



## Notice of meeting of

### Scrutiny Management Committee

**To:** Councillors Galvin (Chair), Aspden, Blanchard (Vice-Chair), Scott, Simpson-Laing, Taylor, R Watson and I Waudby

**Date:** Monday, 28 July 2008

**Time:** 5.00 pm

**Venue:** The Guildhall

### AGENDA

#### 1. **Declarations of Interest**

At this point in the meeting, Members will be invited to declare any personal or prejudicial interests they may have in the business on the agenda.

#### 2. **Minutes** (Pages 3 - 6)

To approve and sign the Minutes of the last meeting of the Committee held on 16 June 2008 .

#### 3. **Public Participation**

At this point in the meeting members of the public who have registered their wish to speak regarding an item on the agenda or an issue within the Committee's remit can do so. Anyone who wishes to register or requires further information is requested to contact the Democracy Officer on the contact details listed at the foot of this agenda. The deadline for registering is Friday 25 July 2008 at 5.00 pm.

**4. Update on Implementation of Recommendations of Previous Scrutiny Reviews (Pages 7 - 16)**

This report provides Members with update information on the implementation of recommendations made as a result of the reviews completed since 2004.

**5. Planning Enforcement - Feasibility Report (Pages 17 - 60)**

This report asks Members to consider a scrutiny topic registered by Councillor Wiseman to scrutinise the resources available to the Planning Enforcement Team and to look at the timescales for completion of enforcement cases.

**6. Any other business which the Chair decides is urgent under the Local Government Act 1972**

Democracy Officer:

Name: Simon Copley

Contact details:

- Telephone – (01904) 551078
- E-mail – [simon.copley@york.gov.uk](mailto:simon.copley@york.gov.uk)

For more information about any of the following please contact the Democracy Officer responsible for servicing this meeting:

- Registering to speak
- Business of the meeting
- Any special arrangements
- Copies of reports

Contact details are set out above.

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- ensure that what you want to say speak relates to an item of business on the agenda or an issue which the committee has power to consider (speak to the Democracy Officer for advice on this);
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### **Holding the Executive to Account**

The majority of councillors are not appointed to the Executive (38 out of 47). Any 3 non-Executive councillors can 'call-in' an item of business from a published Executive (or Executive Member Advisory Panel (EMAP)) agenda. The Executive will still discuss the 'called in' business on the published date and will set out its views for consideration by a specially convened Scrutiny Management Committee (SMC). That SMC meeting will then make its recommendations to the next scheduled Executive meeting in the following week, where a final decision on the 'called-in' business will be made.

### **Scrutiny Committees**

The purpose of all scrutiny and ad-hoc scrutiny committees appointed by the Council is to:

- Monitor the performance and effectiveness of services;
- Review existing policies and assist in the development of new ones, as necessary; and
- Monitor best value continuous service improvement plans

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City of York Council

Committee Minutes

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MEETING	SCRUTINY MANAGEMENT COMMITTEE
DATE	16 JUNE 2008
PRESENT	COUNCILLORS GALVIN (CHAIR), BLANCHARD (VICE-CHAIR), SCOTT, SIMPSON-LAING, TAYLOR AND R WATSON
APOLOGIES	COUNCILLORS ASPDEN AND I WAUDBY
IN ATTENDANCE	COUNCILLOR MERRETT (FOR MINUTE NO. 5 BELOW)

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### 1. DECLARATIONS OF INTEREST

The Chair invited any declaration of interest in business on the agenda at this point in the meeting. No declarations were made.

### 2. MINUTES

RESOLVED: That the minutes of the last meeting of the Committee held on 21 April 2008 were approved as a correct and signed by the Chair.

### 3. PUBLIC PARTICIPATION

The Chair reported that no registrations had been made to speak at the meeting under the Council's Public Participation Scheme.

### 4. APPOINTMENT OF AD HOC SCRUTINY COMMITTEES

Members considered a report setting the appointments to membership of Ad-Hoc Scrutiny Sub-Committees for 2008/9. Although these appointments had been noted at the Annual Meeting in May 2008, Members were reminded that constitutionally this Committee was authorised to formally approve membership of any Ad-Hoc Scrutiny Sub-Committees.

It was agreed to formally appoint those Members to the following Ad-Hocs set out in the report:

- Traffic Congestion Ad-Hoc Scrutiny Sub-Committee
- 'Cultural Quarter' Ad-Hoc Scrutiny Sub-Committee
- Barbican Ad-Hoc Scrutiny Sub-Committee

RESOLVED: That the above Scrutiny Sub-Committees be formally re-established in 2008/9 and the membership be approved as set out in the report.

REASON: In line with constitutional requirements.

## **5. REQUEST FOR FUNDING**

Members considered a report from the Head of Civic, Democratic & Legal Services, representing a request from Traffic Congestion Ad-Hoc Sub-Committee to fund a citywide survey on the broad strategic options available to the city to tackle traffic congestion.

Scrutiny Management Committee (SMC) had initially supported this funding request in February 2008 and asked the Executive to consider providing the required £17,000 from available contingencies. At a meeting on 6 May 2008, the Executive had considered the request and had agreed to fund either the cost of the full city-wide survey or a lesser sum of £6k to assess public opinion through 'Talkabout' or other consultative modules.

At this meeting, SMC's opinion on their preferred option now was being sought. After an initial debate, Members agreed to proceed with a full city-wide survey as a means of obtaining greater engagement with residents on the broad strategic options for tackling traffic congestion.

RESOLVED: That the request from Traffic Congestion Ad-Hoc Scrutiny Sub-Committee for funding up to £17k for a full city-wide survey be approved and the necessary be released from contingencies (and/or reserves) in due course to fund such a survey.

REASON: To enable consultation to proceed, as appropriate.

## **6. SUPPORTING THE CURRENT SCRUTINY FUNCTION IN YORK**

Further to a request at the last meeting of this Committee in April 2008, Members considered a report from the Head of Civic, Democratic & Legal Services setting out current available resources to support scrutiny in York and addressing the likely impact of the new Local Government & Public Involvement in Health Act 2007 upon those resources.

In addition to receiving information in the report on the status of the current staffing structure for the scrutiny function, Members were also informed that a review of the scrutiny structure was underway to assess what might be done to make scrutiny more effective in York, in light of recent CPA findings and ongoing concerns from officer and Members about the function.

RESOLVED: That the report and current resources be noted.

RESOLVED: To ensure Members are fully informed as requested about the level of resources to support the scrutiny function in York.

Councillor J Galvin, Chair

[The meeting started at 5.00 pm and finished at 5.20 pm].

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## Scrutiny Management Committee

28 July 2008

Report of the Head of Civic Democratic & Legal Services

### Update on Implementation of Recommendations of Previous Scrutiny Reviews

#### Summary

1. This report provides Members with update information on the implementation of recommendations made as a result of the reviews completed since 2004.

#### Background

2. At a previous meeting of Scrutiny Management Committee, Members requested an update on the implementation of the recommendations made as a result of all completed scrutiny reviews since 2004, which were subsequently approved by the Executive.

#### Consultation

3. Relevant officers within Directorates were asked to submit their updates as soon as they could for inclusion in the Scrutiny Management Agenda for this meeting; appropriate Officers have been invited to attend the meeting.

#### Options

4. With regard to Annexes A, B and C Members can:
  - a. Sign off those recommendations where implementation has been completed, or
  - b. Request further updates to clarify any outstanding recommendations

#### Analysis

5. A review of 'Highways Maintenance Procurement Process and PFI' was completed in April 2007. Scrutiny Management considered a draft final report on 26<sup>th</sup> March 2007. The final report and approved recommendations were considered by the Executive on 10<sup>th</sup> April 2007 and it was resolved that the scrutiny report be noted and the issues raised and principles identified for procuring highways maintenance for the future be taken into account by the Executive when the outcome of the PFI Expression of Interest was known and consequently when it determined the Council's future highways maintenance

procurement arrangements. The update on the implementation of the recommendations is attached at Annex A to this report.

