

Planning Enforcement Scrutiny Review

Final Report

June 2005

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Planning Enforcement Scrutiny Review

Scrutiny Review Members:

Cllr Tony Austin (chairman)
Cllr Ron Flaherty
Cllr Mike Nee
Cllr Jenny Samper
Cllr Chris Took

Officers:

David Ford, Assistant Head of Culture & Communications (lead officer)
Dan Hamlin, Policy and Improvement Manager
Tony Trotter, Team Leader – Enforcement Team (until September 2004)
Tony Jarvis, Team Leader – Enforcement Team (November 2004 – February 2005)
Kim Bennett – Head of Development Services

1. Introduction:

- 1.1 The Planning Enforcement Team forms part of the Development Services division within the Community and Environment Services directorate. Development Services comprises of Development Control, Building Control, Planning Enforcement, Local Land Charges and an administration unit. The Enforcement Team is based at Military Road and is managed by the Team Leader (Enforcement) who reports to the Head of Development Services.
- 1.2 Development Services was recently subject to a Best Value Review. Members decided not to include Planning Enforcement within the scope of the Best Value Review as it was felt that the issues particular to this service were best dealt with through a separate scrutiny review.

2. Scope of the Review:

- 2.1 Planning Enforcement was first raised as a potential topic for a scrutiny review in 2002. It was decided by the then Scrutiny Management Working Party that the review would form part of phase 2 of the council's scrutiny management programme. The terms of reference of the review were agreed by Overview and Scrutiny Committee at its meeting on 17 March 2004. It was agreed that the scope of the review should include the following: -
 - a) The need to develop a system and protocol in order to effectively prioritise cases;
 - b) The need to develop an effective system for monitoring the performance of staff in relation to closing cases;
 - c) To consider how best to harness Member involvement in planning enforcement cases in light of Members past involvement in this area;
 - d) The need to raise the profile of the Planning Enforcement section in the District and in the public's perception of the section's success;
 - e) To review current legislation for the planning enforcement system and how to make best use of it.

3. The Service

3.1 General Overview

3.1.1 As the Local Planning Authority for the district, the City Council has statutory enforcement powers. The council's Enforcement Team deals with six types of case:-

- Where development occurs without planning permission
- Where planning conditions have not been complied with
- Unauthorised works to listed buildings (including internal alterations)
- Illegal display of advertisements including fly posting
- Monitoring of Section 106 Legal Agreements
- Section 215 actions to improve the appearance of untidy land affecting local amenity

Section 106 legal agreements are undertakings given by Developers to ensure the timely receipt of financial contributions and provision of highway improvements, low cost housing, landscaping, community facilities, etc.

Section 215 actions relate to improvements to untidy and un-maintained land and buildings, which adversely affect the amenity of an area.

3.1.2 The Enforcement Team has approximately 650 cases a year to deal with. The type of case and length of time required to resolve a case can vary greatly. The legal process for dealing with cases can often be time consuming.

3.1.3 The Enforcement Team comprises of five full-time officers plus one 1-year post funded through the Planning Delivery Grant. General administrative support is also provided, although this is not specific to the team. The service by nature is mostly reactive although one member of the team is tasked with looking at enforcement from a proactive point of view.

3.1.4 The service budget for Planning Enforcement is part of the Development Control budget. Direct expenditure on Development Control for 2003/04 was £1,039,060 with income of £478,800. When support costs are added in, the total net charge to the council is £580,900. As part of the above, enforcement has £1,000 for direct action work – currently supplemented by a further £10,000 from the planning delivery grant.

3.2 Legislative Framework and Procedures:

3.2.1 The following section sets out the legal framework within which the Enforcement Team works and the procedures that need to be followed. This highlights the complexity and time-consuming nature of taking effective enforcement action. It was felt that it was important to set this out in detail within the report in order to provide some context to the recommendations made later in the report.

3.2.2 Unauthorised Development

The carrying out of development without planning permission is not normally an offence. However, if development is carried out, or conditions imposed on a planning permission are not complied with, the council may issue an Enforcement Notice requiring the breach of control to be remedied. The enabling section of the 1990 Town and Country Planning Act, Section 172, provides that "where there has been a breach of planning control... then the authority, if they consider it expedient to do so having regard to the provisions of the development plan and to any other material considerations, may issue a notice requiring the breach to be remedied."

3.2.3 The power to issue an Enforcement Notice is thus discretionary and an Enforcement Notice is not used as a penalty to be imposed where there is a breach of planning control. The considerations which go into whether or not to issue an Enforcement Notice are precisely those, which the statute requires be taken into account when determining planning applications. It follows that it would be improper to issue an Enforcement Notice if planning permission would have been granted had an application been made. An Enforcement Notice will be appropriate if planning permission would have been refused or granted subject to indispensable conditions.

3.2.4 Copies of an Enforcement Notice have to be served on the owner and occupier of the land and on any other person having an interest in the land, which the council considers to be materially affected by the Notice. It is sometimes necessary to ascertain the identity of the owner by requisition from the Land Registry. Copies of the notice must be served on all the relevant persons not later than 28 days after its issue and not less than 28 days before it is due to take effect.

3.2.5 Immunity and Resultant Lawfulness

Where an Enforcement Notice relates to operational development (normally building or engineering operations) or to the change of use of a building to a single dwelling house it must be issued within four years of the date of the breach. Beyond four years the development gains immunity from enforcement action and becomes lawful. In all other cases, an Enforcement Notice must be issued within ten years.

3.2.6 When a breach of planning control has gained immunity from enforcement action through passage of time, any person may make an application for a Certificate of Lawful Use or Development (CLUD). Where the case is proved, the council has no option but to grant the application. The test of proof required is on the basis of the balance of probability and not of beyond reasonable doubt. Applications for CLUD are rare and sometimes misunderstood. The question of whether or not planning permission should be granted is of no relevance to them. Their purpose is to establish that immunity from enforcement action has been gained.

3.2.7 Appeals

Any recipient of an Enforcement Notice has a right of appeal to the Secretary of State for the Environment. A substantial majority of Enforcement Notices issued result in appeals. An appeal may be made at any time before the date appearing in the notice as the date upon which it takes effect. Where an appeal is made the Enforcement Notice is of no effect pending the final determination of the appeal. An appeal may be made on one of seven specified grounds, which in summary are:

- (a) that planning permission ought to be granted;
- (b) that the alleged breach of control has not occurred (i.e. a question of fact);
- (c) that the matters alleged are not a breach of control (i.e. a point of law);
- (d) that the breach of control is immune from enforcement because of the 4 or 10 year rules;
- (e) that copies of the notice were not served in accordance with the statutory requirements;
- (f) that the steps required be taken exceed what is necessary to remedy the breach of control; and
- (g) that the period of compliance with the notice is too short.

3.2.8 Stop Notices

In certain circumstances, a planning authority may issue a 'Stop Notice' requiring the discontinuance of an activity alleged in an Enforcement Notice at an earlier stage than can be required by the Enforcement Notice itself. A Stop Notice may be served at any time between the Enforcement Notice being served and it's coming into effect.

- 3.2.9 A Stop Notice takes effect on a date specified in it being not less than 3 days and not more than 28 days from the date of service. Once a Stop Notice has been served, the council may display a site notice stating that it has been served and indicating its terms.
- 3.2.10 The council as local planning authority is liable to compensation for loss or damage directly attributable to the prohibition of an activity by a Stop Notice if the parent Enforcement Notice is quashed at appeal other than on the basis that planning permission is to be granted.
- 3.2.11 Government advice stresses that the power to issue a Stop Notice is discretionary and not to be used automatically as an adjunct to an Enforcement Notice. The need for a Stop Notice usually depends on the character of the activity and its effect on the locality. A cost benefit analysis should be carried out taking account of the interests of the persons carrying out the activity as well as those affected by it. Particular care should be exercised where a Stop Notice would cause the cessation of a business providing livelihood and possibly affecting other jobs.

3.2.12 Injunctions

Where a fine or other penalty is inadequate or ineffective in preventing repeated or continuing breaches or in order to prevent very serious breaches in limited circumstances, there are provisions giving the local authority authorisation to seek Injunctions from the County Court or High Court to restrain the offender. The power relates to Section 178B of the Town and County Planning Act 1990.

- 3.2.13 The scope for obtaining an injunction is wider than for serving an Enforcement Notice as it may refer to an 'apprehended breach' (i.e. anticipated) in that it relates to the activities of a person or persons rather than a use of land. The injunction may be sought at any stage of the enforcement process, but is most frequently used when an operator is ignoring an Enforcement notice, or where the council is reluctant to issue a stop notice. The failure to comply with an injunction leads to a contempt of court and can lead to imprisonment. Following the introduction of the Human Rights Act and importantly a decision relating to a travellers development known as 'The Porter Judgement' the process of obtaining an injunction has greatly increased in complexity and therefore the amount of time spent attempting to resolve the breach.
- 3.2.14 This council has had considerable success in obtaining injunctions against unauthorised residential mobile homes, but always at the cost of removing officers from other duties for substantial periods of time prior to the eventual court hearing. The knock-on effects are that investigations into new cases are stalled and progress on existing cases is delayed.

