

TONBRIDGE & MALLING BOROUGH COUNCIL

PLANNING and TRANSPORTATION ADVISORY BOARD

23 October 2006

Report of the Director of Planning & Transportation

Part 1- Public

Matters for Information

1 PLANNING ENFORCEMENT

1.1 General

- 1.1.1 As Members will recall a new post of Enforcement Team Leader was created at the end of last year and James Wagstaff took up the post in January of this year. Many members will have had contact with James or may have seen him at a presentation to Parish Partnership Panel earlier this year. He has been leading a review of the way in which the Team works and in particular is engaged with colleagues in the main Development Control teams in improving the way that we make the most of the functions of the Uniform system to enable resources to better targeted to investigations and communications with Parish Councils, the public and Members.
- 1.1.2 It is particularly important that we make best use of our technical systems as this provides opportunities for better communications which is so important given the high sensitivity of many potential enforcement cases. We recognised at the time of restructuring the Team that we need to work to improve our external communications because it was abundantly obvious that the concerns that the public and Parish Councils expressed was often more to do with an apparent lack of progress of an investigation rather than the outcome of the investigation itself. My perception is that we have, to a fair degree, overcome this communications problem although there are still, inevitably, a number of persistent cases that remain unresolved and are a frustration to a number of local communities.

1.2 Special controls

- 1.2.1 One of the other reasons that we sought to revise the structure of the team was to look in more detail at the way in which we use the powers of control available to us, the way that we approach enforcement and breach of condition notices and other tools such as Section 215 notices, listed building repair notices or emergency repairs notices on listed buildings.
- 1.2.2 Each case will need to be judged on its specific merits and I recently reported, to Area 3 Planning Committee on a case of a listed building which is in a poor state,

most particularly because of its immediate visual appearance in the street scene. It was concluded in that case that Section 215 may not necessarily be as appropriate as some other powers given that the building is listed. In that case we have procured a structural survey, the results of which are anticipated in a short while. This will allow us to consider whether Section 215 or another approach will be most effective in upgrading/protecting this building.

1.2.3 In light of that case specific report I made wider ranging presentation on the use of Section 215 to the last Parish Partnership Panel. The key points with regard to the potential for the use of Section 215 are:

- Government Best Practice advice is to use these powers in conjunction with other powers and strategies, and especially funding streams and grant regimes. For example the recently publicised use of Section 215 on Hastings is part of a much wider regeneration project
- it is a discretionary power to be used where considered to be effective and appropriate and there is a need to consider the condition of the site, the actual effect on locality and the scope of other powers available
- beneficial effects can be achieved by threat or by pursuing formal action and by works in default
- but often other powers are more effective and direct – Repairs notice, Building Act powers, Enforcement Notice, Housing Act powers.
- it is not a widely used power although increasingly employed recently.
- The Council can take action following service of Notice (“default powers”). In such cases judgement has to be made about ability to recover costs. Prosecution for failure to comply with the Notice is a maximum £1000 fine
- one of the reasons that Section 215 is not widely used is that Notices can be appealed to the Magistrates’ Court. The key is that the Statutory Grounds of appeal enable a challenge to the Notice that the situation arises in the “ordinary course of events” defence – this has not been legally tested so that the LPA is always at risk of having an adverse Court reaction should an appeal be lodged.

1.2.4 In light of these issues surrounding the use of Section 215 we continue to assess whether other powers are available in each specific case. The Chief Solicitor has helpfully assisted by compiling a note which is annexed to this report highlighting alternative powers in various circumstances. As promised I have copied this report and the annex to all Parish Councils.

1.2.5 We are also investigating whether we should revise the wording of some conditions such that it would allow more rapid action, in particular to allow the use

of a Breach of Condition Notice, should a breach occur. The difficulty here is that such revised wordings are often not in compliance with Government's model conditions and could be appealed on that point alone and almost certainly will not be used by Inspectors in appeal cases, whatever merits they have in terms of speedier enforcement.

- 1.2.6 We will continue to investigate all avenues to make our actions more effective in ensuring that enforcement system acts towards the aim of improving the environment or mitigating those unacceptable breaches that cannot be allowed to remain unchecked. With over 500 investigations undertaken each year we do need to best target our resources and be clear about the best use of the tools at our disposal to achieve these ends.

1.3 Legal Implications

- 1.3.1 Each individual case for potential enforcement action is discussed with the Legal Section prior to any recommendation for action being published or the exercise of delegated powers taking place.

1.4 Financial and Value for Money Considerations

- 1.4.1 No financial implications as long as 1.3.1 is adhered to. Value for Money will be achieved by ever more productive use of Uniform software.

1.5 Risk Assessment

- 1.5.1 Failure to seek Legal advice would be a risk.

1.6 Recommendation

- 1.6.1 This report **BE NOTED**

Background papers:

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Nil

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