6. A review of 'Home to School Transport' was completed in April 2007. Scrutiny Management Committee considered a final report in March 2007. The final report and recommendations were considered and endorsed by the Executive at a meeting on 24 April 2007. The update on the implementation of the recommendations is attached at Annex B to this report.
7. A review of 'Reducing Carbon Emissions' was completed in September 2006. Scrutiny Management Committee considered a final report in October 2006. The final report and recommendations were considered and endorsed (with amendments) by the Executive at a meeting on 7 November 2008. The update on the implementation of some of the recommendations is attached at Annex C to this report and it is hoped that a more comprehensive update will be available at the meeting.

### **Corporate Strategy**

8. The process of monitoring the implementation of approved recommendations will contribute to 'encouraging improvement in everything we do'.

### **Implications**

9. There are no known Financial, Human Resources, Equalities, Legal, ITT or Other implications connected to this report".

### **Risk Management**

10. In compliance with the Councils risk management strategy, there are no known risks associated with this report.

### **Recommendations**

11. Members are asked to note the contents of this report and agree which recommendations arising from previously completed scrutiny reviews can be signed off.

Reason: To raise awareness of those recommendations which have still to be implemented.

### **Contact Details**

**Author:**  
Tracy Wallis  
Scrutiny Officer  
Scrutiny Services  
01904 551714

**Chief Officer Responsible for the report:**  
Quentin Baker  
Head of Civic, Democratic & Legal Services  
01904 552001

**Report Approved**



**Date** 17.07.2008

**Wards Affected:**

**All**



**For further information please contact the author of the report**

**Background Papers:** None

**Annexes**

Annex A – Highways Maintenance Procurement Process and PFI Updates

Annex B – Home to school Transport Updates

Annex C – Reducing Carbon Emissions Updates

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Board and Topic	Rec No.	Recommendation as approved by the Executive on 10 April 2007	Update on recommendations as of July 2008
<b>Highways Maintenance Procurement Process &amp; PFI (Review Completed in April 2007)</b> Contact Damon Copperthwaite	1	That the efficiencies and other benefits gained through the PFI approach, as highlighted within the Eol be weighed against any budgetary inflexibility in future years, when deciding whether or not to proceed with the PFI process.	The Council was not selected as a pathfinder for Highway Maintenance PFI Project earlier this year. If a further opportunity arises for the Council to bid for a PFI project and the Council decide to submit a further bid then no doubt the benefits gained from the original project will be incorporated.
	2	That in the event that the PFI outcome is unsuccessful, the key issues identified should be taken into consideration when deciding upon an alternative approach.	Any benefits arising from the PFI project will be incorporated into any project considering an alternative approach.
	3	That in the event that the Council's Eol is successful, the decision to proceed to the next stage of the PFI process, i.e. submitting an Outline Business Case[1] (OBC), be weighed against the resulting greater annual budget commitment required from the Council if the highways repair and maintenance works are to be carried out.	The Council's Eol was not successful.
	4	That it be noted that the total expenditure over the lifespan of the PFI cannot be properly identified.	The Council's Eol was not successful.
	5	That in the event that the Eol is successful, careful consideration should be given when deciding whether to proceed to each of the following stages of the process.	The Council's Eol was not successful.
	6	The Executive resolved to note the scrutiny report and the issues raised and principles identified for procuring highways maintenance for the future and agreed to take them into account when the outcome of the PFI Expression of Interest was known and consequently when it determined the Council's future highways maintenance procurement arrangements.	When proposals come forward for new procurement arrangements for highway maintenance then the scrutiny report and the issues raised and principles identified will be taken into account.
Scrutiny Comment as of ?:			

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Board and Topic	Rec No.	Recommendation as approved by the Executive on 24 April 2007	Update on Recommendations as of July 2008
<b>Home to School Transport Review (Completed in April 2007)</b> Contact Steve Morton for updates on Kendric Ash review	1	Council officers to be instructed to negotiate with the transport provider for St Mary's School, Askham Richard in order for seat belts to be provided on all vehicles. If this is not possible at a reasonable cost then they will re-let the contract from September 2007. The Executive endorsed the Scrutiny Committee recommendation and instructed officers to address this issue as part of any proposals arising out of the Kendric Ash review of the Councils transport contracts	Seatbelts have been provided on St Mary's and Askham Richard buses since September 2007.
	2	The Council will ensure that minimum standards for all future home to school transport buses include: a) Lap seatbelts to be fitted to all vehicles, with the long term aim of these being 3 point seatbelts.  b) CCTV to be installed in all vehicles and functioning at all times c) Contractors to ensure that all drivers have had a CRB check within the last three years before commencing this work and thereafter in line with EU2 emission standards or greater to be required on all contract vehicles Officers were instructed to address these issues as part of any proposals arising out of the Kendric Ash review of the Councils transport contracts. The Executive accepted that it may be necessary to phase in these new contract requirements over a period of time to allow for any necessary conversions to be undertaken and for funding sources to be found.	All contracts which are re-let have minimum quality standards built into the service specification. In September 2007 the Tadcaster Grammar School contract was awarded to a single contractor. All vehicles now have seatbelts, all drivers are CRB checked, all vehicles have a minimum of Euro 2 emission standards. The number of double decked vehicles have been reduced. The costs of installing CCTV on all vehicles is high and whilst this has not been a specified minimum requirement yet, the Council is working with contractors to establish overall service improvements which may minimise any requirement for growth in contract costs. Contracts for Fulford and Manor Secondary Schools and Poppleton Ousebank, St Mary's, St Wilfrid's and Archbishop of York primary Schools are being awarded in July 2008. The minimum standards outlined above are service requirements within the new contracts, with seatbelts for all primary school buses being a stipulated requirement.
	3	The council will ensure that where possible contracts are to be let for more than 5 years, ideally 8 - 10 years in order to allow contractors to invest in higher quality vehicles - The Executive noted the Scrutiny Committee recommendation and asked officers to report back on the advantages and any possible disadvantages of letting longer transport contracts	The contract for Tadcaster School was let for a 4 year period in 2007. The contracts being let this year are for a 3 year period to ensure all contracts are aligned by 2011, and which will subsequently allow the Council the option of letting all contracts to a single home to school provider - if that is the preferred option. Evidence of letting contracts on a single supplier to a single school has been positive. There is a much improved relationship between provider/school and the Council. Processes for tackling poor behaviour are jointly owned and dealt with swiftly.
	4	The council will recognise good practice in other local authorities and encourage schools and contractors to use measures such as good behaviour contracts (see paragraph 32), designated seats and the use of bus prefects to discourage unruly behaviour by pupils. The Executive endorsed the Scrutiny Committee recommendation.	The transport review includes collaborative working with East Riding, North Lincolnshire and North Yorkshire Councils. Topics such as behaviour contracts, portability of CRB checks, training and bus monitors are shared. The option of introducing bus monitors is currently being discussed with Tadcaster Grammar School.
	5	The Council will endeavour to ensure that the same high standards are in place for bus contracts covering all educational establishments. The Executive endorsed the Scrutiny Committee recommendation and instructed officers to address this issue as part of any proposals arising out of the current Kendric Ash review of the Councils transport contracts.	The integrated transport unit - York Transport Provision, is in place to maintain universal quality standards for all passenger transport provided by the Council or provided by contractors on behalf of the Council. There are formal annual performance reviews for all contractors, which review and measure quality and performance throughout the year. Any contract price increases are awarded based on performance.
Scrutiny Comment as of ?:			