3.2.15 Non Compliance with an Enforcement Notice

Where an Enforcement Notice is in force and the steps it requires to be taken have not been taken within the prescribed period an offence occurs. It is then open to the council to bring proceedings in the Magistrates Court. It is by no means unusual to have to bring proceedings in order to secure compliance with an Enforcement Notice. If, after conviction, a person fails to comply with the notice he commits a further

offence and becomes liable to a fine for each day on which the requirements of the notice remain unfulfilled.

3.2.16 Where an Enforcement Notice is in force and it requires steps to be taken and those steps are not taken, the council may itself enter the land and carry out those steps and recover its reasonable expenses from the person that owns the land. This is a cost effective alternative to prosecution proceedings especially when taking action or proceedings against an absentee or 'difficult' landowners. However, this in itself can be both time-consuming and problematic.

3.2.17 Difficulties Encountered following Enforcement Procedures

It will be clear from the above that the enforcement procedures laid down in the legislation are time consuming and many would argue unduly cumbersome. Initially it is necessary to obtain evidence that there has been a breach of control. Where a building has been erected this is seldom a problem, although it is sometimes necessary to establish when the building was erected and whether or not it was permitted development.

3.2.18 Evidence that there has been a material change of use may be very much more difficult to establish. It is essential that the right parcel of land, or 'planning unit', and the correct description of the unauthorised use are identified at this stage if an Enforcement Notice is not to be quashed later at appeal.

3.2.19 Once it is clear that there is a breach of control, it becomes necessary to identify the persons on whom copies of the notice must be served. It is sometimes a practical problem to secure the proper completion of formal requisitions for information – delaying tactics are not unknown – and further delays arise if it is necessary to seek information from the Land Registry.

3.2.20 As previously noted, recipients of an Enforcement Notice once served have the right to appeal and the majority take advantage of this procedure. They also have the right to request that the appeal be heard at a public inquiry rather than be dealt with under the written representations procedure thus adding more time before the appeal is ultimately determined. It is by no means unusual for a year or even more to pass between the issue of an Enforcement Notice and the issue of an appeal decision. Even then, an Inspector may decide to extend the period for compliance with the Enforcement Notice.

3.2.21 Enforcement action takes time, which, in some cases, can be ameliorated by the use of injunctions or stop notices, which may themselves attract compensation. The time consuming nature of enforcement action is not readily understood by the public at large and persons affected by unauthorised development understandably expect the authority to be able to take prompt and effective measures to meet their complaints.

3.2.22 Government Guidance on Investigating Breaches of Planning Control

This section so far has dealt with the procedures involved in taking enforcement action and has touched on the problems inherent in the procedures. Account must also be taken of Government advice, which is set out in Planning Policy Guidance Note 18 (PPG18) and related circulars.

3.2.23 PPG 18 says that the integrity of the development control process depends on the readiness of councils to take enforcement action when it is essential. Nonetheless, they should initially seek to resolve breaches of control by negotiation. An

Enforcement Notice should not come as a bolt out of the blue to the recipient. The owners of businesses should be encouraged and given reasonable time to relocate to an acceptable site. The possibility of reducing the level of activity to an acceptable degree should be explored. Only where the breach of control is causing serious harm to public amenity in the neighbourhood the person responsible will not submit a planning application despite being advised to do so and the breach took place in full knowledge that planning permission was needed, are authorities urged to take vigorous enforcement action.

3.2.24 If the advice given in PPG 18 and relevant Circulars is not taken into account, the council may be at risk of an award of costs in an ensuing appeal against an Enforcement Notice.

3.2.25 Unauthorised Works to Listed Buildings

There is an important difference between the council's powers where there is a breach of listed building control and where there is a breach of planning control. It is an offence to carry out works for the demolition of a listed building or for its alteration in a manner, which affects its character as a building of special architectural or historic interest without the grant of listed building consent. As previously noted, it is not an offence to carry out development without the granting of planning permission.

3.2.26 Section 28 of the 1990 Listed Buildings and Conservation Areas Act also gives planning authorities the power to issue a listed building Enforcement Notice where there has been a contravention of listed building control. The power is again discretionary and the procedures are broadly similar to an ordinary Enforcement Notice. There are also equivalent provisions for an offence where a listed building Enforcement Notice is not complied with and for the planning authority to itself carry out the work in default and recover its costs.

3.2.27 A planning authority thus has the options of either bringing proceedings, issuing an Enforcement Notice, or both where there is a breach of listed building control. Many breaches of listed building control are unwitting and it will normally be sufficient to issue an Enforcement Notice. The offender suffers the financial penalty of the costs of carrying out the remedial works required by the Enforcement Notice. In some cases the breach of control may have involved the destruction of a feature of a building, which significantly contributed to its special interest. In these circumstances a prosecution will normally be appropriate. It may also be appropriate to prosecute where the breach is flagrant and in full knowledge of the law.

3.2.28 Works in Conservation Areas

Conservation Area Consent is normally required to substantially demolish an unlisted building within a conservation area. It is an offence to demolish such a building without consent and the Act applies the listed building enforcement provisions to such buildings

3.2.29 Breaches of Advertisement Regulations

The law includes no provision for the issue of an Enforcement Notice where there is a breach of advertisement control. Instead, it is an offence to display an advertisement in contravention of the Control of Advertisements Regulations. The remedy is therefore to prosecute offenders, although it is sometimes difficult to identify the person responsible. Planning authorities also have the power, in some circumstances to remove or obliterate any placard or poster, which is displayed in

contravention of the Regulations. Where the placard or poster identifies the person who displayed it or caused it to be displayed, written notice of the intended action must be given. This provision is particularly useful when dealing with fly-posting.

3.2.30 Tree Preservation Orders

The Enforcement Team deal with tree issues where they relate to breaches of planning condition (a tree may be required to be retained within a development); whereas, the council's Arboricultural Officer investigates alleged breaches of tree-related legislation.

3.2.31 Monitoring Section 106 Agreements

Details of section 106 legal agreements are monitored by the Enforcement Section to ensure the timely receipt of financial contributions and provision of highway improvements, low cost housing, landscaping, community facilities, etc. This involves monitoring the progress of development to ensure Developers make the required contributions or carry out environmental improvements at the appropriate stage of development and feeding information to the Land Charges in response to search queries.

3.2.32 Section 215 Action

Section 215 Notices had been particularly effective in improving the appearance of a dilapidated locality in Hastings. Such notices had been served in Herne Bay and had resulted in a marked improvement to the appearance of a number of properties along the seafront.

3.3 Staffing and division of workload:

The team comprises of five full-time members of staff and one temporary member.

Planning Enforcement Team Leader

Identifies new cases. Allocates and manages work within the team. Identifies where action needs to be taken, hence making a 'deemed assessment' to establish the acceptability or otherwise of unauthorised developments in all cases. Responds to complaints about the service. Deals with certain high profile cases and projects. Prepares reports to committee as arise and deals with appeal work resulting from enforcement action.

Senior Planning Inspector

General casework but with an emphasis towards dealing with larger developments utilising past experience as Clerk of Works, particularly where technical knowledge of building would be useful at the early stages of development. Deputises for Team Leader.

Planning Inspector (1)

General casework. All Section 215 Actions. All Section 106 monitoring.

Planning Inspector (2)

General casework. Expert in analysing aerial photography, therefore deals with cases where use of this would be advantageous e.g. changes of use where the history of use of land is not clear.

Planning Inspector (3)

The post is filled by a new member of staff who commenced duties in September 2004. With no background in Enforcement, he is currently undergoing training.

Planning Enforcement Officer (Temporary)

The post is funded through the Planning Delivery Grant for 2004/05 and finishes July 2005. Future renewal of this contract depends upon funding being available from the 2005/06 Planning Delivery Grant.

4. Current Performance:

4.1 Managing Cases

- 4.1.1 There are approximately 650 planning enforcement issues to deal with each year ranging from minor infringements to major cases. The number of complaints has risen in the last year and there are currently over 100 cases per officer. There is no formal system for prioritising cases.
- 4.1.2 An analysis of cases received between March 2003 and February 2004 identified that the Enforcement Team received a total of 636 cases during this period. Of these, 263 (42%) related to operational development (Building works) occurring without planning permission, 148 (23%) related to material change of use occurring without planning permission, 58 (9%) related to breaches of planning conditions, 52 (8%) related to unauthorised advertisements, 51 (8%) related to Section 215 monitoring, 43 (7%) related to works to listed buildings and 21 (3%) related to Section 106 monitoring. During the same period a total of 406 cases were closed. During the same period 58 Enforcement Notices were issued.
- 4.1.3 When analysing these figures it was identified that a number of cases had been closed with the reason given as "No breach identified." Most of the cases had been referred to the council by members of the public but there were a variety of reasons why there was no breach identified. It was concluded that public education could lead to a lessening of the number of these types of cases but acknowledged that it was sometimes difficult to judge a potential breach at the start.
- 4.1.4 Some of the breaches appeared to be fairly minor and almost trivial but some of these cases were complex and without the detailed history it was difficult to judge from the computer the seriousness of a case or indeed the exact type of case, for example a breach of a Section 215.
- 4.1.5 In some instances it appears that cases are dealt with quickly and in others a number of months can pass before the case is closed. This is due to officers closing cases in batches on the computer during quieter periods.

