so that they can be kept informed of progress.

Alternatively, complainants may telephone one of the Enforcement Officers to report the breach or ask their local Councillor to take the matter up on their behalf.

Anonymous complaints are not normally investigated.

We were advised by the Head of Planning Control that it was hoped at some future date that it would be possible to log an enforcement complaint via the Council's web site using a standard template.

### **B. The Initial Enforcement Investigation.**

See Flow Chart 1 in Appendix C.

On receipt of a report alleging a breach of planning control, the complaint is acknowledged and then prioritised according to the urgency of the case as detailed below.

#### **Priority 1 Complaints – Initial Site Visit within 1 Working Day**

- \* Damage to Listed Buildings
- \* Works to Protected Trees
- \* Significant Unauthorised Building Works

#### **Priority 2 Complaints – Initial Site Visit within 5 Working Days**

- \* Unauthorised Uses or Works causing significant impact or distress to neighbours
- \* Major breach of Planning Policy
- \* Complaints received from MPs or Elected Members

### **Priority 3 Complaints – Initial Site Visit within 20 Working Days**

\* Minor breach of control causing limited impact

All investigations are carried out on a strictly confidential basis and the complainant's details will not be revealed by the Enforcement Officers.

The initial investigation will normally involve the Enforcement Officer checking the development history of the site to establish whether any conditions have been attached to any approval granted. Other records kept by the Council may also be checked in order to build up a comprehensive picture. The landowners will be contacted and normally interviewed on site to provide information on what is or has occurred on the site in order to help establish the facts.

The complainant may be asked to assist with the investigation by keeping a diary or log of the events under investigation. This is helpful where problems are occurring in the evenings or at weekends, outside normal working hours and can help to identify whether a breach has occurred and whether further action is appropriate.

The Planning Enforcement Section does not provide a 24/7 service. However, if the alleged breach is occurring 'out of hours' the Case Officer will visit the site during unsocial hours if this is necessary to establish the full nature of the alleged breach.

Once the initial investigation has been completed, the Enforcement Officer (frequently in conjunction with the Council's Planning Solicitor) will determine, in relation to the planning legislation, whether a breach of planning control has occurred. The Council may not necessarily issue an Enforcement Notice in respect of every breach of planning control. Prior to considering enforcement action, the Council will consider whether it is expedient, having regard to all material considerations, to take enforcement action.

There are specific timescales laid down in the Enforcement Team's procedures for acknowledging complaints and for carrying out the initial investigation. It is left to individual Planning Enforcement Officers to use their discretion in keeping complainants informed as the case subsequently progresses.

#### **C. What Happens When a Breach of Planning Control is Confirmed?**

See Flow Chart 2 in Appendix C.

If there is no breach of planning control or where a minor or insignificant breach has occurred, or there is insufficient evidence to pursue the matter following the initial investigation, the case will be closed and no further action taken.

Where a breach is established, there are a number of alternative courses of action available to the Council. As indicated earlier, the ability to take enforcement action is entirely at the discretion of the Council, and the type of action taken will be dependant on the nature of the breach.

There are three principal courses of action available to the Council:-

- \* Open negotiations to remedy the breach;
- \* Invite a retrospective planning application;
- \* Instigate formal action.

**(i) Negotiate A Solution To Remedy The Breach.**

In many cases the breach of planning control can often be rectified by negotiating a solution with the landowner. This approach will be taken when it is seen as being the most reasonable and effective way of dealing with the breach.

**(ii) Invite A Retrospective Planning Application.**

If the development is such that it is in line with the relevant Local Plan policies and other pertinent planning policy guidelines, the Council will invite a retrospective planning application where the imposition of conditions would make it acceptable in planning terms. The landowners would normally be given a reasonable amount of time in which to submit a planning application. Formal enforcement action would be held in abeyance pending determination of the application.

If the breach is immune from enforcement action because the time limits for taking action have expired, the Council may invite an application for a Lawful Development Certificate if this is considered appropriate.

**(iii) Formal Enforcement Action.**

If permission is unlikely to be granted, the Council will ask for the use to cease or for the unauthorised development to be removed. A suitable period of time will normally be allowed depending on what action needs to be taken to remedy the breach. Tenants in an industrial building, for example, would be given time to find alternative premises to relocate.