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Board and Topic	Rec No.	Recommendation as approved by the Executive on 7 November 2006	Update on Recommendations as of July 2008
<b>Reducing Carbon Emissions Scrutiny Sub-Committee (Review Completed Sept 2006)</b> Contact Steve Waddington	1	That Climate Change Strategies and Action Plans are developed by the Council's Sustainability Officer as a matter of urgency. This to be done with a view to best practice approaches used by other Local Authorities. It is acknowledged that the Council is already well advanced in developing its strategies for dealing with climate change, in so far as it has powers to do so, and anticipates that a consultants report will be submitted to Executive shortly. At that time the SMC may, of course if they wish, choose to review the contents of the report".	
	2	That the Local Development Framework and our present planning policy framework include a Calderdale/Merton Style Target. This target will require developers to ensure that: <ul style="list-style-type: none"> <li>i. at least 10% of all energy required is provided from renewable sources in all new and significantly refurbished developments from this point and up to 2010, including domestic development.</li> <li>ii. After 2010 the target rises for onsite embedded renewables to be greater than or equal to 15% between 2010 and 2015</li> <li>iii. Then rises again to be greater than or equal to 20% between 2015 and</li> </ul> This proposal to be referred to the LDF Working Group for their consideration	
	3	That the City of York Council researches planning policies adopted by other local authorities with a view to applying them in York, if appropriate, in order to specifically ensure energy efficiency by design. That all plans submitted to the Local authority be tested on these criteria. The proposal to be referred to the LDF Working Group for their consideration.	
	4	That the authority enforce Parts L and F of the Building Regulations as a matter of urgency, resolving any training and resourcing issues that may need addressing, whilst recognising that the deployment of resources will be influenced by the Councils annual budget build process	
	5	That the Council, through officers in consultation with its Elected Member Energy Champion request that the Yorkshire and Humber Assembly and/or Yorkshire Forward facilitate region wide BREEAM assessor training for the region's Development Control (and other appropriate) Officers with the aim of reducing costs to individual Local Authorities, with the aim of reducing future expenditure.	
	6	That information, including any response to regional questionnaires, on the Councils position be reported to the City Strategy EMAP at an appropriate time	

Board and Topic	Rec No.	Recommendation as approved by the Executive on 7 November 2006	Update on Recommendations as of July 2008
	7	That the authority adopt clearer lines of communication to ensure that information already collated by Housing Officers regarding thermal efficiencies improvements and other Carbon reduction measures, is shared with the Sustainability Officer. This should be done to ensure housing data relevant to the developing Environmental Management System (EMAS) is integrated. Officers in Housing should work with the Authority's Sustainability Officer to agree the best format for such data sharing and, ensure advice regarding targeted improvements in housing and the reporting of these outcomes are delivered under EMAS	All data recorded on the Housing Stock in terms of energy efficiency is held within the housing stock condition database and administered by the Asset management data Analyst. The sustainability officer is invited to work closely with the data analyst as and when required to resolve any information requests that are required as part of this process.
	8	That the Housing Strategy & Enabling Group - Housing Standards & Adaptations Officer and other officers in housing where relevant work with York EEAC officers consult upon, devise and adopt a 'Energy Efficiency and Thermal Comfort Strategy and Action Plan' for the authority commencing this year. The Officers are recommended to use the Regional Action Plan (Annex C) NEA guidance (Annex F) and activities outlined at paragraph 50 of this report as a primary steer in shaping the process	Have just completed a PSSCS the results of which are currently being analysed to provide the base line evidence for a Private Sector Renewal Strategy which will include energy efficiency and thermal comfort measures, linked to fuel poverty. This work will be completed by December 2008.
	9	That the Local Authority ensures that CYC Officer and Member Positions on the Energy Partnership Board are always filled.	Mark Grandfield Asset Manager is the officer rep
<b>Reducing Carbon Emissions Scrutiny Sub-Committee (Review Completed Sept 2006)</b>	10	That Annual and inter-year joint working be conducted between EEAC's Local Authority Support Programme Co-ordinator and CYC Housing Officers to ensure that opportunities for the use of renewables are considered as part of the HRA and Housing Capital Business plan. Where such opportunities are cost neutral or affordable within the life of the business plan, micro-renewables should be installed as part of the development of the business plan. Consultation between housing officers and EEAC should cover improvements scheduled to buildings fabric, such as photovoltaic roof tiles when roofs need replacement and/or heating, water systems replacements (i.e. can carbon minimising heat pumps be applied) etc; Consultation should also explore opportunities to bring in external grants revenue.	The opportunities for the use of renewables are considered as part of the HRA and Housing Capital Business plan as part of the current refresh
Scrutiny Comment as of 26 February 2007: Executive have only recently considered and approved these recommendations therefore to soon to report on their implementation. Suggest update in September 2007			



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## Scrutiny Management Committee

28 July 2008

### Planning Enforcement – Feasibility Report

#### Summary

1. This report asks Members to consider a scrutiny topic registered by Councillor Wiseman to scrutinise the resources available to the Planning Enforcement Team and to look at the timescales for completion of enforcement cases. A copy of the topic registration form is attached at Annex A.

#### Criteria

2. Councillor Wiseman believes that this topic fits with the following eligibility criteria as set out in the topic registration form:
  - Public Interest (i.e. in terms of both proposals being in the public interest and resident perceptions)
  - Under Performance/Service Dissatisfaction.
  - Service Efficiency
3. The Assistant Director of Planning and Sustainable Development and the Head of Development Control also agree that the topic fits with the above criteria.
4. The portfolio holder for City Strategy did not have any particular comments but believed that most of the questions proposed in this topic could be answered by other means than a scrutiny review and a review would only be necessary if a process issue existed.

#### Background to Proposed Review

5. Councillor Wiseman wishes this review to explore the possibilities of speeding up the period from opening to closing planning enforcement cases and achieve a reduction in the number of outstanding cases. She has raised concerns that a lack of resources within the Planning Enforcement Team may be contributing to delays in cases being brought to a timely conclusion. As part of the review she also proposes that the Council's approach to court action is reviewed to investigate concerns that enforcement by City of York Council has little threat of further legal action being taken.
6. Members are presented with information on both ongoing and completed cases at Planning Sub-Committees on a quarterly basis and it is noticeable that the number of ongoing cases is not being reduced. Some cases have been open for

a very long time without resolution. There do not appear to be any timescales for completing a case. Whilst Councillor Wiseman is aware that some cases are very complex and need a lot of time there are still too many minor cases (Category C cases [see Annex E]) ongoing and as part of this review she would like to explore possible ways of completing these in a timelier manner.

## Consultation

7. Between September 2004 and May 2005, City of York Council's Environment and Sustainability Scrutiny Board conducted a detailed review into the subject of 'Powers of Enforcement – Take-Aways'. The findings of this review were signed off by the Scrutiny Management Committee (SMC) at a meeting on 24 October 2005. These findings were subsequently recommended for implementation by the Executive Member for Environment and Sustainability at a meeting held on 9 November 2005.
8. SMC receive regular updates on whether the recommendations of scrutiny reviews have been implemented. Once SMC are happy that all the recommendations have been fully implemented then they will sign them off as complete. An update in relation to the scrutiny review 'Powers of Enforcement – Take-Aways' was presented to SMC on 22 October 2007 and again on 26 November 2007 when the Assistant Director (Planning and Sustainable Development) attended to answer questions. The minutes of this meeting record that the recommendations had been implemented and were therefore signed off subject to additional information in relation to recommendations 1 and 2 being provided to Members by e-mail. Recommendations 1 and 2 are set out below.

**Recommendation 1** The Environment and Sustainability Scrutiny Board would welcome the positive contribution that the success of the penalty notice support bid would make to addressing these issues.

**Recommendation 2** A multi-agency access database containing details about all individual take away properties should be created. Such details should be in the form of notes on disturbance, environmental health issues, actions taken to ensure compliance etc and updated by licensing, planning, environmental health and the community police as appropriate. This should be maintained to ensure that it remains current.

At the time of writing this report it had not been clarified whether the additional information had been provided as requested.