4.2 Case Studies

- 4.2.1 In order to inform the review, a number of case studies were presented to the panel. One particular case study considered a complaint regarding the unauthorised change of use to stationing of residential caravans, motor vehicles and motor vehicle parts, use of land for model aircraft flying, shooting club and business use by landscape company. The initial complaint was received in July 1994. An Enforcement Notice was eventually served in September 1997. Periods of non-compliance and requests for more time continued until February 2001 when planning permission was sought, refused and the subsequent appeal dismissed. Following an unsuccessful attempt to prosecute, the council received information that the land had been sold to new owners in February 2003. Subsequently, negotiations with the developer and site

visits led to works taking place to remove the required items. This was being undertaken in May 2004 nearly 10 years after the initial complaint.

- 4.2.2 This case is an extreme one but highlights the lengthy process that can ensue when dealing with a particularly difficult developer or member of the public. However, the failure to adequately address a case such as this will frustrate councillors and members of the public as well as the staff involved. Therefore, consideration needs to be given to the effectiveness of the approach taken particularly in relation to the time taken to deal with the matter (beyond the limitations of the legal framework) and in keeping all parties informed of progress or otherwise.
- 4.2.3 Members of Development Control and General Purposes Committee recently considered a report considering a case at Albion Lane, Herne, where the Ombudsman found against the council. It was resolved that this particular case be referred to this review as a case study
- 4.2.4 The case goes back to 1992 when the council served two Enforcement Notices on the occupier of a residential property in Albion Lane, Herne, requiring him to discontinue the use of the site for the sale, storage and repair of motor vehicles. There followed protracted negotiations in order to secure compliance with the notices, culminating in the council prosecuting the owner for breaches of the notices in 1997. He was found guilty and ordered to pay a fine of £1,000 plus costs. By 1998, there had been a substantial reduction in the number of vehicles on site and the situation remained under control until June 2001. Thereafter, the problems re-emerged involving a huge amount of staff time from the Planning and Enforcement sections, Legal, Environmental Health and the Antisocial Behavioural Unit. Details are set out in the report referred to above. The current situation is that the site continues to be monitored against allegations that the owner is now buying and selling cars, but using surrounding roads to park them on.
- 4.2.5 While the Ombudsman acknowledged that this type of case represents great difficulties in order to effectively enforce against, the view was taken that there was a period between the end of 2002 and September 2003 when direct action could have been pursued as it was clear that the strategy the council was pursuing was not going to succeed. This, in the Ombudsman's view amounted to maladministration.
- 4.2.6 With the benefit of hindsight, it is acknowledged by officers that in this instance too much reliance was placed upon the planning enforcement powers, whereas a combined effort involving a possible Anti-social Behaviour Order, Noise Abatement Notice and planning powers, might have achieved a more effective result. While in officers view this point is debateable, in future officers have agreed that for similar cases involving cross-departmental issues, a senior officer from a single department will take more of a leading role in order to ensure co-ordination of action.

4.3 Benchmarking:

- 4.3.1 In order to inform the review, phone and the enforcement staff conducted a benchmarking exercise with a number of similar local authorities provided the information. The authorities chosen were Oxford, Chichester, Winchester and Tonbridge and Malling. These were selected on the basis of their similarities to the Canterbury district in terms of population and historic environment. As with all benchmarking exercises, care should be taken not to infer too much from a small sample. The information gathered was used by the panel to generate new lines of enquiry and to highlight where good practice may be available.

Appendix 1 highlights the results.

- Oxford seems to have the most productive section in terms of staff ratio to total cases, although the overall area is smaller
- Canterbury is comparatively well staffed, although the officers here monitor section 106 agreements
- Canterbury has the second highest number of cases. It may be that the number of cases is tied very specifically to a historic environment and large number of conservation areas. This might explain Oxford's high caseload in a small area
- None of the council's made heavy use of direct action, preferring to go for a negotiated solution
- Chichester expected the amount of direct action cases to grow and was considering outsourcing this aspect of work
- Only Oxford have a laid out priority system which again may have grown out of the number of cases the section deals with
- Two of the enforcement teams have dedicated clerical support

The findings from this exercise informed the recommendations made in the review.

5. Consultation:

The following consultations were undertaken as part of the review. The findings were used to inform the recommendations.

5.1 Member Consultation:

Ten Members attended a discussion meeting on 2 August 2004 on planning enforcement in order to inform the review at an early stage. The note from the meeting is attached at **Appendix 2**. From the discussion a number of suggestions were made: -

- Members could act as a buffer between Officers and members of the public complaining about less serious cases;
- More involvement with Parish councils and local communities could help the planning enforcement process
- Public perception should be improved through better communication and in certain cases using the media to highlight particular issues
- Members needed a better understanding of the limitations of planning enforcement particularly in relation to the legal processes
- Some Members felt they weren't always informed of cases in their wards
- Some Members felt that staffing levels were inadequate
- A system for prioritising cases was felt to be useful and could promote a better understanding with the public and parish councils as they could be informed of more achievable timescales
- Conditions attached to planning consent needed to be worded carefully in order to ensure they were enforceable
- Cross-departmental working should be encouraged e.g. Between planning and environmental health

5.2 Staff Consultation

A meeting was held on 1 July 2004 between Members of the panel and staff within the Enforcement Team excluding the then Enforcement Team Leader. **Appendix 3**

contains a note from this meeting. From the discussion, a number of key points were made by staff: -

- The legal process is slow and it was not always possible from the outset to predict the amount of time and effort a case would require;
- A formally adopted priority system was welcomed. Staff were working to a simple priority system based largely on previous experience;
- Administrative support, which was shared with Development Control, had decreased and this was creating an added pressure.
- More staff would help and there could be a case for employing an office 'junior' to take on the simpler cases;
- Office accommodation is insufficient and inadequate;
- The Planning Contact Centre had helped in terms of dealing with telephone enquiries.

5.3 Deputy Head of Legal

The Deputy Head of Legal was invited to a meeting of the panel on 24 November 2004 to discuss the role of Legal Services in the council's enforcement process. In the course of the discussion the following key points were made: -

- The Legal Team always met the deadlines for issuing and serving notices;
- A new member of staff had recently been appointed to a part time position and provided dedicated support to the legal team on planning matters;
- The council did claim costs for those cases going to the Magistrates or County Courts;
- The council often used contractors to carry out direct action. It was suggested that a procurement exercise should be carried out and a panel of contractors drawn up;
- The legal team regularly reviewed the processes and whether they could be speeded up. However, applying planning law was slow and it was important to be meticulous throughout;
- A councillor thought that there should be a greater provision of funds for S215 Notices and the council should take the opportunity, if possible, to take court action for ignoring a S215 Notice.

6. Key Issues Identified During the Review with Recommendations:

6.1 Prioritisation

- 6.1.1 With approximately 650 planning enforcement issues to deal with each year ranging from minor infringements to major cases being able to effectively deal with all cases with existing resources is not viable. The service is mostly reactive although one member of staff is tasked with looking at enforcement from a proactive point of view. A disproportionate amount of time is sometimes spent on particular cases (can be as much as 2/3 days per week in the early part of an investigation). There is no formal system for prioritising cases at present.
- 6.1.2 The review panel considered a proposal for a system of prioritisation. It will be important that there is Member 'buy-in' to a priority system to ensure the system is used effectively and to avoid lower priority cases being given a higher priority just because they have been raised by a local constituent. Member buy-in would greatly assist the Enforcement Team in providing them with clear guidance on what would

constitute a priority. The proposed system is set out in **Appendix 4**. In essence the system breaks down cases into three distinct areas.

1. Emergency

Irreparable damage to the environment, to the nation's heritage or public safety. This would require an immediate response from the Enforcement Team. It is likely that there would be a very small number of such cases.

2. High Priority

Damage that is likely, unless immediate action is taken, to cause:

- a. serious long-term damage to the environment
- b. a high probability of danger to the public whether using the highway or not, or
- c. causing serious damage to residential quality of life in terms of noise and disturbance at unsocial hours
- d. harm to the reputation and standing of the council

In general, High Priority cases will be those that it is immediately apparent are unacceptable in planning terms and immediate enforcement action is appropriate. It is likely that about two thirds of all cases would fall into this category.

3. Low Priority

New structures or changes of use having limited degree of disturbance to local residents or damage to the environment and which do not come within the category of the higher priority. Inconsequential breaches of planning control with little or no harm to the environment or to the quality of life of local residents. It is likely that one third of all cases would fall into this category.