As a last resort, a formal Notice can be issued if it is considered expedient having regard to the development plan and other material considerations. This is a **discretionary decision** which is made on a case by case basis. The Council must be able to justify taking formal action, and it must be sure that the steps specified in the notice are reasonable, and that a reasonable period is given for compliance. The Notice is required to be served on any owner/occupier/person who has control of or an interest in the land.

**D. Securing Compliance with an Enforcement Notice.**

See Flow Chart 4 in Appendix C.

Once an Enforcement Notice has been served, the recipient has a legal duty to comply with the Notice. When the Council is satisfied that the Notice has been complied with the case is closed.

Where a Notice has been served and has not been complied with by the relevant date, and the recipient has not lodged an appeal (see paragraph E below) a criminal prosecution may be undertaken in the Magistrates Court.

Where appropriate, and if other means have not secured a cessation of the breach being enforced against, the Council will consider using its default powers to take direct action to remedy the breach of planning control, recovering the cost from the owner or placing a legal charge on the land.

### **E. Enforcement Appeals**

See Flow Chart 3 in Appendix C.

Section 174 of the Town and Country Planning Act 1990 (as amended) provides that a person served with an Enforcement Notice has a right of appeal to the Secretary of State. An appeal must be made before the Notice takes effect (normally 28 days after the date of issue of the Notice).

If an appeal is made the Notice is held in abeyance pending the outcome of the appeal.

When the appeal process is initiated, the Secretary of State appoints an Inspector to consider the matter. Cases can be dealt with by written submissions (majority of cases), an informal hearing or by Public Inquiry. The Planning Inspectorate on behalf of the Secretary of State makes the final decision as to the appeal method.

The Council's Planning Solicitor has commented that:-

“The real difficulty is with the appeal system itself. It has now for many years been overloaded and it has been taking the Planning Inspectorate an excessive period of time to determine appeals. It is this delay that, in our opinion, has brought the planning enforcement system into disrepute. The Planning Inspectorate have, however, now recruited further Inspectors and there is clear evidence that the time between serving the Enforcement Notice and the hearing of any appeal is being greatly reduced.”

The Inspectors have a number of different options at their disposal when deciding an appeal including upholding, varying or quashing an Enforcement Notice.

Costs can be awarded by the Planning Inspector against both parties at the conclusion of the appeal if it is found that either the Council or the appellant has acted unreasonably in pursuing an appeal.

The result of Enforcement Notice appeals for the years 2002 to 2004 was as follows:-

<u>Year</u>	<u>No. of Appeals</u>	<u>No. Allowed</u>	<u>No. Dismissed</u>
2002	19	2	17
2003	7	2	5
2004	4	0	4

## **(IX) Planning Enforcement Caseload**

The principal source of casework is from Members of the Public who report alleged breaches of the Planning Regulations, but other sources are as follows:-

Planning Officers;  
Historic Buildings Advisor (ECC)  
District Councillors  
Parish and Town Councils  
Amenity Societies  
Other Council Departments  
Other Agencies  
Proactive Patrol by Planning Enforcement Officers (occasional)

The level of proactive patrol by Planning Enforcement Officers is minimal, and the service provided is principally reactive. Further staffing resources would be required to make the service a pro-active one.

For instance, if all planning conditions attached to planning permissions were to be rigorously checked and assured for compliance it was estimated by the Head of Planning Control that a minimum of 2 additional fulltime Planning Enforcement Officers would be required.

The high Planning Enforcement caseload is illustrated in the Table below:-

	<b>2002</b>	<b>2003</b>	<b>2004</b>
<b>Number of Cases</b>	<b>791</b>	<b>739</b>	<b>647</b>
<b>Enforcement Notices</b>	<b>61*</b>	<b>47</b>	<b>19</b>
<b>Planning Contravention Notices</b>	<b>17</b>	<b>4</b>	<b>4</b>
<b>Requisition for Information</b>	<b>25</b>	<b>21</b>	<b>28</b>
<b>Stop Notice</b>	<b>2</b>	<b>0</b>	<b>0</b>
<b>Untidy Site Notice</b>	<b>1</b>	<b>1</b>	<b>1</b>

**(\* 30 at Twin Oaks Caravan Site)**

In addition to their enforcement roles, Officers in the Planning Enforcement Section will also, as and when the need arises, undertake non-enforcement work, e.g. dealing with general planning enquiries/queries, in order to relieve the work pressures in Development Control.