9. Should this topic go ahead as a scrutiny review Councillor Wiseman has suggested that these recommendations be revisited. She would like to find out whether the recommendations of the scrutiny review on 'Powers of Enforcement – Take-Aways' changed the way that planning enforcement was conducted. If it did change how did it change and how was this change achieved.
10. Recommendation 8 of the 'Powers of Enforcement – Take-Aways' stated that:

'Officers should be equipped with the necessary tools to undertake their work. The present level of equipment between departments is variable. Equipment should be assessed to meet the needs of the work and ensure equality of access between equivalent areas of work.'

Planning Enforcement Officers at both Chester City Council and Bath and North East Somerset Council are issued with the same type of equipment as those in York. Neither of the aforementioned Councils provided their Planning Enforcement Officers with laptop computers. In terms of numbers of officers employed Chester City Council has 3 enforcement officers and Bath and North East Somerset Council has 4 (with one post for a senior enforcement officer currently being vacant).

### National Picture

11. The Town and Country Planning Act 1990 sets out the law on Enforcement. This is attached at Annex B.
12. Planning Policy Guidance 18 (PPG18) introduced new and improved enforcement powers to Local Planning Authorities (LPAs) by the Planning and Compensation Act 1991. The guidance outlines the general approach to enforcement, including the primary responsibility of LPAs in the matter and the decisive issue of whether a breach of planning control would unacceptably affect public amenity or the existing use of land and buildings meriting protection in the public interest. This is attached at Annex C to this report.
13. A table is attached at Annex D showing Enforcement Benchmarking Results 2006/07 for various Local Authorities including York and giving a national and regional perspective. This table includes statistics in relation to number of cases investigated and total number of notices issued within given timescales.

### Local Picture

14. Information on local planning enforcement is available on City of York Council's website. This sets out the Authority's approach to planning enforcement, the procedures for enforcing planning control in the City, what to do if you have concerns that a development is proceeding without any necessary consent or is not in accordance with a consent already granted and the level of service that can be expected from the City of York Council. A copy of this is attached at Annex E.
15. City of York Council employs 4 Planning Enforcement Officers; 3 of these are employed on a full time basis and one part time (4 days per week). As well as dealing with planning enforcement work they also deal with Section 106 monitoring work. (A definition of Section 106 Agreements is attached at Annex F of this report). The amount of work done in relation to Section 106 monitoring is the equivalent of 1 full days work for each officer and involves collecting monies as certain trigger points during a development.
16. The Head of Development Control is planning to undertake a review of the internal processes and procedures within the planning enforcement service in

Autumn 2008. There would be the possibility of linking this in with a scrutiny review.

17. The Head of Development Control and Assistant Director (Planning and Sustainable Development) have volunteered to run a training course for Members on planning enforcement. If Members were interested in attending then a date could be arranged for Autumn 2008.
18. The following further comments were received from the Assistant Director: (Planning and Sustainable Development) and the Head of Development Control:
  - a. The Planning Enforcement Teams do not offer an 'Out of Hours' Service, but will monitor cases outside normal working hours on a pre-arranged basis.
  - b. Are the delays only attributable to a perceived lack of resources in the City Strategy Department or are there other factors such as capacity in legal services?
  - c. Are the delays caused by the procedures in place or because of the nature of enforcement work?
  - d. Enforcement Officers also monitor Section 106 Agreements and this can be a very time consuming process.
  - e. The timescales from receipt to closing enforcement cases in York are comparable with other Local Authorities and are largely determined by the nature of the cases and the extent to which a 'breacher' of planning control seeks to resist action through the appeal process.
  - f. Historically City of York Council has no reputation or track record for taking Court Action.
  - g. City of York Council does not use 'all the tools in its toolbox' i.e. there are some options open to the Authority in relation to Planning Enforcement that have never or rarely been used, such as Section 215 Notice to require the improvement of unsightly land or dilapidated buildings.
19. The following comments were received from City of York Council's Legal department:
  - a. Planning Enforcement Officers have received training from Legal Services on how to prepare files for prosecution.
  - b. There is no evidence of any recent planning prosecutions being undertaken.
  - c. The Planning Department are aware of their statutory duty to enforce planning legislation.
20. In light of the above consultation there are clearly tensions within City of York Council in relation to expected outcomes from planning enforcement cases. In

order to provide clarity within the organisation it is suggested that a focused review of this topic would be appropriate.

21. Comments have been received from 2 of the 4 Planning Enforcement Officers. The issues raised would need to be addressed if a review of this topic were to go ahead; however it was not considered appropriate to include them at this stage since the comments were not directly related to whether the review should proceed.

## **Conduct of Review**

### **Information Gathering**

22. A Scrutiny Review on Planning Enforcement would allow Members to study various statistics in relation to planning enforcement cases including:

- The number of cases opened, ongoing and closed over a specified time.
- Number of Enforcement Notices (of all types) issued over a specified time.
- Number of times court action was taken over a specified time.

These statistics could then be compared with statistics in similar Local Authorities.

23. A review would also allow Members to

- Investigate City of York Council's approach to court action in relation to planning enforcement matters.
- Investigate the possibility of adapting the Planning Enforcement Guidelines (Annex E) to form a Charter and/or a policy.

24. It is suggested that the following persons be consulted if a review were to go ahead:

- Officers from the Planning Department
- Planning Enforcement Officers
- Legal Services
- Members
- Any other associated Officers that may be associated with planning enforcement
- Chair of the 'Powers of Enforcement – Take-Aways' (If Members consider it appropriate to include the changes introduced to planning enforcement as a result of the Powers of Enforcement – Take-Aways Scrutiny Review in the remit).

25. Taking the above into consideration, it is considered that a topic of this nature would require no more than 3-6 months to complete.
26. This directorate has already been subject to two recent scrutiny reviews that have taken up officer time and resources. This may impact on 'everyday workloads' e.g.: Highways Maintenance Procurement Process and PFI Scrutiny Review, Traffic Congestion Scrutiny Review and the 2005 Powers of Enforcement – Take-Aways Scrutiny Review.

### **Implications**

27. **Financial** - There is a small amount of funding available within the scrutiny budget for research.
28. **Human Resources (HR)** – None other than those mentioned in paragraph 26 of this report.
29. **Legal** – There are no direct legal implications associated with this particular report. However legal implications associated with this topic may emerge if the topic progresses.
30. **Other** – There are no known equalities, property, crime and disorder or other implications associated with the recommendations within this report.

### **Risk Management**

31. In compliance with the Council's risk management strategy, there are no known risks associated with the recommendations of this report.

### **Recommendations**

32. Based on the evidence presented within this report Members are advised to proceed with this review. It is suggested that this review commence in the autumn of 2008.
33. In making this recommendation, an overall aim for this review was recognised together with a number of key objectives. A suggested remit is therefore attached at Annex G and Members are asked to consider this and make any necessary changes necessary, prior to approving a remit for this review.
34. Members are specifically asked to consider whether they wish any review to include examining the impact of the Powers of Enforcement – Take-Aways Scrutiny Review (see v of remit).
35. Members are also asked to consider whether they would like to take up the offer of attending a training course as set out in paragraph 17 of this report.



**Contact Details**

**Author:**

Tracy Wallis  
Scrutiny Officer  
Scrutiny Services  
01904 551714

**Chief Officer Responsible for the report:**

Quentin Baker  
Head of Civic, Legal & Democratic Services  
Tel No. 01904 551004

**Feasibility Study  
Approved**



**Date** 18.08.2008

**Specialist Implications Officer(s)**

None.

**Wards Affected:**

**All**



**For further information please contact the author of the report**

**Background Papers:**

None

**Annexes**

Annex A – Topic Registration Form

Annex B – Section VII – Town and Country Planning Act 1990 – Enforcement

Annex C – PPG18

Annex D – Enforcement Benchmarking Results 2006/07

Annex E – Guidelines in relation to City of York Council's Planning Enforcement Service

Annex F – Definition of Section 106 Agreements

Annex G – Draft Remit for the Review

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## ANNEX A



## Scrutiny topic registration form

Fields marked with an asterisk \* are required.