- 6.1.3 The Enforcement Team Leader felt that with some reorganisation of the methods of working, that there were sufficient resources to deal with those cases that warranted action.

Recommendation 1:

That the prioritisation system attached at Appendix 4 is adopted by the council as a direct result of this review. Once approved and adopted, the priority system would need to be adhered to by both staff and Members (Ref. Para 4.1)

Recommendation 2:

That a system for regularly reviewing the effectiveness of the prioritisation system including a mechanism for reporting back to Members on performance and the closing of cases is adopted in conjunction with the system itself. It is recommended that a standing item be added to the agenda of the Site Visits Panel meetings for the monitoring and reviewing of the system. (Ref. Para 4.1)

6.2 Enforcement Policy:

It was felt by the panel that it would be useful for the council's policies for enforcement to be clearly set out for the benefit of the council, officers and the public.

Recommendation 3:

That the Enforcement Policy set out in Appendix 5 is agreed concurrently with the prioritisation system. The policy should be published on the council's website. The policy should be reviewed in light of any new legislation and should involve stakeholder consultation. (Ref. Para 4.1.3)

6.3 Direct Action:

As the report suggests there are instances when direct action would be required in order to address issues relating to cases that in particular fall into the Emergency or High Priority categories. Some authorities outsource such work to private companies. However, an appropriate default budget has only been established as a result of the Planning Delivery Grant and this is not likely to be available for the next financial year.

A Reserve fund could help ensure cases were taken to logical conclusion. Such actions would raise profile with the public – growth bid / exec create reserve fund on the grounds of good planning and raising public profile of the service

Additional funding would also be required to fund S215 Notices and court action against those ignoring S215 notices.

Recommendation 4:

That a procurement exercise be carried out and a panel of contractors drawn up capable of carrying out direct action. Clear criteria should be established and agreed to identify when a contractor would be called upon to take direct action on the council's behalf. (Ref. Para 3.2.16)

Recommendation 5:

That the Head of Development Services considers a growth bid in order to establish an appropriate budget for taking direct action using default powers to rectify breaches of planning control. (Ref. Para 3.2.16)

6.4 Staffing / Resources:

- 6.4.1 There is a small working budget for planning enforcement although compared to other local authorities the staffing resource is above average. The panel considered opportunities for additional income through financial penalties. There is no way in which the council can generate income but costs can be recovered in certain instances. For example, if the council exercises 'default powers' and takes direct action as referred to in 6.3, then we can recover costs associated with ensuring compliance with the requirements of the Enforcement Notice. So, for example, if an Enforcement Notice requires that a site be cleared of scrap cars we can use our own contractors to do the work and recover the costs of the contractor and all officer time at the hourly rate after the decision to exercise these powers.
- 6.4.2 Fines through the Courts go to the Government not the council. The council can claim the costs of the proceedings through the court but the amount is generally limited.
- 6.4.3 The knowledge base within the Enforcement Team appears to be high. However, issues relating to the effectiveness of administrative support, some training requirements, performance management and office accommodation have been identified during the review. However, it is the view of the panel that the introduction of the prioritisation system and the establishment of a performance culture could help with the issues relating to staffing levels and administrative support.

- 6.4.4 It was felt though that the introduction of dedicated administrative support or more time being freed up from existing generic administrative staff to support the work of the enforcement team would be beneficial.
- 6.4.5 During the course of the review, concern was expressed by the panel and staff within the Enforcement Team about the sub-standard office accommodation they work within. It was the view of the panel that this issue needed looking at as soon as possible.

Recommendation 6:

That a performance management system directly related to the agreed prioritisation system and the closing of cases is introduced and monitored quarterly by the Enforcement Team Leader and reported to the Head of Development Services. (Ref. Para 4.1)

Recommendation 7:

That the effectiveness of staff performance in relation to the prioritisation system is reviewed 18 months after its introduction. A concurrent review of staffing levels and training needs is also carried out to determine whether changes need to be made. This should be synchronised with any budget setting processes for the following financial year (Ref. Para 4.1.3)

Recommendation 8:

That the Head of Development Services and the Central Services Manager review office accommodation as a matter of urgency (Ref. Para 5.2)

6.5 Member / Parish Council Involvement

Some Members and parish Council's take a proactive role in planning enforcement issues acting as effective 'eyes and ears' to the planning enforcement team. A system for prioritising cases will need to reconcile a systematic approach with the sometimes contrary pressures exerted by Members. Expectations may need adjusting in light of the capacity the service has to work effectively.

Recommendation 9:

That a user-friendly guide to Planning Enforcement is produced in order to inform Members (and in particular new Members) and Parish Council's of the enforcement process and the important role they play in it (Ref. Para 5.1)

6.6 Profile Raising

There appears to be a perception problem. Faith in the enforcement system to effect quick solutions is low. The Enforcement Team often bears the brunt of the public's disappointment. The team works in a complaint environment where nobody is happy. The panel took the view that more could be done by the council to proactively raise the profile of the work of the enforcement team and to highlight to the public areas of good practice and measures to be taken to avoid contravening planning policy. In the short term an increase in complaints from the public is possible.

Recommendation 10:

That a communications plan is drawn up in conjunction with the council's communications team to highlight the successes of the work of the Enforcement Team and educate the public in matters relating to enforcement

policy. The plan should consider appropriate press coverage, the use of District Life and the council's website. (Ref. Para 4.1.3)

6.7 Communicating with Complainants

In analysing the evidence presented to the panel it is clear that on-going communication with complainants such as updating them on progress or lack of progress in relation to their complaint is poor. Therefore, it was felt that an administrative system which would automatically ensure that regular written correspondence takes place with complainants is implemented.

The panel considered the introduction of SMART (Specific, Measurable, Achievable, Realistic and Time-related) targets in order to ensure that complainants are effectively communicated with and staff performance is properly monitored. The following suggested SMART targets need considering.

Target 1 – All written or email complaints will be acknowledged within 3 working days

Target 2 – Site visits (when required) of 75% of new cases received will be carried out within five working days

Note: Site Visits are not required if the council requires the complainant to log events – the council sends a letter asking them to do this. This happens if the complaint is e.g. intermitted out of hours work, allegations that people are exceeding 28 day permitted development allowances etc. The reason that 75% is suggested is because at the moment all new cases received in one week are visited the following Tuesday (unless it is an emergency) This means that complaints received on Monday will not be visited till the sixth day. If the target is 6 days the team should have a 95% target

Target 3 – Known complainants will be informed of the result of the Site Visits and the way the matter will be progressed within five working days

Note: This means how the team is going to deal with the case. In many cases if it is not a planning matter or a minor breach the team will go to target 4 at this point. If however the team needs to make further inquiries/investigation/research etc then this period is needed

Target 4 - A formal determination 80% of all new cases will be made within eight weeks and known complainants informed accordingly

Note: It is appreciated that all planning enforcement investigations involve an element of finding out what is happening, identifying the breach of planning control, identifying whether or not it is immune from action and whether the breach is minor and we should not take action, whether it may be acceptable and controllable and invite an application or whether it is unacceptable and we should enforce. All investigations may therefore be considered 'deemed planning applications' Therefore, it is suggested that the council should follow government targets for planning and be in a position to make a determination of 80% of cases within eight weeks. 'A Determination' in this means that either the case will be closed, an application will be invited, or enforcement action authorised

Target 5 - Following the above, known complainants will be informed:

- A When Enforcement Notices are issued**
- B When appeals are received**
- C When appeals are allowed/dismissed and the implications of the result**
- D When the Period for Compliance expires The Council's proposed action - (e.g. prosecution/default etc) and the likely timescale**

It is the view of the Team Leader (Enforcement) that the council should resist targets that say we should update complainants every six weeks or so as this will take officers away from pursuing the action.

Recommendation 11:

That a system for replying and updating enforcement complainants on progress relating to their cases is implemented working to the following targets: -

Target 1 – All written or email complaints will be acknowledged within 3 working days

Target 2 – Site visits (when required) of 75% of new cases received will be carried out within five working days

Target 3 – Known complainants will be informed of the result of the Site Visits and the way the matter will be progressed within five working days

Target 4 - A formal determination (i.e. deciding upon what action to take) 80% of all new cases will be made within eight weeks and known complainants informed accordingly

Target 5 - Following the above, known complainants will be informed:

- A When Enforcement Notices are issued**
- B When appeals are received**
- C When appeals are allowed/dismissed and the implications of the result**
- D When the Period for Compliance expires The Council's proposed action - (e.g. prosecution/default etc) and the likely timescale**

N.B. Achievement

(Ref. Para 4.1)

6.8 Legal Issues

Legally the process for dealing with enforcement cases can be complex and labyrinthine. This means it can consume large amounts of time in preparation. Processes are slow and increase in complexity and uncertainty through the various stages of appeal permitted by the system. Legal Services have introduced additional support to deal with the workload related to enforcement issues. A Service Protocol between Planning Enforcement and Legal Services would formalise the relationship and ensure both services meet the requirements of the other.