## **(X) Links with Other Departments**

### **A. Building Control**

There are close links between the Planning Control Service and the Building Control Service. Building Control Officers undertake cross checks between Building Regulation and Planning Applications as part of ongoing monitoring of building activity across the District.

Building Control Officers undertake site checks to ensure that development is correctly sited relative to planning permissions and that certain specific requirements (which may be flagged up by the Planning Case Officer) are incorporated at construction stage.

Building Control liaises with Development Control in connection with site works subject to amendment, works to listed buildings, dangerous structures and demolitions, unsafe sites, trees and landscaping in conflict with development or in need of preservation measures or in relation to illegally undertaken building or development work.

### **B. Environmental Services**

The Planning Enforcement Section liaises as necessary with Environmental Services where breaches of planning control also involve possible breaches of the environmental legislation, so that a co-ordinated approach can be taken.

Unauthorised burning on site involving black smoke may, for instance, be best dealt with under the Clean Air Act by Environmental Services as this involves an immediate prosecution of the offender.

## **(XI) Links With External Agencies**

Links with external Agencies such as the Environment Agency and Essex County Council are maintained as appropriate.

## **(XII) Types of Notice**

As indicated previously, enforcement action can involve the issue of a Notice. However, there are a number of different types of Notice available to the Council in relation to breaches of planning control as detailed below:-

### **A. Planning Contravention Notice.**

This is normally used at the start of an investigation and requires the person on whom it is served to provide details of any operations or works which have been carried out and details of anyone with a legal interest in the site. Power to issue a Planning Contravention Notice is contained in Section 171 of the Town and Country Planning Act 1990. Such a Notice is served where the Council wishes to ascertain if there has been a breach of planning control, but certain information may be required to clarify whether this is the case. A response must be made within 21 days, otherwise a legal offence has been committed which could result in prosecution.

### **B. Breach of Condition Notice**

Power to serve a Breach of Condition Notice is contained in Section 187A of the Town and Country Planning Act 1990. This deals with breaches of any conditions attached to a permission which has already been granted. **There is no right of appeal against this Notice.**

### **C. Enforcement Notice**

Power to issue an Enforcement Notice is granted by Section 172 of the Town and Country Planning Act 1990. This is the principal form of Notice used to deal with unauthorised development and has been referred to previously in this report. An Enforcement Notice will specify what steps must be taken to remedy the breach and a reasonable period will be given within which these must be complete.

There is a right of appeal against an Enforcement Notice, and the terms of the Notice are suspended until a decision is reached on the appeal by the Secretary of State.

### **D. Stop Notice**

This is only used in particularly urgent or serious cases requiring the cessation of unauthorised activity that has implications for public safety or related issues. Power to issue a Stop Notice is granted by Section 183 of the Town and Country Planning Act 1990 (as amended). This Notice would be served with an Enforcement Notice, but would be able to require the immediate cessation of an activity. If a Stop Notice is served without due cause, or a subsequent appeal against a parallel Enforcement Notice is sustained, the Council may be open to claims of compensation for any loss of damage directly attributable to the Stop Notice.

### **E. Temporary Stop Notice**

It has been possible since March 2005 to serve a Temporary Stop Notice under Section 171E to 171H of the Town and Country Planning Act 1990 which can require an activity to cease for up to 28 days. There are some restrictions as to when such Notices can be used. These Notices were introduced by the Planning and Compulsory Purchase Act 2004 with a view to giving Enforcement Officers the ability to stop something happening, at least on a temporary basis, immediately and without any risk of compensation having to be paid by the Council.

### **(XIII) Injunctions**

These can be applied for either in the High Court or the County Court and, similar to Stop Notices, are only used in the most serious or urgent cases. It is not essential for the Local Authority to have served an Enforcement Notice. Injunctions can be relevant in two instances. Firstly, to prevent the breach of planning control, e.g. the establishment of a gypsy encampment, and, secondly, where criminal proceedings have failed to produce the desired result an Order from a Court requiring the owner to comply is sometimes necessary. Breach of such an Order is contempt of Court and can potentially result in

imprisonment.