* Proposed topic:		Planning Enforcement Scrutinise the resources to look at the timescales for completion of enforcement cases		
* Councillor registering the topic		Wiseman - Councillor Sian Wiseman		
Submitted due to an unresolved 'Cllr Call for Action' enquiry		<input checked="" type="checkbox"/>		
<p>Please complete this section as thoroughly as you can. The information provided will help Scrutiny Officers and Scrutiny Members to assess the following key elements to the success of any scrutiny review:</p> <p><b>How</b> a review should best be undertaken given the subject  <b>Who</b> needs to be involved  <b>What</b> should be looked at  <b>By when</b> it should be achieved; and  <b>Why we are doing it ?</b></p>				
<b>Please describe how the proposed topic fits with 3 of the eligibility criteria attached.</b>				
	Yes?	<b>Policy Development &amp; Review</b>	<b>Service Improvement &amp; Delivery</b>	<b>Accountability of Executive Decisions</b>
Public Interest (ie. in terms of both proposals being in the public interest and resident perceptions)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	√	<input checked="" type="checkbox"/>
Under Performance / Service Dissatisfaction	<input type="checkbox"/>	<input type="checkbox"/>	√	<input type="checkbox"/>
In keeping with corporate priorities	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
Level of Risk	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
Service Efficiency	<input type="checkbox"/>	<input type="checkbox"/>	√	<input type="checkbox"/>
National/local/regional significance e.g. A central government priority area, concerns joint working arrangements at a local 'York' or wider regional context	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>

**ANNEX A**

**\* Set out briefly the purpose of any scrutiny review of your proposed topic. What do you think it should achieve?**

Does the resources available to the planning enforcement department contribute to the delay in bringing enforcement cases to a satisfactory conclusion?

**\* Please explain briefly what you think any scrutiny review of your proposed topic should cover.**

Review the recommendations made by previous scrutiny committee on take away enforcement. Review the Councils policy on court action in planning enforcement cases and make recommendation

Please indicate which other Councils, partners or external services could, in your opinion, participate in the review, saying why.

None

**Explain briefly how, in your opinion, such a review might be most efficiently undertaken?**

Speak to the relevant parties such as Officers from the Planning Department, Planning Enforcement Officers, any other associated Officers that may be associated with planning enforcement, Legal Services and Members. Study statistics of cases open and closed and compare these with similar authorities. Study the recommendations made for the 'Powers of Enforcement – Take-Aways' Scrutiny Review and look at what difference these recommendations made. Explore how or if the result of this scrutiny review changed the way Enforcement was conducted. If it did change the way it was conducted then how was this achieved?

Investigate whether the Planning Enforcement Service Guidelines could be adapted to form a Charter and/or a policy.

Estimate the timescale for completion.		1-3 months 3-6 months - ✓ 6-9 months
Support documents or other useful information		

Warning: This item is published and cannot be updated

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Date submitted: Monday, 7th July, 2008, 3.00 pm

Submitted by: Councillor Sian Wiseman

**ANNEX B**

**Town and Country Planning Act 1990**

**Part VII Enforcement**

**Enforcement notices**

**172 Power to issue enforcement notice**

(1) Where—

(a) it appears to the local planning authority that there has been a breach of planning control after the end of 1963; and

(b) the authority consider it expedient to do so having regard to the provisions of the development plan and to any other material considerations, they may issue a notice requiring the breach to be remedied.

(2) A notice under this section is referred to in this Act as an “enforcement notice”.

(3) There is a breach of planning control—

(a) if development has been carried out, whether before or after the commencement of this Act, without the grant of the planning permission required for that development in accordance with Part III (or, as the case may be, Part III of the 1962 Act or Part III of the 1971 Act); or

(b) if any conditions or limitations subject to which planning permission was granted have not been complied with.

(4) An enforcement notice which relates to a breach of planning control consisting in—

(a) the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land; or

(b) the failure to comply with any condition or limitation which relates to the carrying out of such operations and subject to which planning permission was granted for the development of that land; or

(c) the making without planning permission of a change of use of any building to use as a single dwellinghouse; or

(d) the failure to comply with a condition which prohibits or has the effect of preventing a change of use of a building to use as a single dwellinghouse, may be issued only within the period of four years from the date of the breach.

(5) Subject to section 175(4), an enforcement notice shall take effect on a date specified in it (in this Part referred to as the “specified date”).

(6) A copy of an enforcement notice shall be served not later than 28 days after the date of its issue and not later than 28 days before the specified date—

(a) on the owner and on the occupier of the land to which it relates; and

(b) on any other person having an interest in that land, which in the opinion of the authority is an interest materially affected by the notice.

(7) The local planning authority may withdraw an enforcement notice (without prejudice to their powers to issue another) at any time before it takes effect.

(8) If they do so, they shall immediately give notice of the withdrawal to every person who was served with a copy of the notice.

**173 Contents of enforcement notice**

(1) An enforcement notice shall specify the matters alleged to constitute a breach of planning control.

(2) An enforcement notice shall also specify—

(a) any steps the local planning authority require to be taken in order to remedy the breach; and

## ANNEX B

(b) any such steps as are mentioned in subsection (4) which the authority require to be taken.

(3) In this section “steps to be taken in order to remedy the breach” means (according to the particular circumstances of the breach) steps for the purpose—

(a) of restoring the land to its condition before the development took place; or  
(b) of securing compliance with the conditions or limitations subject to which planning permission was granted,  
including—

(i) the demolition or alteration of any building or works;  
(ii) the discontinuance of any use of land; and  
(iii) the carrying out on land of any building or other operations.

(4) The steps referred to in subsection (2)(b) are steps for the purpose—

(a) of making the development comply with the terms of any planning permission which has been granted in respect of the land; or  
(b) of removing or alleviating any injury to amenity which has been caused by the development.

(5) An enforcement notice shall specify the period within which any such step as is mentioned in subsection (2) is to be taken and may specify different periods for the taking of different steps.

(6) Where the matters which an enforcement notice alleges to constitute a breach of planning control include development which has involved the making of a deposit of refuse or waste materials on land, the notice may require that the contour of the deposit shall be modified by altering the gradient or gradients of its sides in such manner as may be specified in the notice.

(7) The Secretary of State may by regulations direct—

(a) that enforcement notices shall specify matters additional to those which they are required to specify by this section; and  
(b) that every copy of an enforcement notice served under section 172 shall be accompanied by an explanatory note giving such information as may be specified in the regulations with regard to the right of appeal conferred by section 174.

(8) Where—

(a) an enforcement notice has been issued in respect of development consisting of the erection of a building or the carrying out of works without the grant of planning permission; and

(b) the notice has required the taking of steps for a purpose mentioned in subsection (4)(b); and

(c) the steps have been taken,

for the purposes of the planning Acts planning permission for the retention of the building or works as they are as a result of compliance with the notice shall be deemed to have been granted on an application for such permission made to the local planning authority.

### **174 Appeal against enforcement notice**

(1) A person having an interest in the land to which an enforcement notice relates or a relevant occupier may appeal to the Secretary of State against the notice, whether or not a copy of it has been served on him.

(2) An appeal may be brought on any of the following grounds—

(a) that planning permission ought to be granted for the development to which the notice relates or, as the case may be, that a condition or limitation alleged in the enforcement notice not to have been complied with ought to be discharged;

## ANNEX B

- (b) that the matters alleged in the notice do not constitute a breach of planning control;
  - (c) that the breach of planning control alleged in the notice has not taken place;
  - (d) in the case of a notice to which section 172(4) applies, that the period of four years from the date of the breach of planning control to which the notice relates had elapsed at the date when the notice was issued;
  - (e) in the case of a notice not falling within paragraph (d), that the breach of planning control alleged by the notice occurred before the beginning of 1964;
  - (f) that copies of the enforcement notice were not served as required by section 172(6);
  - (g) that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control or to achieve a purpose specified in section 173(4);
  - (h) that the period specified in the notice as the period within which any step is to be taken falls short of what should reasonably be allowed.
- (3) An appeal under this section shall be made by notice in writing to the Secretary of State before the specified date.
- (4) A person who gives notice under subsection (3) shall submit to the Secretary of State, either when giving the notice or within the prescribed time, a statement in writing—
- (a) specifying the grounds on which he is appealing against the enforcement notice; and
  - (b) giving such further information as may be prescribed.
- (5) If, where more than one ground is specified in that statement, the appellant does not give information required under subsection (4)(b) in relation to each of those grounds within the prescribed time, the Secretary of State may determine the appeal without considering any ground as to which the appellant has failed to give such information within that time.
- (6) In this section “relevant occupier” means a person who—
- (a) on the date on which the enforcement notice is issued occupies the land to which the notice relates by virtue of a licence in writing; and
  - (b) continues so to occupy the land when the appeal is brought.