Recommendation 12:

That a Service Protocol is drawn up between Legal Services and the Enforcement Team (Ref. Para 5.3)

6.9 Cross-departmental Working

The recent Ombudsman report, which considered how the council dealt with a particular case at Albion Lane, Herne, highlighted problems encountered when a particular issue cuts across a number of services or departments, in this case – Planning Enforcement, Legal, Community Safety and Noise Control. It was felt that in order to improve the effectiveness in dealing with such issues in future, a lead officer needs to be identified in order to ensure co-ordination of action.

Recommendation 13:

Where a case requires a number of Departments to work together due to various legislation applying to the case, a lead officer needs to be identified to co-ordinate the work across services (Ref. Para 4.2.6)

7. Implementation

The attached action plan summarises the recommendations and identifies lead officers and delivery dates. Delivery dates for some of the actions remain dependent upon the successful appointment of a new Planning Enforcement Team Leader post, which is currently vacant.

Scrutiny Management and Review Sub-committee will monitor the implementation of the action plan.

8. Conclusion

The Review Panel commends this report to the Executive and City Council.

PLANNING ENFORCEMENT SCRUTINY REVIEW: ACTION PLAN

Ref.	Recommendation	Responsible Officer	Delivery Date	Six Monthly Update
1	That the prioritisation system attached at Appendix 4 of the report is adopted by the council as a direct result of this review. Once approved and adopted, the priority system would need to be adhered to by both staff and Members	Planning Enforcement Team Leader		
2	That a system for regularly reviewing the effectiveness of the prioritisation system including a mechanism for reporting back to Members on performance and the closing of cases is adopted in conjunction with the system itself. It is recommended that a standing item be added to the agenda of the Site Visits Panel meetings for the monitoring and reviewing of the system.	Planning Enforcement Team Leader		
3	That the Enforcement Policy set out in Appendix 5 of the report is agreed concurrently with the prioritisation system. The policy should be published on the council's website. The policy should be reviewed in light of any new legislation and should involve stakeholder consultation.	Planning Enforcement Team Leader		
4	That a procurement exercise be carried out and a panel of contractors drawn up capable of carrying out direct action. Clear criteria should be established and agreed to identify when a contractor would be called upon to take direct action on the council's behalf.	Planning Enforcement Team Leader Deputy Head of Legal Services		

Ref.	Recommendation	Responsible Officer	Delivery Date	Six Monthly Update
5	That the Head of Development Services considers a growth bid in order to establish an appropriate budget for taking direct action using default powers to rectify breaches of planning control.	Head of Development Services	Sept 2005	
6	That a performance management system directly related to the agreed prioritisation system and the closing of cases is introduced and monitored quarterly by the Enforcement Team Leader and reported to the Head of Development Services.	Planning Enforcement Team Leader		
7	That the effectiveness of staff performance in relation to the prioritisation system is reviewed 18 months after its introduction. A concurrent review of staffing levels and training needs is also carried out to determine whether changes need to be made. This should be synchronised with any budget setting processes for the following financial year	Head of Development Services Planning Enforcement Team Leader		
8	That the Head of Development Services and the Central Services Manager review office accommodation as a matter of urgency	Head of Development Services Central Services Manager	March 2005	
9	That a user-friendly guide to Planning Enforcement is produced in order to inform Members (and in particular new Members) and Parish Council's of the enforcement process and the important role they play in it	Planning Enforcement Team Leader		
10	That a communications plan is drawn up in conjunction with the council's communications	Planning Enforcement Team Leader		

Ref.	Recommendation	Responsible Officer	Delivery Date	Six Monthly Update
	team to highlight the successes of the work of the Enforcement Team and educate the public in matters relating to enforcement policy. The plan should consider appropriate press coverage, the use of District Life and the council's website.	Assistant Head of Service (Communications & Museums)		
11	<p>That a system for replying and updating enforcement complainants on progress relating to their cases is implemented working to the following targets: -</p> <p>Target 1 – All written or email complaints will be acknowledged within 3 working days</p> <p>Target 2 – Site visits (when required) of 75% of new cases received will be carried out within five working days</p> <p>Target 3 – Known complainants will be informed of the result of the Site Visits and the way the matter will be progressed within five working days</p> <p>Target 4 - A formal determination (i.e. deciding upon what action to take) 80% of all new cases will be made within eight weeks and known complainants informed accordingly</p> <p>Target 5 - Following the above, known complainants will be informed:</p>	Planning Enforcement Team Leader		

Ref.	Recommendation	Responsible Officer	Delivery Date	Six Monthly Update
	<p>A When Enforcement Notices are issued B When appeals are received C When appeals are allowed/dismissed and the implications of the result D When the Period for Compliance expires The Council's proposed action - (e.g. prosecution/default etc) and the likely timescale</p> <p>N.B. Achievement of this target dependent upon IT software issues being resolved</p>			
12	That a Service Protocol is drawn up between Legal Services and the Enforcement Team	Head of Development Services Deputy Head of Legal Services		
13	Where a case requires a number of Departments to work together due to various legislation applying to the case, a lead officer needs to be identified to co-ordinate the work across services	Head of Development Services		

APPENDIX 1

Planning Enforcement – Benchmarking (May 2004)

	Chichester	Oxford	Tonbridge & Malling	Winchester	Canterbury
Contact	Shona Archer	Paul Townsend	Richard Evans	Charlie Robson	Tony Trotter
Population	106,100	149,100	106,900	110,109	141,300
Area (hectares)	78,678	4,560	24,013	65,934	31,056
How many staff do you have in your PE section?	6 (including Team Clerk)	3	4 (including team clerk)	5 (including team admin)	5
Are these dedicated staff or do they carry out other functions?	Dedicated	Dedicated	Dedicated	Dedicated	Dedicated
Approximately how many cases do you deal with each year? (e.g. last year)	450	989 – 2002/03	530	620	660
Do you have a priority system, if so can I have a copy?	First come first served	Yes	First come first served	Admin sift first	No
Do you do section 215 work?	Yes	Yes	Yes	Yes	Yes
Do you monitor conditions and legal agreements, e.g. section 106, proactively?	No – left with Legal team	Small workload, mainly involving lawful use	No	Yes	Yes
In how many cases have you taken direct action?	3-4 over the past 5 years, although this figure is expected to grow. Currently	1-2 per year cases mainly resolved by negotiation	Not aware of any in recent past – usually negotiation	8 cases in preparation	3 cases

	investigating specialist use of contractor to deal with direct action				
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PLANNING ENFORCEMENT SCRUTINY REVIEW

**POINTS ARISING FROM A DISCUSSION BETWEEN PANEL MEMBERS AND
OTHER MEMBERS OF THE COUNCIL HELD ON 2 AUGUST 2004 IN
CONFERENCE ROOM 1 AND 2, COUNCIL OFFICES**

Present: Councillors Nee and Miss Samper – Panel Members
David Ford – Lead Officer for the Review
Councillors Avery, Cragg, Mrs Doyle, Gilbey, Mrs McCabe,
Oakes, Mrs Reuby and Seager
Tony Trotter – Team Leader: Enforcement
Rosemary Burton – Committee Administrator

In the absence of Councillor Austin (Chairman of the Review Panel), Councillor Miss Samper acted as the facilitator during the discussions.

Members based the discussions on a number of questions and the points made are summarised under each question.

*What are Members' expectations regarding planning enforcement?
Are they met?
Could the service be improved?*

It was difficult to fulfil the expectations of both Members and the public as in a number of cases immediate action was expected (the Council should do something). However, it was accepted that most cases involved law-abiding citizens and it was the Council's role to give help and advice.

Members could act as a buffer between Officers and members of the public complaining about less serious cases.

Officers should act quickly in certain cases and more media publicity should be given to those cases. The Council should be seen and known as a "tough" council. But not all Members agreed with this as Officers had to follow the correct legal processes. This often gave the impression that the Council was not acting quickly and decisively.

The number of cases requiring planning enforcement action would probably rise as people were more inclined to act without seeking advice and guidance from the Council.

Parish Councils and local communities could and did help the Planning Enforcement process.

Members' expectations were that action should be taken quickly although accepted that the correct processes had to be followed.

Public perception could be improved not only by acting more quickly but also ensuring that people were better informed. There was a need for improved communications between the public and the Council.

Do Members believe that there is a clear understanding amongst all Members of the limitations of the activities the Enforcement Team can carry out and follow through?

Members needed a better understanding of the limitations of planning enforcement particularly the legal side of the process. More information on the process should be given to Members.

Members should work in partnership with the Officers and communication between them improved.

Whilst Officers were always willing to respond to requests for information, it was felt that Members were not always told of planning enforcement cases within their Ward.

Is there anything that would help Members generally better understand the enforcement process and limitations?

The recent training seminar had improved understanding amongst some Members.

It could be argued that in some cases Members were demanding too much and pursuing what could be considered minor cases within their own Wards.

Given the large caseload that the Enforcement Team has, how can resources be most effectively deployed?

The process was slow in most cases and there had been complaints to the Ombudsman about the effectiveness of the Council.