#### **(XIV) Minor Amendments to Approved Plans**

A minor amendment to approved plans may be sought by a developer either through direct discussions with the Planning Case Officer and occasionally as a result of a planning enforcement complaint. Whilst the Planning Service has traditionally been accommodating in entertaining minor or working amendments to planning approvals, the concept of minor amendments has nevertheless caused the Council some difficulties in the past. For instance, third parties assume that the public decision at an Area Committee is the end of the matter, but developers may treat it as just another stage in the negotiating process, to be pursued via modifications (changes to conditions).

We were advised by the Head of Planning Control that the procedures that the Council follows in this respect are under review in consultation with the Council's Planning Solicitor.

#### **(XV) Customers Guide to Planning Enforcement**

This draft leaflet (copy included in the written evidence submitted to us by the Head of Planning Control) contained a helpful guide to customers on making a complaint about an alleged breach of planning control and set out much useful information on the planning enforcement process.

We were advised by the Head of Planning Control that this leaflet had now been finalised and once printed would be available to the public at the Planning Department's Reception Point, and on the Council's web site.

#### **(XVI) Proposed Planning Enforcement Manual**

The Head of Planning Control informed us that he was proposing to compile a Planning Enforcement Manual which would provide a clear statement of the decision making framework in dealing with alleged breaches of planning control. It would set down how, when and what the Council does in dealing with alleged breaches; how work is prioritised; when it is expedient or not to take enforcement action; the policies that apply and the criteria that is taken into account.

The Manual would be a public document and would aid transparency in the planning enforcement process.

#### **(XVII) "IDOX" Document Imaging System**

We were advised by the Head of Planning Control that the Planning Department had recently purchased this system and that ultimately it would provide for a wealth of planning information to be made available electronically. The system was in the process of being commissioned, but it would enable planning consents, for instance, to be downloaded electronically by Parish and Town Councils and Amenity Societies.

## **(XVIII) Performance Targets**

The Planning Enforcement Section currently has the following targets in relation to carrying out the initial investigation into reports of breaches of planning control and responding to the complainants:-

### **Priority 1 Complaints**

Damage to listed buildings/protected trees/  
significant unauthorised building works  
Investigate/initial site visit/response within  
**one working day.**

### **Target**

To achieve the response  
time 100%.

### **Priority 2 Complaints**

Unauthorised uses/works causing significant  
impact/distress to neighbours/major breaches  
of planning policy.  
Complaints received via MPs or Members.  
Investigate/initial site visit/response within **five  
working days.**

### **Target**

To achieve the response  
time 100%.

### **Priority 3 Complaints**

Minor breaches of control causing limited impact.  
Acknowledge complaint within **three working  
days.**  
Investigate/site visits/response within **twenty  
working days.**

### **Target**

To achieve the response  
time 95%.

These targets are currently being achieved. It should be noted that these are targets for investigating alleged breaches of control not for resolving such issues.

## **(XIX) Other Planning Enforcement Powers**

Some breaches of planning control are the subject of separate legislative codes. These include:

- \* Listed buildings
- \* Advertisements
- \* Trees
- \* Section 215 Notices – Land adversely affecting the amenity of neighbourhoods

### **A. Listed Buildings**

Listed Buildings are dealt with under the Planning (Listed Buildings and Conservation Areas) Act 1990. Essentially, Listed Building consent is required for the demolition of a listed building or for the alteration or extension in any manner that would affect its character as a building of special architectural or historic interest. It is an **immediate criminal offence** under Section 9 of the Act to carry out unauthorised works to a Listed Building.

The owner of a Listed Building or those who have an interest in the property or who have carried out the works may be prosecuted by the Council irrespective of whether consent is later obtained retrospectively or the unauthorised works later made satisfactory. There is no time limit upon the Council pursuing Listed Building Enforcement Action.

Officers from Essex County Council's Historic Buildings and Conservation Team provide the Planning Department with specialist advice on Listed Buildings and Conservation Areas. Specialist advisers report to the Planning Enforcement Section any breaches in Listed Building and Conservation Area control, and will give advice as to the most appropriate form of action to be taken.

### **B. Advertisements**

The display of advertisements is controlled under the Town and Country Planning (Control of Advertisements) Regulations 1992 (as amended). Advertisements are divided into three main groups:

- \* Those advertisements which are expressly excluded from local planning authority control;
- \* Those which have "deemed consent" so that the planning authority's consent is not required provided the advertisement is within certain rules; and
- \* Those to which the planning authority's consent is always needed.