### **175 Appeals: supplementary provisions**

- (1) The Secretary of State may by regulations prescribe the procedure which is to be followed on appeals under section 174 and, in particular, but without prejudice to the generality of this subsection, may—
- (a) require the local planning authority to submit, within such time as may be prescribed, a statement indicating the submissions which they propose to put forward on the appeal;
  - (b) specify the matters to be included in such a statement;
  - (c) require the authority or the appellant to give such notice of such an appeal as may be prescribed;
  - (d) require the authority to send to the Secretary of State, within such period from the date of the bringing of the appeal as may be prescribed, a copy of the enforcement notice and a list of the persons served with copies of it.
- (2) The notice to be prescribed under subsection (1)(c) shall be such notice as in the opinion of the Secretary of State is likely to bring the appeal to the attention of persons in the locality in which the land to which the enforcement notice relates is situated.
- (3) Subject to section 176(4), the Secretary of State shall, if either the appellant or the local planning authority so desire, give each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.

## **ANNEX B**

(4) Where an appeal is brought under section 174 the enforcement notice shall be of no effect pending the final determination or the withdrawal of the appeal.

(5) Where any person has appealed to the Secretary of State against an enforcement notice, no person shall be entitled, in any other proceedings instituted after the making of the appeal, to claim that the notice was not duly served on the person who appealed.

(6) Schedule 6 applies to appeals under section 174, including appeals under that section as applied by regulations under any other provisions of this Act.

### **176 General provisions relating to determination of appeals**

(1) On the determination of an appeal under section 174, the Secretary of State shall give directions for giving effect to the determination, including, where appropriate, directions for quashing the enforcement notice or for varying its terms.

(2) On such an appeal if the Secretary of State is satisfied that to do so will not cause the appellant or the local planning authority injustice, he may—

(a) correct any informality, defect or error in the enforcement notice; or

(b) give directions for varying its terms.

(3) The Secretary of State—

(a) may dismiss an appeal if the appellant fails to comply with section 174(4) within the prescribed time; and

(b) may allow an appeal and quash the enforcement notice if the local planning authority fail to comply with any requirement of regulations made by virtue of paragraph (a), (b), or (d) of section 175(1) within the prescribed period.

(4) If the Secretary of State proposes to dismiss an appeal under paragraph (a) of subsection (3) or to allow an appeal and quash the enforcement notice under paragraph (b) of that subsection, he need not comply with section 175(3).

(5) Where it would otherwise be a ground for determining an appeal under section 174 in favour of the appellant that a person required to be served with a copy of the enforcement notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.

### **177 Grant or modification of planning permission on appeals against enforcement notices**

(1) On the determination of an appeal under section 174, the Secretary of State may—

(a) grant planning permission for the development to which the enforcement notice relates or for part of that development or for the development of part of the land to which the enforcement notice relates;

(b) discharge any condition or limitation subject to which planning permission was granted;

(c) determine any purpose for which the land may, in the circumstances obtaining at the time of the determination, be lawfully used having regard to any past use of it and to any planning permission relating to it.

(2) In considering whether to grant planning permission under subsection (1), the Secretary of State shall have regard to the provisions of the development plan, so far as material to the subject matter of the enforcement notice, and to any other material considerations.

(3) Any planning permission granted by the Secretary of State under subsection (1) may—

(a) include permission to retain or complete any buildings or works on the land, or to do so without complying with some condition attached to a previous planning permission;

(b) be granted subject to such conditions as the Secretary of State thinks fit;



**ANNEX B**

and section 72(1) and (5) shall apply with any necessary modifications in relation to the grant of permission under subsection (1) as it applies to a grant of permission under section 70(1).

(4) Where under subsection (1) the Secretary of State discharges a condition or limitation, he may substitute another condition or limitation for it, whether more or less onerous.

(5) Where an appeal against an enforcement notice is brought under section 174, the appellant shall be deemed to have made an application for planning permission for the development to which the notice relates.

(6) Any planning permission granted under subsection (1) on an appeal shall be treated as granted on the application deemed to have been made by the appellant.

(7) In relation to a grant of planning permission or a determination under subsection (1) the Secretary of State's decision shall be final.

(8) For the purposes of section 69 the Secretary of State's decision shall be treated as having been given by him in dealing with an application for planning permission made to the local planning authority.

**178 Execution and cost of works required by enforcement notice**

(1) If any steps which by virtue of section 173(2)(a) are required by an enforcement notice to be taken (other than the discontinuance of a use of land) have not been taken within the compliance period, the local planning authority may—

(a) enter the land and take those steps, and

(b) recover from the person who is then the owner of the land any expenses reasonably incurred by them in doing so.

(2) Where a copy of an enforcement notice has been served in respect of any breach of planning control (as defined in section 172(3))—

(a) any expenses incurred by the owner or occupier of any land for the purpose of complying with the notice, and

(b) any sums paid by the owner of any land under subsection (1) in respect of expenses incurred by the local planning authority in taking steps required by such a notice to be taken,

shall be deemed to be incurred or paid for the use and at the request of the person by whom the breach of planning control was committed.

(3) Regulations made under this Act may provide that—

(a) section 276 of the [1936 c. 49.] Public Health Act 1936, (power of local authorities to sell materials removed in executing works under that Act subject to accounting for the proceeds of sale);

(b) section 289 of that Act (power to require the occupier of any premises to permit works to be executed by the owner of the premises); and

(c) section 294 of that Act (limit on liability of persons holding premises as agents or trustees in respect of the expenses recoverable under that Act),

shall apply, subject to such adaptations and modifications as may be specified in the regulations, in relation to any steps required to be taken by an enforcement notice.

(4) Regulations under subsection (3) applying section 289 of the Public Health Act 1936 may include adaptations and modifications for the purpose of giving the owner of land to which an enforcement notice relates the right, as against all other persons interested in the land, to comply with the requirements of the enforcement notice.

(5) Regulations under subsection (3) may also provide for the charging on the land of any expenses recoverable by a local planning authority under subsection (1).

## **ANNEX B**

(6) Where by virtue of this section any expenses are recoverable by a local planning authority, those expenses shall be recoverable as a simple contract debt in any court of competent jurisdiction.

(7) In this section and in sections 179, 183 and 184 any reference to the compliance period, in relation to an enforcement notice, is a reference to the period specified in the notice for compliance with it or such extended period as the local planning authority may allow for compliance with it.

### **179 Penalties for non-compliance with enforcement notice**

(1) Where—

(a) a copy of an enforcement notice has been served on the person who at the time when the copy was served was the owner of the land to which the notice relates, and  
(b) any steps required by the notice to be taken (other than the discontinuance of a use of land) have not been taken within the compliance period,  
then, subject to the provisions of this section, that person shall be guilty of an offence.

(2) A person who is guilty of an offence under subsection (1) shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum, or  
(b) on conviction on indictment, to a fine.

(3) Where proceedings have been brought under subsection (1) against a person (“the original owner”) who has, at some time before the end of the compliance period, ceased to be the owner of the land, if he—

(a) duly lays information to that effect, and  
(b) gives the prosecution not less than three clear days' notice of his intention,  
he shall be entitled to have the person who then became the owner of the land (“the subsequent owner”) brought before the court in the proceedings.