Certain cases were difficult and time consuming and one particular case was discussed in general by the Members.

Officers always followed the correct guidelines and legal processes and in this respect it could be argued that the law should be changed so as not to give the present perceived advantage to the wrong doer.

The Council should employ more staff to deal with the increase in the number of cases. Tony advised that in his opinion 6 or 7 with a Manager would be the ideal number. A new member of staff had been appointed recently with a different role from that of the other members of the section. The person would carry out some of the initial work and have an administrative role. It was hoped that this would speed up the process.

Planning Enforcement was one of the most important services carried out by the Council.

Some cases involved what could be considered minor transgressions, eg the use of plastic (UPVC) window frames in Conservation Areas, and it could be argued that the Council had, over the years, changed its attitude to such cases. Tony advised that enforcement action had been taken and compliance on change of ownership issued to a number of properties. He accepted that owners of neighbouring properties could be unaware that such action had been taken and Members again noted that the lack of communication was part of the problem. Also, often the firms carrying out the work were aware of restrictions and relied on the buyer being ignorant of the need to obtain planning consent.

At present there is no effective system for prioritising cases. Would a system adopted by members be useful?

It was generally felt that a system for prioritising cases would be useful.

A priority system would promote a better understanding with the public and Parish Councils as they could be informed of more achievable time scales.

Supplementary:

Is there a consistent view from Members as to what constitutes a priority?

Those cases involving a danger to the public or the loss of a listed building were of a high priority. Cases that did not result in inconvenience to others were of a low priority.

What would Members like to see from a priority system?

Any priority system would need support from Members and acceptance that it could not be overturned by Members' demands.

The system would need to demonstrate that the Council was more proactive and aggressive.

How best could the performance of the Enforcement Team be monitored?

There was a general discussion on whether one method would be to target cases involving replacement windows but it was concluded that it would be unwise at this stage.

It appeared that the Council did not have the spare capacity to deal with emergency action.

How can we raise the profile of the work of the Enforcement Team amongst the public?

It was agreed it the profile needed to be raised – the Team did a good job and residents should be told. This would result in greater public confidence in the Council. However, it was difficult to publicise certain cases particularly those involved in the legal process.

There was a case for the public to be informed and educated more and it was suggested that articles could be included in District Life.

Are there any other points Members want to raise?

Conditions attached to planning consent needed to be worded carefully in order to ensure that they were enforceable. Tony advised that his Team did carry out this work in conjunction with Building Control Officers. Members noted that it involved a policing as opposed to an enforcing role. There was a general discussion on planning consent conditions and how they were checked. Lack of restrictions on past planning consents and changes in planning guidance could lead to problems, eg conversion of garages into living accommodation. Also, it was sometimes difficult to ensure that conditions on landscaping, particularly for large developments, were met within a realistic timeframe.

There were occasions when cross-department working should be encouraged, eg planning and environmental health.

Members were informed that the S215 notices were particularly effectively and had led to a general improvement in the appearance of various areas in the district.

PLANNING ENFORCEMENT SCRUTINY REVIEW

**POINTS ARISING FROM A DISCUSSION BETWEEN PANEL MEMBERS AND
PLANNING ENFORCEMENT OFFICERS HELD ON 1 JULY 2004 IN
CONFERENCE ROOM 1 AND 2, COUNCIL OFFICES**

Present: Councillor Austin – Chairman of the Panel
Terry Dawson, Nigel Dyer, Councillor Flaherty, Liz Kerr,
Councillor Nee and David Sime
Rosemary Burton (Committee Administrator)

Legal processes were slow and demanded thorough and detailed background work. Not always possible at the outset to predict the amount of time and effort a case would require.

At one time emphasis had been on negotiation and then action – negotiation could take time and thus could be a slow process.

But positive and more aggressive action could result in litigation – slow process.

Officers did operate a simple priority system in place – based on experience.

A publicised priority system would be good – possible timescales would be known from the outset.

Set timescales could result in an increase in pressure on an Officer's workload.

Need to have sensible levels of consultation and communication.

Use of technology/technical aids – care had to be taken that they did not infringe on "human rights".

Gathering evidence could be difficult but was essential – had to be Officer's evidence.

The Section did work with the Press Office – but 2 sides to every story – could be wrong sort of publicity particularly if there were social issues.

More staff would help – particularly admin – to carry out much of the office and computer work – would need a basic knowledge of planning work.

Current admin support – shared with Development Control – had decreased due to increased demands of Development Control.

Could be a case for employing a "junior" to take on the simpler cases – temporary position to be filled shortly but only limited funding. But sometimes difficult to establish the complexity of a case and continuity throughout a case was essential. High Hedges part of Anti-Social Behaviour Act and who would deal with enforcement needed to be addressed.

Increase in S215 activity – had now spread from the coast – but worked well as most people complied without any legal action. Could make more of the success of S215s

but unable to deal with all cases at present – perhaps funding for staff should reflect success. Could be said that improved appearance reduced crime.

Not all Members aware of S215 cases.

Section monitored that requirements of S106 agreements were met – could be a case of having a dedicated officer.

Office accommodation insufficient and inadequate – too cramped and too noisy.

LAMP project could help – will contain all details of individual properties. Due to come “on-line” in 14 months.

Possible affect of new licensing act on Planning Enforcement – would Officers be involved in checking up that any conditions imposed are complied with.

The capability of the section had been reduced by the management restructures.

The Planning Contact Centre had helped – it acted as an excellent telephone answer service.

ENFORCEMENT TEAM PRIORITISATION SYSTEM

Emergency

Irreparable damage to the environment, to the nations heritage or to public safety.

Response time

Any breach of planning control that is in the 'Emergency' category requires an immediate response. In this case, and only where there is the potential for irreparable damage to the environment, our heritage or public safety a member of the enforcement team will attend the site immediately (including at weekends if necessary) and take measures to contain the situation.

Emergency cases will override the normal reception and site visit programme.

Examples

- (i) Lopping or felling of trees subject to legal protection,
- (ii) Flagrant ongoing and/or irreparable damage to Listed Buildings
- (iii) New or altered accesses to primary routes causing serious traffic hazards
- (iii) Uses of buildings or erection of structures falling within planning control and which present an immediate and serious danger to the public

In Emergency cases and when appropriate, cases that involve TPO'ed trees etc a Landscape Officer will normally accompany the Enforcement Officer. In the case of alleged serious damage to Listed Buildings the Conservation Officer will normally accompany the Enforcement Officer.

It is anticipated that there will be very few such cases

Priority One

Damage that is likely, unless immediate action is taken, to cause:

- a. **serious long-term damage to the environment,**
- b. **a high probability of danger to the public whether using the highway or not, or**
- c. **causing serious damage to residential quality of life in terms of noise and disturbance at unsocial hours**
- d. **harm to the reputation and standing of the Council**

In general Priority One cases will be those that it is immediately apparent are unacceptable in planning terms and immediate enforcement action is appropriate.

Examples

- (i) Noise disturbance to a number of local residents between 11.00 p.m. and 6.00 a.m. arising from a breach of planning control (e.g. unauthorised 24 hour Taxi operations in a residential area), Noisy industrial users not complying with hours of use or noise limiting conditions within the above hours. Note: Such cases may not be identified following an initial site visit but would be

identified following the complaint

- (ii) Unauthorised buildings, uses or non-compliance with conditions which have the potential to cause serious long-term damage to the environment, in town and countryside, and which are, unless positive action is taken quickly, likely to become more acute.
- (iii) New residential uses in the countryside (including caravans)
- (iv) Developments which are contrary to established countryside constraint policies
- (v) New developments likely to cause serious pollution.
- (vi) Securing compliance with a formal notice
- (vii) Untidy sites having a serious impact on the amenity of the area.
- (viii) Formal enforcement action following refusal of retrospective applications.

Response Time

If, during an initial site visit in accordance agreed timetables it appears that a breach of planning control is causing a level of harm that brings it within the above category the case officer will deal with the cases before those with a lower priority.

Priority One cases will be reported for appropriate action as soon as the necessary evidence is gained. Where it is necessary to gain information through the use of PCNs etc the return of this information will be pursued as a priority.

Every effort will be made to carry out the necessary investigation and legal steps to enable formal enforcement action to be taken within eight weeks of the identification of the problem

Priority Two

New structures or changes of use having a limited degree of disturbance to local residents or damage to the environment and which do not come within the category of a higher priority. Inconsequential breaches of planning control with little or no harm to the environment or to the quality of life of local residents.

In general Priority Two cases are those that may warrant the invitation to submit a planning application either to regularise acceptable development or to impose appropriate conditions or ascertain through the proper planning process the effect development or investigations which reveal after initial site visits that it would not be expedient to pursue formal enforcement action

Examples:

Developments for which it would planning permission would normally be granted

Small residential extensions causing little harm, minor deviations from approved plans etc. Advertisements that are not illuminated, Satellite dishes on unlisted buildings, Houses in Multiple Occupations unless causing demonstrable harm

Apparent neighbour disputes, unauthorised adverts in harmless positions, residential developments (including fences) marginally above permitted development rights, developments which have taken place with minor variations from an approved plan not affecting the environment or peoples quality of life or not complying with conditions in a technical sense.