The rules are complicated and seek to control amongst other things the height, size and illumination of advertisements.

Anyone who displays an advertisement without the consent required for it is acting illegally. It is open to the Council to take a prosecution in the Magistrates Court for an offence under Section 224 of the Town and Country Planning Act 1990. Unless the offence is particularly flagrant or repeated, the planning authority may not initially consider it necessary to prosecute for an advertisement offence. Instead it may invite the advertiser to apply for consent, and, if refused, there will be a right of appeal to the Secretary of State. The continued display of an advert after consent has been refused, and any appeal dismissed, may result in prosecution.

Any form of flyposting (i.e. displaying an advertisement without consent) is an offence which is immediately open to prosecution, or to the removal or obliteration if the Council decides to take such action. If the advertisement identifies the advertiser the Council must give two days notice before obliteration or removal takes place.

The control of flyposting also involves Environmental Services and that aspect of enforcement is likely to be covered by our scrutiny into Environmental Protection/Street Scene.

### **C. Trees**

Under Section 198 of the Town and Country Planning Act 1990, the Council has the right to make provision for the preservation of trees in its area by issuing a Tree Preservation Order. Any unauthorised works to protected trees is an offence under Section 210 of the Act. It is an offence to cut down, uproot or wilfully destroy a tree in such a manner as to destroy it. Trees in Conservation Areas are similarly protected under Sections 211 and 212 of the Act. Hedgerows are protected under the 1997 Hedgerow Regulations which aims to protect important hedgerows in the countryside by controlling their removal through a system of notification.

### **D. Section 215 Notices – Land Adversely Affecting The Amenity Of Neighbourhoods**

In respect of untidy sites, the Council may take action under Section 215 of the Town and Country Planning Act 1990 to require land to be cleaned up when its condition adversely affects the amenity of the area. The Council may serve a notice on the owner and occupier of the land requiring steps to be taken within a specified period. There is a right of appeal to the Magistrates Court, during which the time the notice is of no effect pending the outcome of the appeal, but once the notice takes effect it is an offence not to carry out the steps required. If the notice is not complied with the Council may prosecute the owner for the offence of non-compliance with the Notice, or enter the land, carry out the required works and recover all costs from the owner.

### **(XX) Officers Scheme of Delegation – Planning Enforcement**

Under the Council's Constitution, the Development Director, Head of Planning Control and Solicitor to the Council (or nominee in the absence of these officers) have delegated powers in respect of the following planning enforcement matters:-

1. Authority to issue Enforcement Notices, Breach of Condition Notices, Listed Building Enforcement Notices, Conservation Area Notices, Stop Notices, Requisitions for Information, Planning Contravention Notices under the Town and Country Planning Act 1990 as amended and Planning (Listed Buildings and Conservation Areas) Act 1990 as amended for all breaches of planning legislation in accordance with the Council's adopted Enforcement Policy.
2. Authority to prosecute in respect of the unauthorised display of advertisements, unauthorised works to a listed building, breach of tree preservation or Hedgerow Regulations, or non-compliance where enforcement action has previously been authorised.
3. Authority to take the appropriate enforcement action, including serving an injunction, where the Development Director, or his nominee, considers the circumstances to be urgent.
4. Authority to vary steps required to comply with Enforcement Notices already authorised, including altering the period required for compliance, service of further Notices and withdrawal of Notices.

5. Authority to comment upon and represent the Council on applications for Goods Vehicle Operator Licences.

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Members do of course have the right to ask for a matter to be considered by a Committee even though it may have been delegated to an officer. Officers may also occasionally refer matters to a Committee where they consider the subject matter to be particularly sensitive and would be better decided by members.

A Committee that is being asked to consider whether or not to take formal enforcement action would conduct its proceedings in Private Session for the reason set out in paragraph 12 (Any instructions relating to legal proceedings) of Part 1 of Schedule 12(A) of the Local Government Act 1972. If the Committee was to serve an Enforcement Notice it would be prejudicial to the Council's case if, for instance, the recipient was to be supplied with information relating to legal opinions that had been obtained in relation to contentious aspects of the breach of planning control in question.

However, we have been advised by the Council's Planning Solicitor and the Head of Planning Control that, in the majority of cases, they would not have any problem in providing advice to Committee in open session.