(4) Where in such proceedings—

(a) it has been proved that any steps required by the enforcement notice have not been taken within the compliance period, and

(b) the original owner proves that the failure to take those steps was attributable, in whole or in part, to the default of the subsequent owner  
then—

(i) the subsequent owner may be convicted of the offence; and

(ii) if the original owner also proves that he took all reasonable steps to secure compliance with the enforcement notice, he shall be acquitted of the offence.

(5) If, after a person has been convicted under the previous provisions of this section, he does not as soon as practicable do everything in his power to secure compliance with the enforcement notice, he shall be guilty of a further offence and liable—

(a) on summary conviction to a fine not exceeding £200 for each day following his first conviction on which any of the requirements of the notice (other than the discontinuance of the use of land) remain unfulfilled; or

(b) on conviction on indictment, to a fine.

(6) Where, by virtue of an enforcement notice—

(a) a use of land is required to be discontinued, or

(b) any conditions or limitations are required to be complied with in respect of a use of land or in respect of the carrying out of operations on it,

then, if any person uses the land or causes or permits it to be used, or carries out those operations or causes or permits them to be carried out, in contravention of the notice, he shall be guilty of an offence.

(7) A person who is guilty of an offence under subsection (6) shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum, or

## ANNEX B

(b) on conviction on indictment, to a fine.

(8) Where a person is convicted under subsection (6) in respect of any use of land and the use is continued after the conviction he shall be guilty of a further offence and liable—

(a) on summary conviction, to a fine not exceeding £200 for each day on which the use is so continued, or

(b) on conviction on indictment, to a fine.

### **180 Effect of planning permission on enforcement notice**

(1) If, after the service of a copy of an enforcement notice, planning permission is granted—

(a) for the retention on land of buildings or works, or

(b) for the continuance of a use of land, to which the enforcement notice relates, the enforcement notice shall cease to have effect in so far as it requires steps to be taken for the demolition or alteration of those buildings or works or, as the case may be, the discontinuance of that use.

(2) If the planning permission granted as mentioned in subsection (1) is granted so as to permit the retention of buildings or works, or the continuance of a use of land, without complying with some condition subject to which a previous planning permission was granted, the enforcement notice shall cease to have effect in so far as it requires steps to be taken for complying with that condition.

(3) The fact that an enforcement notice has wholly or partly ceased to have effect under subsection (1) or (2) shall not affect the liability of any person for an offence in respect of a previous failure to comply with the notice.

### **181 Enforcement notice to have effect against subsequent development**

(1) Compliance with an enforcement notice, whether in respect of—

(a) the completion, demolition or alteration of any buildings or works;

(b) the discontinuance of any use of land; or

(c) any other requirements contained in the notice, shall not discharge the notice.

(2) Without prejudice to subsection (1), any provision of an enforcement notice requiring a use of land to be discontinued shall operate as a requirement that it shall be discontinued permanently, to the extent that it is in contravention of Part III; and accordingly the resumption of that use at any time after it has been discontinued in compliance with the enforcement notice shall to that extent be in contravention of the enforcement notice.

(3) Without prejudice to subsection (1), if any development is carried out on land by way of reinstating or restoring buildings or works which have been demolished or altered in compliance with an enforcement notice, the notice shall, notwithstanding that its terms are not apt for the purpose, be deemed to apply in relation to the buildings or works as reinstated or restored as it applied in relation to the buildings or works before they were demolished or altered; and, subject to subsection (4), the provisions of section 178(1) and (2) shall apply accordingly.

(4) Where, at any time after an enforcement notice takes effect—

(a) any development is carried out on land by way of reinstating or restoring buildings or works which have been demolished or altered in compliance with the notice; and

(b) the local planning authority propose, under section 178(1), to take any steps required by the enforcement notice for the demolition or alteration of the buildings or works in consequence of the reinstatement or restoration,

## **ANNEX B**

the local planning authority shall, not less than 28 days before taking any such steps, serve on the owner and occupier of the land a notice of their intention to do so.

(5) Where without planning permission a person carries out any development on land by way of reinstating or restoring buildings or works which have been demolished or altered in compliance with an enforcement notice—

(a) he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale, and

(b) no person shall be liable under any of the provisions of section 179(1) to (5) for failure to take any steps required to be taken by an enforcement notice by way of demolition or alteration of what has been so reinstated or restored.

### **182 Enforcement by the Secretary of State**

(1) If it appears to the Secretary of State to be expedient that an enforcement notice should be issued in respect of any land, he may issue such a notice.

(2) The Secretary of State shall not issue such a notice without consulting the local planning authority.

(3) An enforcement notice issued by the Secretary of State shall have the same effect as a notice issued by the local planning authority.

(4) In relation to an enforcement notice issued by the Secretary of State, sections 178 and 181 shall apply as if for any reference in those sections to the local planning authority there were substituted a reference to the Secretary of State.

### **Stop notices**

#### **183 Stop notices**

(1) Where in respect of any land the local planning authority—

(a) have served a copy of an enforcement notice requiring a breach of planning control to be remedied; but

(b) consider it expedient to prevent, before the expiry of the compliance period, the carrying out of any activity which is, or is included in, a matter alleged by the notice to constitute the breach,

they may at any time before the notice takes effect serve a notice prohibiting the carrying out of that activity on the land, or any part of it specified in the notice.

(2) A notice under subsection (1) is in this Act referred to as a “stop notice”.

(3) A stop notice shall not prohibit—

(a) the use of any building as a dwellinghouse, or

(b) the use of land as the site for a caravan occupied by any person as his only or main residence, or

(c) the taking of any steps specified in the enforcement notice as required to be taken in order to remedy the breach of planning control.

(4) For the purposes of subsection (3) “caravan” has the same meaning as it has for the purposes of Part I of the [1960 c. 62.] Caravan Sites and Control of Development Act 1960.

(5) Where the period during which an activity has been carried out on land (whether continuously or otherwise) began more than 12 months earlier, a stop notice shall not prohibit the carrying out of that activity on that land unless it is, or is incidental to, building, engineering, mining or other operations or the deposit of refuse or waste materials.

(6) A stop notice may be served by the local planning authority on any person who appears to them to have an interest in the land or to be engaged in any activity prohibited by the notice.

## **ANNEX B**

(7) The local planning authority may at any time withdraw a stop notice (without prejudice to their power to serve another) by serving notice to that effect on persons served with the stop notice.

### **184 Stop notices: supplementary provisions**

(1) A stop notice must refer to the enforcement notice to which it relates and have a copy of that notice annexed to it.

(2) A stop notice must specify the date on which it will take effect (and it cannot be contravened until that date).

(3) That date must not be earlier than three nor later than 28 days from the day on which the notice is first served on any person.

(4) A stop notice shall cease to have effect when—

(a) the enforcement notice to which it relates is withdrawn or quashed; or

(b) the compliance period expires; or

(c) notice of the withdrawal of the stop notice is first served under section 183(7).

(5) A stop notice shall also cease to have effect if or to the extent that the activities prohibited by it cease, on a variation of the enforcement notice, to be included in the matters alleged by the enforcement notice to constitute a breach of planning control.

(6) Where a stop notice has been served in respect of any land, the local planning authority may display there a notice (in this section and section 187 referred to as a “site notice”)—

(a) stating that a stop notice has been served and that any person contravening it may be prosecuted for an offence under section 187,

(b) giving the date when the stop notice takes effect, and

(c) indicating its requirements.

(7) If under section 183(7) the local planning authority withdraw a stop notice in respect of which a site notice was displayed, they must display a notice of the withdrawal in place of the site notice.

(8) A stop notice shall not be invalid by reason that a copy of the enforcement notice to which it relates was not served as required by section 172(6) if it is shown that the local planning authority took all such steps as were reasonably practicable to effect proper service.