Response Time

Officers will deal with Priority Two cases in turn after higher priority cases.

CANTERBURY CITY COUNCIL RECOMMENDED ENFORCEMENT POLICIES

1. Introduction

- 1.1 Canterbury City Council recognises the importance of establishing effective controls over unauthorised development to assist in the conservation of the natural and built environment and to protect the quality of people's lives. The integrity of the Town and Country Planning process depends on the Council's readiness to take enforcement action against unauthorised development when it is expedient to do so.
- 1.2 Central Government, in the 'Good Practice Guide' for local planning authorities contained within the Department of the Environment, Transport and the Regions Circular No.10/97 Enforcing Planning Control, advises Local Planning Authorities to formulate a clear statement of their enforcement Policies. This will provide a decision-making framework and enable effective enforcement procedures and practices to be formulated and implemented. The Policy Statement will inform members of the public of this Council's Policies and practices. It will assist the public in understanding of the enforcement system and what they can expect from it.
- 1.3 Planning enforcement is the most technically complex component of the development control regime. Unless the enforcement function is efficiently organised, resources will be wasted and the authority's performance will not reach acceptable standards.
- 1.4 Planning enforcement activity is almost always labour intensive and thorough investigation of the relevant planning history and painstaking evaluation of the facts is the foundation of effective enforcement and takes considerable time.

2. Government Advice

- 2.1 PPG18 sets down clear advice as to when enforcement should be taken and sets down the general approach to enforcement. It states that local authorities should be guided by the following considerations:
 - (i) Parliament has given local planning authorities the primary responsibility for taking whatever enforcement action may be necessary in the public interest in their administrative area (the private citizen cannot initiate planning enforcement action);
 - (ii) The Commissioner for Local Administration (the local Ombudsman) has held in a number of investigated cases that there is in "maladministration" if an Authority fails to take effective enforcement action that was plainly necessary, and has occasionally recommended a compensatory payment to the complainant for the consequent injustice.
 - (iii) In considering any enforcement action the decisive issue for the Local Planning Authority should be whether the breach of planning control would unacceptably affect public amenity or the existing use of land and buildings meriting protection in the public interest.

- (iv) Enforcement action should always be commensurate with the breach of planning control to which it relates (e.g. it is usually inappropriate to take formal enforcement action against a trivial or technical breach of planning control which causes no harm to amenity in the locality of the site); and
- (v) Where the Local Planning Authority's initial attempt to persuade the owner or occupier of the site voluntarily to remedy the harmful effects of unauthorised development fails, 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. The Local Planning Authorities should bear in mind the statutory time limits for taking enforcement action.

2.2 The 'Good Practice Guide' for local planning authorities contained within the Department of the Environment, Transport and the Regions Circular No.10/97 Enforcing Planning Control sets out some do's and don'ts in relation to enforcement action and states:

- **don't enforce solely to regularise acceptable development**
- **don't enforce solely to obtain a fee**
- **don't give weight either way to the fact that the development has already taken place**
- **don't have regard to other immaterial (non planning) considerations**
- **don't let protracted negotiation delay essential enforcement action**
- **don't seek to restore land to a better condition than it was in before the breach took place**
- **don't be too legalistic**
- **don't be strong with the weak and weak with the strong**
- **don't forget to withdraw a redundant notice in good time**
- **don't require immediate compliance with an enforcement notice that does not give a period**
- **do have Enforcement Policies**
- **do be prepared to give reasons for taking enforcement action, or inviting applications or ignoring breaches of planning control**
- **do use appropriate investigative powers**
- **do allocate the necessary resources to see action through to the end**
- **do delegate sensibly**
- **do use plain language**
- **do set priorities for enforcement action**
- **do be prepared to use all the enforcement powers available, commensurate with the seriousness of the breach**
- **do have regard to the Council's obligations under other legislation which may be invoked as a result of enforcement action.**

2.3 Mindful of this advice Canterbury City Council will adopt the following strategic approach to enforcement.

3. The Council's Approach to Enforcement

3.1 The Council accepts that the rapid initiation of enforcement action is vital to prevent a breach of planning control from becoming well established and

more difficult to remedy, and it recognises the importance of establishing effective controls over unauthorised development. The Council will not condone wilful breaches of planning control and will exercise its discretion to take enforcement action if it is considered expedient to do so. The Council will investigate alleged breaches of planning control, to determine whether a breach has, as a matter of fact occurred, and if it has, to determine the most appropriate course of action.

3.2 It is the Council's objective in taking enforcement action to: -

ensure that decisions are made in accordance with the Development Plan unless material considerations indicate otherwise and the development does not affect: -

- (i) the environment
- (ii) the amenity of the landscape
- (iii) its buildings and people, or
- (iv) highway safety

3.3 In determining whether it is expedient to take enforcement action the Council will:-

- pay due regard to the Development Plan policies in force and to all other material situations.
- assess whether the breach of planning control unacceptably affects public amenity or causes harm to land or buildings
- in appropriate cases attempt to persuade an owner or occupier of land to voluntarily remedy any harmful effects of unauthorised development, but
- not allow the requirement to negotiate to hamper or delay formal enforcement action that may be required to make the development more acceptable on planning grounds or to make it stop.
- not take action against trivial or technical breaches of planning control that do not unacceptably affect public amenity, which are unlikely to intensify, and where it is not in the public interest to do so.
- not take action solely to regularise an acceptable development or obtain a fee.
- Make decisions which accord with the Human Rights Act 1998

3.4 In meeting its objectives the Council will:-

- (i) Ensure that reaction times are appropriate to the nature of the harm.
- (ii) Allocate resources appropriate to the level of harm caused by the breach.
- (iii) Utilise all the legal powers available appropriate to the breach.
- (iv) Pursue action commensurate with the breach.

4. **Strategic Policies for Enforcing Planning Control**

4.1 The Council recognises its responsibility, given by parliament, to investigate and resolve as appropriate breaches of planning control.

4.2 The Council has, over the years, had to deal with an increasing number of complaints and has expanded the enforcement function to deal with these complaints. There are a number of reasons for this increasing level of activity including:-

- (i) An increasing public awareness of environmental issues.
 - (ii) Increased public participation in the development control process.
 - (iii) Increased public expectation of the Planning System to protect the quality of people's lives and an increasing expectation that local government will solve problems between neighbours.
 - (iv) Lack of communication between neighbouring land users.
- 4.3 This increased public awareness gives rise to an increased level of complaint. There is therefore the need to periodically review the tasks and performance of the enforcement function through the Service Plan process to ensure that its resources are properly directed and managed in the interests of the district as a whole.

Policy EP1 - To meet its statutory duty and meet the reasonable expectations of local residents the Council will review the enforcement function from time to time.

5. Speed of Reaction to Complaints

- 5.1 The public expects their complaints to be addressed with reasonable speed. However, amongst the complaints received there will be many that are not in fact planning matters and others that are more appropriately dealt with by other authorities or other function of the Council. Additionally and more importantly an initial complaint is often a symptom of a more serious planning problem the impact of which cannot be assessed until a site visit is carried out.
- 5.2 It is recognised that complaints need to be investigated, and seen to be acted upon, quickly and efficiently. However, existing enforcement workload often precludes immediate action on all complaints received and therefore the Committee has adopted a system of prioritising investigation of complaints based on the effect of the breach of planning control.
- 5.3 It is also necessary for the complainant and other interested parties to be kept informed of progress made in accordance with the Councils guidelines

Policy EP2 - All complaints received by the Council's enforcement function will be examined and where appropriate an initial site visit to verify the breach and prioritise the case the will take place within five working days of receipt.

6. Prioritising According to Harm Caused

- 6.1 Once a site visit has identified the nature of the breach and the degree of harm caused by the breach, the complaint will be prioritised into categories based on the harm caused to interests of acknowledge planning importance.

Policy EP3 - The Council's enforcement resources will be concentrated on those breaches causing the major harm or having the potential to cause major harm.

- 6.2 Some developments, which currently may be causing little demonstrable harm, have the potential to cause substantial harm once the four or the ten-year barrier is exceeded. In determining priorities the Council will take into

account the potential for developments to gain immunity from enforcement action.

- 6.3 On occasions a breach of planning control which may start as a high priority causing serious harm may change and be brought partially under control to the point where little harm is being caused. The priority system must therefore be flexible enough to allow for changing priorities throughout the 'life' of a case.

7. Investigating Alleged Breaches of Planning Control

- 7.1 Town and Country Planning legislation provides a Local Planning Authority with a range of tools to investigate and resolve breaches of planning control. Investigative tools include Rights of Entry, Planning Contravention Notices and Requisitions for Information. Additionally, the Council may seek to use technical equipment to monitor sites but where these tools do not provide evidence of a breach the Council may require the assistance of local residents in monitoring or corroborating the activities.
- 7.2 On occasions it may not be possible for officers of the Council to confirm what has been alleged by complainants is, as a matter of fact, taking place. In such cases complainants will be expected to assist in providing evidence both at the appeal stage and any subsequent legal proceedings

Policy EP4 - The Council will use all the tools and facilities available to it in investigating breaches of planning control including the assistance of the public when appropriate.