**4. THE VIEWS OF THE PARISH AND TOWN COUNCILS, AND AMENITY SOCIETIES ON THE PLANNING ENFORCEMENT PROCESS.**

Parish/Town Councils in the District were requested to complete a questionnaire on planning enforcement and we received responses from twenty one (39%). Similarly, questionnaires were sent to four Amenity Societies and we received responses from three. Seven of the Parish Councils and two of the Amenity Societies asked to attend a Scrutiny Hearing to share their experiences with the Panel.

The written and verbal evidence we received from Parish/Town Councils and Amenity Societies was helpful in enabling us to appreciate how they felt about the way the Council dealt with their reports about planning enforcement breaches, and the level of service that they would like to see provided.

Where specific queries on cases or other planning issues outside our specific terms of reference have been raised we have drawn these to the attention of the Head of Planning Control to respond direct to the relevant Parish/Town Council or Amenity Society.

The main themes and issues raised were as follows:-

\* There was a general consensus that all unauthorised developments and failures to comply with conditions attached to planning permissions should be rigorously and robustly enforced within reasonable timescales.

\* Some Parishes felt that each case had to be dealt with on its merits, but others felt that repeat offenders should not "get away with it" and that a hard

line should be taken with these types of miscreant.

- \* Some Parishes felt that we should not allow minor amendments to applications or entertain retrospective applications.
- \* Failure by applicants/developers to adhere to hours of working conditions attached to planning consents were cited as a common breach.
- \* Concerns were expressed at the lengthy timescales taken in some instances to bring a case to closure.
- \* Site contractors/builders do not always appear to be aware of the conditions of planning permissions, and there should be more pro-active monitoring by Planning Enforcement in ensuing compliance.
- \* Conditions attached to planning permissions should be available to Parishes on request.
- \* One of the amenity societies felt that Conservation Area guidelines are not strictly enforced, and that it would be helpful, particularly, if guidance was published setting out the planning criteria that applied in respect of shop fronts in Conservation Areas.
- \* In looking at ways of improving communication, it was felt that it would be helpful if there was a more systematic process of giving feedback to complainants at each stage of the enforcement process.
- \* Parishes/Amenity Societies need to be advised if certain conditions attached to a planning permission are not to be enforced.
- \* A named officer for each planning application and planning enforcement case would be helpful.
- \* Contentious sites would benefit from site visits by both Members and Officers.
- \* One Parish felt that it would be helpful to have a 24/7 planning enforcement service to enable more effective reporting and actioning of breaches.
- \* Unsocial behaviour by developers/builders in “burning off” on site in contravention of planning conditions was highlighted as a common problem with some developers.
- \* Better cross agency working.
- \* Lack of transparency in taking decisions on planning enforcement issues was raised as an issue by one Parish.
- \* It was felt that more information on the Council’s website concerning planning applications and enforcement issues would be helpful.
- \* One Parish suggested providing more information on planning issues in the information pack that the Council provides to new residents.

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Given the complexities of the planning enforcement process, we asked the Parish Council and Amenity Societies witnesses who attended the Scrutiny Hearings on 21<sup>st</sup> and 28<sup>th</sup> November whether they felt it would be useful for the Council to hold a training session/workshop on the subject of planning enforcement.

A majority of the witnesses felt that such a training session/workshop would be helpful and instructive.

## **5. THE VIEWS OF DISTRICT COUNCILLORS ON THE PLANNING ENFORCEMENT PROCESS**

The written and verbal evidence that we received from District Councillors highlighted the following issues.

- \* Length of time taken to resolve enforcement cases.
- \* The need to make full use of enforcement powers to ensure that offenders take action to remedy breaches.
- \* Given that enforcement cases can be lengthy, the need to ensure from a communications point of view that complainants are advised of the process that the Council follows and are kept informed at each stage.

We also received both oral and written evidence from Cllr. Eric Lynch concerning the handling of flyposting issues in the context of planning enforcement, and, in particular, the application of the Council's zero tolerance policy towards flyposting in the District. He felt that the policy was not being applied consistently and produced photographic evidence of instances of flyposting which had not been actioned. Cllr. Lynch felt that the zero tolerance policy needed to be reviewed, and advocated that the Council should take a commonsense approach that is seen as fair and equal to all members of the community.

