

PLANNING ENFORCEMENT AD HOC SCRUTINY COMMITTEE

Briefing Note: How Land Charges Register Could Be Used To Assist The Planning Enforcement Process

Background

1. An enforcement notice appears as a charge on the Land Charges Register. This would be revealed during a Land Charges Search, so that anyone wishing to purchase the property or lease is aware of the outstanding notice and the requirements necessary to comply with it. An enforcement notice runs with the land and therefore anyone who purchases the property, or an interest in it, then becomes liable (where appropriate) for non compliance with that notice.
2. During its meetings the Planning Enforcement Ad Hoc Scrutiny Committee has discussed how the Land Register could be used as a tool by enforcement to both deter breaches of planning control and encourage swift remedial action where a breach is ongoing. An entry on the Register can result in prompt action given the difficulty of selling with an enforcement notice. It was commented at the meetings that other authorities have extended the use of the register to include matters which are not at formal notice stage, with even the threat of an entry being made in the initial letter to a 'breacher' often being sufficient to secure the remedial works. This would help to reduce the workload of chasing non-compliance perhaps for several months. Concerns were however expressed that this would raise issues of confidentiality, possible compensation claims and usefulness of doing so in the majority of cases.
3. The Enforcement team currently makes use of the Land Registry for obtaining land and property owner address details on a frequent basis.

Legal Context

4. The Local Land Charges Act 1975 sets out the circumstances under which charges can be registered against land and property. It states:-

'(1) A charge or other matter affecting land is a local land charge if it falls within any of the following descriptions and is not one of the matters set out in section 2 below:—

 - (a) any charge acquired either before or after the commencement of this Act by a local authority or National Park authority, water authority, sewerage, undertaker or new town development corporation under the Public Health Acts 1936 and 1937, . . . the Public Health Act 1961 or the Highways Act 1980 (or any Act repealed by that Act or the Building Act 1984), or any similar charge acquired by a local authority or National Park authority under any other Act, whether passed before or after this Act, being a charge that is binding on successive owners of the land affected;
 - (b) any prohibition of or restriction on the use of land—

- (i) imposed by a local authority or National Park authority on or after 1st January 1926 (including any prohibition or restriction embodied in any condition attached to a consent, approval or licence granted by a local authority or National Park authority on or after that date), or
- (ii) enforceable by a local authority or National Park authority under any covenant or agreement made with them on or after that date, being a prohibition or restriction binding on successive owners of the land affected;.....

....(2) For the purposes of subsection (1)(a) above, any sum which is recoverable from successive owners or occupiers of the land in respect of which the sum is recoverable shall be treated as a charge, whether the sum is expressed to be a charge on the land or not.

(3) For the purposes of this section and section 2 of this Act, the Broads Authority shall be treated as a local authority or National Park authority.”

- 5. The imposition of charges, which do not involve any prohibition of or restriction on the use of land but are merely a register of cases, would be an unlawful use of the Register.

Analysis

- 6. Notwithstanding the legal difficulties there are issues relating to the potential for misuse of any such regime whereby a vexatious complaint could result in a register entry with consequential discouragement of purchasers. Property blight could be a source of compensation claims. On the other hand the selective use of the register, whereby vexatious complaints, or cases which are not considered to be appropriate to be placed on the register, could lead to complaints of inconsistency.
- 7. The threat of placing an entry with no actual entries being made would also lead to complaints.

Conclusion

- 8. The Register lawfully holds records of enforcement notices served as a charge against the particular property or land. This is useful in securing compliance where the owner is looking to sell the property. There is scope to point out more regularly to owners that any enforcement notice served would lead to a charge on the Register, as part of case handling. If this took place early in the process it may help to reduce the time taken to resolve the case. Offices will consider appropriate wording for insertion into letters to those owners breaching control.
- 9. The placement of cases where no formal action has been taken is probably unlawful and could lead to compensation claims being submitted as well as complaints regarding consistency.