8. Using Available Enforcement Tools

- 8.1 Once evidence has been obtained that a breach of planning control has, as a matter of fact occurred and that the breach is not immune from enforcement action the Council has a range of options available to deal with the issue. In determining which option to adopt the Council will be mindful that the primary function of enforcement is to bring to an end the harmful effects of the unlawful development as soon as practicable.
- 8.2 In certain cases where very serious harm is likely to result, a Local Planning Authority has the facility of seeking the assistance of the Courts in restraining an anticipated breach of planning control. In such cases the Council will need to convince the Court that the breach is indeed likely to take place, will cause serious harm to interests of planning importance, and that all material planning considerations, including Human Rights issues, have been taken into account.

Policy EP5 - The Council will use the full range of Enforcement and other Notices available to it and when appropriate will seek Injunctions from the Courts to prevent or restrain breaches of planning control.

9. Minor Technical Breaches

- 9.1 Enforcement action shall always be commensurate with a breach of planning control to which it relates and formal action against trivial or technical breaches of planning control which cause no harm to amenity in the locality of

the site will, in accordance with central government advice, not normally be taken.

Policy EP6 - Enforcement action will not normally be initiated where a trivial or technical breach of planning control (including minor contraventions of GPDO limitations) has occurred which causes no harm, or potential harm, to public amenity in the locality of the site, and where it is not in the public interest to do so. The Council will not take action to solely regularise an acceptable development or obtain a fee.

10. **Dealing with Serious Breaches of Planning Control**

- 10.1 Although generally infrequent, certain types of breaches of planning control cause serious harm to interests of acknowledged importance and can happen very quickly. An example is a caravan encampment, which, if immediate action is not taken can result in permanent consolidation of the use to the detriment of local amenity.
- 10.2 Although most breaches of planning control can be brought under control and the previous situation restored, on occasion such contraventions as harm to Listed Buildings or felling of Trees the subject of TPOs can cause irreparable harm. In such case it is appropriate to use the most powerful tools to prevent or control permanent and irreparable damage.

Policy EP7 - The Council will apply to the Courts for Injunctions under the provisions of Section 187B of the Town and Country Planning Act 1990, and other legislation, to restrain anticipated and actual breaches of planning control where those breaches are, or are likely to, cause serious or irreparable harm to interest of acknowledged importance.

11. **Non-Compliance with Planning Conditions**

- 11.1 Where planning permission has been granted for development, and conditions have been imposed, which are designed to protect or alleviate any injury to the amenity caused by the development and/or to improve the visual appearance of the development, and those conditions have not been complied with within a specified period, consideration will be given as to whether it is appropriate to issue an Enforcement Notice for non-compliance with the planning conditions imposed or to issue a Breach of Condition Notice.
- 11.2 The advantage of serving a Breach of Condition Notice is that there is no right of appeal to the Secretary of State against the notice and, unlike an enforcement notice, its effect cannot be suspended by means of an appeal. The failure to comply with a breach of condition notice is a criminal offence. A Breach of Condition Notice should not, however, be served if there is any doubt as to the validity of the condition.
- 11.3 **The advantage of serving an Enforcement Notice is that its requirements can be more flexible than those contained in a Breach of Condition Notice. Where an Enforcement Notice has not been complied with, the Council can exercise its default powers by entering the land and carry out any works required by the notice.**

Policy EP8 - Where conditional planning permission has been granted for development but conditions have not been complied with and it is in the public interest to do so, a Breach of Condition Notice or an Enforcement Notice shall be served, depending upon the circumstances of each case.

12. **Granting Unconditional Planning Permissions for Unauthorised Development**

- 12.1 Where development, which requires planning permission, has been carried out or is in the process of being carried out an assessment shall be made to establish if it is likely that unconditional planning permission would be granted for the development. If planning permission is likely to be granted, a retrospective planning application shall be requested. Where an application has been requested but not submitted within a reasonable time the owner or occupier of the land will be informed that without a specific planning permission for the development there may prove to be conveyancing implications when disposing of the land where no evidence can be produced of a planning permission having been granted for the development. Where there is no specific planning objection to the development enforcement action will not normally be considered appropriate.

Policy EP9 - Where development has been carried out without planning permission and unconditional planning permission would be likely to be granted, but where the owner or occupier refuses to submit a planning application, the owner or occupier will be informed of the implications of having carried out the development without planning permission. Where there is no planning objection to the development, formal enforcement proceedings will not normally be initiated.

13. **Under-enforcement**

- 13.1 Where development has been carried out without planning permission and the development could be made acceptable by imposing conditions to remedy any injury that may be caused, an application for retrospective planning permission shall be requested to be submitted within a reasonable period. If after a reasonable period, the owner or occupier of the land appears unwilling to submit a planning application, an Enforcement Notice shall usually be issued. The notice would have the effect of granting planning permission subject to full compliance with those steps specified in the notice, which will remedy or alleviate the injury caused by the development. The Council in these circumstances will notify complainants (and where appropriate the local Parish Council and Ward Member) that it is intended to take this action.

Policy EP10 - Where development has been carried out without planning permission, and it is considered permission could be granted subject to conditions, but the owner or occupier refuses to submit a planning application, an enforcement notice shall usually be served, the effect of which will be to grant planning permission provided the requirements of the Notice have been carried out.

14. **Periods for Compliance with the Requirements of an Enforcement Notice**

- 14.1 Once a breach of planning control has been determined as being unacceptable and it is in the public interest to pursue enforcement action it is necessary to determine an appropriate period in which the contravener has to comply with any necessary steps to alleviate the breach of planning control. In determining periods for compliance it is appropriate to consider the feasibility of relocation for a small business, the effect of enforcement action on valuable local employment, the affect of the action of the self-employed and the social costs on the owner or occupier of the land.
- 14.2 It is not the Local Planning Authority's responsibility to seek out and suggest to an owner or occupier of land on which unauthorised development has taken place, an alternative site that might be more acceptable in planning terms. However, if a suitable site is known it will be suggested, and a time limit for relocation agreed. An enforcement notice will be served with a compliance period, which reflects the agreed timetable.
- 14.3 Where the development provides valuable local employment, the Council will advise the owner or occupier how long the activity or operation shall be allowed to continue or to be reduced to an acceptable level of intensity. An enforcement notice shall usually be issued allowing a realistic period for compliance for the unauthorised activity or operation to cease, or its scale to be reduced to an acceptable level.
- 14.4 Enforcement action against unlawful and unacceptable development may result in social costs such as homelessness to the occupants. Whilst not condoning any unlawful residential use of land social costs may be relevant in determining appropriate action. It is therefore appropriate that these social costs shall be taken into account in determining periods of compliance.

Policy EP11 - Where unauthorised development has been carried out and is unacceptable on the site, an Enforcement Notice shall usually be issued which allows for a realistic period of compliance for the activity to cease, be relocated, or its scale to be acceptably reduced, this will be balanced against the need to ameliorate the harm caused by the development.

15. **Periods of Grace**

- 15.1 When an enforcement notice has been served which provides a reasonable time to discontinue the unauthorised development from the site or to relocate, and serious attempts are shown by the owner or occupier to comply with the requirements of the enforcement notice, the requirements of the notice may be waived or relaxed to provide additional time to enable the small business or self employed person to relocate or cease operating the site, or to re-house a family that would otherwise be homeless. This will depend on the level of harm created by the activity.

Policy EP12 - Where it is evident to the local planning authority, that serious attempts are being made to comply with the requirements of the enforcement notice, consideration will be given to waive or relax any requirement in the notice, including the compliance period.

16. **Ensuring Compliance**

- 16.1 When enforcement action has been taken and the necessary steps have not been taken after the specified period for compliance, or at the end of period for compliance if the period for compliance has been waived, the Council has several options to seek to bring about compliance with the requirements of the Notice. The Council can bring prosecution proceedings through the Courts, seek the assistance of the Courts in obtaining an injunction or exercise default powers and use its contractors and agents to carry out any or all of the steps required. Each mechanism has advantage and disadvantages. Successful prosecution proceedings will punish the contravener but will not in itself bring to an end a breach of planning control. It may deter further contraventions but fines are sometimes small and payable over long periods. Costs in Council prosecution cases are often high and sometimes are not fully recovered. Default action is effective especially in removing structures, and the total cost is normally recoverable in time. However, the primary consideration in determining the manner in which compliance with the requirements of an Enforcement Notice can be achieved is ensuring that the proper planning of the area is restored as soon as possible.

Policy EP13 -The Council will use all the available tools to ensure compliance with Enforcement or other Notices and will choose the method that is most effective in bringing to an end a breach of planning control as soon as possible.