We were advised by Officers that responsibility for dealing with flyposting issues is divided between the:-

Planning Enforcement Section - flyposting of illegal adverts that are displayed on private land or on buildings;

Street Scene Services – all other flyposting that is either on or beside the highway.

We will look further at the issue of flyposting when work commences on the second module of the enforcement powers investigation regarding Environmental Protection/Street Scene Enforcement in 2006/07.

## **6. DETERMINED OFFENDERS**

One of the issues that has been raised with us particularly by the Parishes and

Amenity Societies, is whether the planning enforcement system is open to abuse.

The majority of cases dealt with by officers appear to relate more to unintentional breaches as a result of ignorance. However, there may be a small number of offenders who flout the regulations knowingly. These offenders may either go ahead with unauthorised developments or may have no intention of complying with planning conditions.

In respect of determined offenders, it can of course be difficult to prove intent and knowledge.

However, retrospective planning applications can conceivably be used by some applicants to delay enforcement action. This could be achieved by submitting one or a series of applications each of which contains minor variations on the previous versions. Each application has the effect of stopping any enforcement action whilst the current application is under consideration.

Whilst there is the potential for the system to be abused, there are no easy solutions because the Council is required under the regulations to treat each planning application on its merits.

Nevertheless, we feel that Officers when undertaking informal negotiations with determined offenders with a view to seeking an amiable solution to a planning breach, should have a clear boundary beyond which tougher and more formal enforcement methods come into play.

## 7. **CONCLUSIONS AND RECOMMENDATIONS**

### **(I) Conclusions**

The Planning Enforcement Section handles a considerable annual workload and it is clear to us that Officers operate under some pressure in dealing with their respective caseloads.

The service provided by the Section is principally a “reactive” one in that Officers handle and process complaints about alleged breaches of planning control that are reported to them by third parties. We can appreciate that with the resources available, the amount of pro-active work undertaken will be minimal. In addition, the Officers of the Section may, from time to time, be required to undertake non-enforcement work such as dealing with general planning enquiries in order to ease the work pressures in the Development Control Section.

We feel that the staffing resources of the Planning Enforcement Section need to be reviewed with a view to making the service more proactive in its approach particularly with regard to checking compliance with the conditions attached to planning consents. If additional resources are allocated, these need to be tied in with appropriate indicators to measure the impact on performance.

Insofar as timescales for dealing with planning enforcement cases are

concerned, it is clearly not always possible to anticipate how a case will develop and consequently the timescale for resolving a complaint can be difficult to predict.

It is evident that factors such as:-

- \* the collection of relevant and satisfactory evidence;
- \* ongoing negotiations to try and resolve a case without resorting to formal action;
- \* the submission of a retrospective application;
- \* an appeal against a formal Notice

will all have an impact on the speed in which a case can be progressed.

It is understandable, therefore, that when an unauthorised development persists for some time it can be a cause of concern and frustration for complainants. Whilst complex cases will inevitably take time to resolve, we would like to see a more systematic process for keeping complainants informed of progress at regular intervals from the initial investigation stage through to final resolution.

We would also like to see the production of a quarterly Planning Enforcement Case Monitor which shows the current position with each case. The Monitor should be circulated to Members of the Council, Parish and Town Councils and Amenity Societies to keep them up to date on progress.

We welcome the Head of Planning Control's proposal to produce and publish a Planning Enforcement Manual.

The process of communicating planning information (such as conditions on planning consents) to the public and Parish and Town Councils and Amenity Societies will no doubt become more streamlined once the Planning Department's IDOX document imaging system has been fully commissioned.

The issue of transparency in the enforcement process has been raised with us as a specific concern by one of the Parish Council witnesses. Whilst the nature of planning enforcement and the potential legal action that it entails means that some decisions are inevitably taken 'in camera', it is anticipated that the Enforcement Manual, the IDOX system and the Quarterly Monitor on Planning Enforcement cases will aid transparency in the enforcement process.

Furthermore, in view of the comments that the Council's Planning Solicitor and the Head of Planning Control have made to us regarding the giving of advice to Committee (see Section 3 – paragraph (XX)), we would encourage the Area Committees to consider enforcement cases in open session wherever possible.

As regards repeat offenders or those offenders who act in an anti-social manner, whilst it is important that every case must be dealt with on its individual merits we would like the Head Of Planning Control, in consultation with the Council's Planning Solicitor, to set out guidelines for Planning Enforcement Officers when undertaking informal negotiations with determined offenders or persistent anti-social offenders so that there is a clear

boundary beyond which tougher and more formal enforcement methods come into play.

