

Scrutiny Review of Planning Enforcement

Consultation with Parish Council and Amenity Groups – 15 September 2011

Notes of points raised during discussion, including initial responses by Council officers

Following a PowerPoint presentation on the broad principles of the planning enforcement system (PowerPoint circulated to all external attendees) the following key issues were raised and discussed. The issues set out below capture the main points raised from the floor and the initial response given by Council officers at the time:

1. It is difficult for some outside the mainstream planning process to appreciate the complexities of the enforcement process and why different approaches and decisions are sometimes taken in different cases. Applicants need to be reminded to talk to planning officers at an early stage if planning changes to their properties to understand what is likely to be acceptable and what is not. *(Response: – Council officers are happy to help in order to try to avoid problems later.)*
2. A particular problem arises with regard to conditions on planning approvals where work on site can sometimes start before final details are approved. *(Response: Council enforcement of conditions is like any other enforcement matter. The Council must have clear evidence of a breach and act proportionally in respect of the impact of the breach.)*
3. In some cases it is felt that decisions are taken by officers with regard to detailed matters, giving third parties or local Members no opportunity to comment. Sometimes changes agreed can be contentious and need to be aired more in public. *(Response: Every planning enforcement complaint and investigation is notified to the local Councillor(s). Where a breach is identified and is of such importance that action should be taken in the form of serving an Enforcement Notice, then authority for such action is given by the elected Members of the Council in public Committee. Consideration is being given to ways in which a record of cases can be made more widely available, but this will require further investigation as there is past experience of unfortunate publicity where an alleged use is found to have not occurred but the site owner becomes vilified locally on a spurious basis – the Council cannot allow this to*

occur. It is also the case that day to day business and resources must be managed efficiently and the level of decision making must reflect that.)

4. There needs to be better communication with Parish Councils over enforcement cases and alleged breaches of planning control. Delegated decisions are sometimes taken without input from the relevant PC. If a breach is being investigated, it is useful to inform the PC of this so that local knowledge can be obtained although it is acknowledged that some reports of breaches can be malicious. Enforcement notices are reported to Members via Area Planning Committees but in some cases, earlier PC involvement is needed. *(Response: see 3. above.)*
5. Issues related to the making of retrospective applications need to be explained e.g. how long does an applicant have before the development becomes 'permanent'. It was pointed out that if a development does not have the benefit of a valid planning permission, there would be still be legal problems when the owner wished to sell the property. *(Response: Each case has its own characteristics but put simply a building becomes immune to enforcement action after 4 years and a use after 10 years. There is no fixed time for the submission of a retrospective application.)*
6. Problems related to Houses in Multiple Occupation (HMOs) were raised and how these could be better controlled. These can cause problems for neighbours due to noise problems and if they complain, those neighbours can be stigmatised as a result. *(Response: Successive Governments have varied and subsequently varied again the level of control available under planning legislation. Each case will need to be judged on its merits.)*
7. The definition of running a business from home was queried as this can also have impacts on neighbouring properties. It was reported that the number of commercial vehicles parking at the property or on-street was not necessarily sufficient grounds to conclude that a breach of control had occurred let alone to justify taking action. Use of the Electoral Register to check the number of occupants in such houses is not permissible. *(Response: Each case has to be judged on the basis known in planning law as "a matter of fact and degree". No iron rules as to what needs planning permission and what doesn't.)*
8. The relationship between Members and officers was raised in respect of the initial decision to pursue enforcement action. Members could have the ability to 'call in' an enforcement case for discussion at an Area Planning Committee. It was suggested that the Council could publish a 'List F' setting out enforcement investigations by Ward. *(Response: see 3. above. All Members receive notice of cases in their Ward.)*

9. It was suggested that, as part of this review, the costs of the Council's enforcement service should be compared with other similar authorities and consideration given to publishing service standards setting out targets for investigations etc. *(Response: This will form part of a future Report.)*
10. It was queried whether building without consent should be an 'offence' which would then deter people from carrying out works without the necessary consent. *(Response: The Council has invited Government to do this. To date the Government has not shown an inclination to adopt this approach.)*
11. The need to protect trees from damage and development was regarded as a high priority. More resources are needed to help on this important aspect of enforcement. *(Response: This will be included in a later Report.)*
12. The cost of enforcing against illegal traveller encampments was seen as a potential disincentive to taking action against them often involving the High Court. *(Response: This is a potentially important issue but every case will have to be assessed individually and crucially in the context of adopted planning policy. Currently Government policy on traveller and gypsy sites is under review.)*
13. It was felt that hedges were important local features and needed to be protected. Many had been highlighted in the Character Area Assessments. *(Response: Planning controls with regard to the protection of hedges are very limited but where the option is available and justified the option is taken to seek some control.)*
14. It was agreed that the review of enforcement could be informed by setting clearer priorities for attention and some form of triage system could perhaps be adopted to assess how different cases should be handled. *(Response: This will be the subject of a further report.)*

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