On the subject of flyposting, whilst this particular issue will be looked at again by the Panel in the context of Environmental/Street Scene enforcement the evidence that we have considered to date strongly suggests to us that this Council policy is in urgent need of review.

Finally, given the complexity of planning enforcement we feel that it would be helpful for the Council to hold a training session/workshop for Parish and Town Councils and Amenity Societies.

## **(II) Recommendations**

We **RECOMMEND** to the Cabinet as follows:-

**1. The Planning Enforcement Section should become more proactive in its approach particularly with regard to checking compliance with the conditions attached to planning consents.**

**2. A more systematic process should be drawn up by the Head of Planning Control for keeping complainants informed at the following key stages of the planning enforcement process:**

- \* **Acknowledgement of complaints;**
- \* **Report on initial assessment, advising of action to be taken, if any;**
- \* **Issue of Enforcement Notice or outcome of other action;**
- \* **Lodging of any appeal;**
- \* **Final closure of investigation;**

**and for giving regular updates to complainants in between these key stages where the case is a complex and lengthy one.**

**3. The Planning Enforcement Section should produce a quarterly Planning Enforcement Case Monitor containing in respect of each case:-**

- \* **the date the complaint was received;**
- \* **the complaint priority category;**
- \* **the nature and location of the alleged breach;**
- \* **a brief summary of the current position.**

**The Monitor should be circulated to District Councillors, Parish and Town Councils and Amenity Societies to keep them up to date on progress.**

**4. The Head of Planning Control's proposal to produce and publish a Planning Enforcement Manual should be welcomed and endorsed.**

**5. The Head of Planning Control in consultation with the Council's Planning Solicitor should set out guidelines for Planning Enforcement Officers when undertaking informal negotiations with determined offenders or those persistent offenders who act in an anti-social manner, so that there is a clear boundary beyond which tougher and more formal**

enforcement methods come into play.

**6. The Head of Planning Control should hold a training session/workshop for Parish and Town Councils and Amenity Societies on planning enforcement.**

**7. The introduction of the Planning Department's IDOX imaging system should be utilised in such a way as to ensure that the conditions of planning consents are readily available to the public, Parish and Town Councils and Amenity Societies.**

**8. The standard letter notifying the outcome of a planning application that is sent to persons who submitted representations, should include a sentence indicating where the decision notice can be inspected.**

**9. Building Control Officers should take copies of planning permissions with them on site to check for obvious non-compliance.**

**10. The Area Committees should be encouraged to consider planning enforcement cases in open session wherever possible unless legal advice suggests otherwise.**

**11. Staffing resources in the Planning Enforcement Section should be reviewed in the light of any decisions to accept the above recommendations. If further resources are allocated to the Planning Enforcement Section, the Head of Planning Control should draw up a series of indicators to measure the impact on performance.**

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**We have taken evidence on the planning aspects of a zero tolerance policy on flyposting and will be taking further evidence on this subject as part of our investigation into Environmental Protection/Street Scene enforcement. We will make any appropriate recommendations on this issue once the latter investigation has been concluded.**

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**Finally, we would like to record our thanks to all those individuals who have contributed to this review and for the written and oral evidence that has been submitted to us by witnesses.**

**The Scrutiny Panel**

J. E. B. Gyford (Chair)  
M. J. Banthorpe  
B. T. Broyd  
Mrs. H. W. Catley  
J. C. Collar  
N. D. C. Edey

D. M. Finch (Vice-Chair)  
B. J. Gaught  
D. Mann  
D. E. A. Rice  
R. A. G. Tincknell  
Ms. L. R. Watson

8. **APPENDICES (NOT ATTACHED)**

**Appendix A** – Written submissions from potential witnesses.

**Appendix B** – Transcripts of oral evidence given at Scrutiny Hearings on 16<sup>th</sup>, 21<sup>st</sup> and 28<sup>th</sup> November 2005.

**Appendix C** – Flow Charts:

Flow Chart 1 – Initial Investigation

Flow Chart 2 – Breach of Planning Control Confirmed

Flow Chart 3 – Enforcement Notice Appeal Process

Flow Chart 4 – Securing Compliance With An Enforcement  
Notice