### **185 Service of stop notices by Secretary of State**

(1) If it appears to the Secretary of State to be expedient that a stop notice should be served in respect of any land, he may himself serve such a notice.

(2) A notice served by the Secretary of State under subsection (1) shall have the same effect as if it had been served by the local planning authority.

(3) The Secretary of State shall not serve such a notice without consulting the local planning authority.

### **186 Compensation for loss due to stop notice**

(1) Where a stop notice is served under section 183 compensation may be payable under this section in respect of a prohibition contained in the notice only if—

(a) the enforcement notice is quashed on grounds other than those mentioned in paragraph (a) of section 174(2);

(b) the enforcement notice is varied (otherwise than on the grounds mentioned in that paragraph) so that matters alleged to constitute a breach of planning control cease to include one or more of the activities prohibited by the stop notice;

(c) the enforcement notice is withdrawn by the local planning authority otherwise than in consequence of the grant by them of planning permission for the development to which

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the notice relates or for its retention or continuance without compliance with a condition or limitation subject to which a previous planning permission was granted; or

(d) the stop notice is withdrawn.

(2) A person who, when the stop notice is first served, has an interest in or occupies the land to which the notice relates shall be entitled to be compensated by the local planning authority in respect of any loss or damage directly attributable to the prohibition contained in the notice or, in a case within subsection (1)(b), so much of that prohibition as ceases to have effect.

(3) A claim for compensation under this section shall be made to the local planning authority within the prescribed time and in the prescribed manner.

(4) The loss or damage in respect of which compensation is payable under this section in respect of a prohibition shall include any sum payable in respect of a breach of contract caused by the taking of action necessary to comply with the prohibition.

(5) In the assessment of compensation under this section, account shall be taken of the extent (if any) to which the claimant's entitlement is attributable—

(a) to his failure to comply with a notice under section 330, or

(b) to any mis-statement made by him in response to such a notice.

(6) Except in so far as may be otherwise provided by any regulations made under this Act, any question of disputed compensation under this Part shall be referred to and determined by the Lands Tribunal.

(7) In relation to the determination of any such question, the provisions of sections 2 and 4 of the [1961 c. 33.] Land Compensation Act 1961 shall apply subject to any necessary modifications and to the provisions of any regulations made under this Act.

### **Penalties for contravention of stop notice**

(1) If any person contravenes or causes or permits the contravention of a stop notice—

(a) after a site notice has been displayed, or

(b) if a site notice has not been displayed, more than two days after the stop notice has been served on him,

then, subject to subsection (3), he shall be guilty of an offence.

(2) A person who is guilty of an offence under subsection (1) shall be liable—

(a) on summary conviction to a fine not exceeding the statutory maximum, or

(b) on conviction on indictment to a fine;

and if the offence is continued after conviction he shall be guilty of a further offence and liable—

(i) on summary conviction to a fine not exceeding £200 for each day on which the offence is continued, or

(ii) on conviction on indictment to a fine.

(3) In proceedings for an offence under this section it shall be a defence for the accused to prove—

(a) that the stop notice was not served on him, and

(b) that he did not know, and could not reasonably have been expected to know, of its existence.

## **Registers**

### **188 Register of enforcement and stop notices**

(1) Every district planning authority and the council of every metropolitan district or London borough shall keep, in such manner as may be prescribed by a development order, a register containing such information as may be so prescribed with respect—

(a) to enforcement notices; and

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- (b) to stop notices, which relate to land in their area.
- (2) A development order may make provision—
  - (a) for the entry relating to any enforcement notice or stop notice, and everything relating to any such notice, to be removed from the register in such circumstances as may be specified in the order; and
  - (b) for requiring a county planning authority to supply to a district planning authority such information as may be so specified with regard to enforcement notices issued and stop notices served by the county planning authority.
- (3) Every register kept under this section shall be available for inspection by the public at all reasonable hours.

### **Enforcement of orders for discontinuance of use, etc.**

#### **189 Penalties for contravention of orders under s. 102 and Schedule 9**

- (1) Any person who without planning permission—
  - (a) uses land, or causes or permits land to be used—
    - (i) for any purpose for which an order under section 102 or paragraph 1 of Schedule 9 has required that its use shall be discontinued; or
    - (ii) in contravention of any condition imposed by such an order by virtue of subsection (1) of that section or, as the case may be, sub-paragraph (1) of that paragraph; or
  - (b) resumes, or causes or permits to be resumed, development consisting of the winning and working of minerals the resumption of which an order under paragraph 3 of that Schedule has prohibited; or
  - (c) contravenes, or causes or permits to be contravened, any such requirement as is specified in sub-paragraph (3) or (4) of that paragraph, shall be guilty of an offence.
- (2) Any person who contravenes any requirement of an order under paragraph 5 or 6 of that Schedule or who causes or permits any requirement of such an order to be contravened shall be guilty of an offence.
- (3) Any person guilty of an offence under this section shall be liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum; and
  - (b) on conviction on indictment, to a fine.
- (4) It shall be a defence for a person charged with an offence under this section to prove that he took all reasonable measures and exercised all due diligence to avoid commission of the offence by himself or by any person under his control.
- (5) If in any case the defence provided by subsection (4) involves an allegation that the commission of the offence was due to the act or default of another person or due to reliance on information supplied by another person, the person charged shall not, without the leave of the court, be entitled to rely on the defence unless, within a period ending seven clear days before the hearing, he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of the other person as was then in his possession.

#### **190 Enforcement of orders under s. 102 and Schedule 9**

- (1) This section applies where—
  - (a) any step required by an order under section 102 or paragraph 1 of Schedule 9 to be taken for the alteration or removal of any buildings or works or any plant or machinery;
  - (b) any step required by an order under paragraph 3 of that Schedule to be taken—
    - (i) for the alteration or removal of plant or machinery; or
    - (ii) for the removal or alleviation of any injury to amenity; or

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(c) any step for the protection of the environment required to be taken by an order under paragraph 5 or 6 of that Schedule, has not been taken within the period specified in the order or within such extended period as the local planning authority or, as the case may be, the mineral planning authority may allow.

(2) Where this section applies the local planning authority or, as the case may be, the mineral planning authority may enter the land and take the required step.

(3) Where the local planning authority or, as the case may be, the mineral planning authority have exercised their power under subsection (2) they may recover from the person who is then the owner of the land any expenses reasonably incurred by them in doing so.

(4) Any expenses recoverable by a local planning authority or a mineral planning authority under subsection (3) shall be recoverable as a simple contract debt in any court of competent jurisdiction.

(5) Section 276 of the [1936 c. 49.] Public Health Act 1936 shall apply in relation to any works executed by an authority under subsection (2) as it applies in relation to works executed by a local authority under that Act.

### **Established use certificates**

#### **191 Meaning of “established use”**

For the purposes of this Part a use of land is established if—

(a) it was begun before the beginning of 1964 without planning permission and has continued since the end of 1963;

(b) it was begun before the beginning of 1964 under a planning permission granted subject to conditions or limitations, which either have never been complied with or have not been complied with since the end of 1963; or

(c) it was begun after the end of 1963 as the result of a change of use not requiring planning permission and there has been, since the end of 1963, no change of use requiring planning permission.

#### **192 Applications for established use certificates**

(1) Subject to subsection (3), where a person having an interest in land claims that a particular use of it has become established, he may apply to the local planning authority for a certificate to that effect.

(2) Such a certificate is in this Act referred to as an “established use certificate”.

(3) No application may be made under subsection (1)—

(a) in respect of the use of land as a single dwellinghouse, or

(b) in respect of any use not subsisting at the time of the application.

(4) An established use certificate shall, as respects any matters stated in it, be conclusive for the purposes of an appeal to the Secretary of State against an enforcement notice a copy of which has been served in respect of any land to which the certificate relates, if the copy of the notice is served after the date of the application on which the certificate was granted.

(5) The Secretary of State may give directions requiring applications for established use certificates to be referred to him instead of being dealt with by local planning authorities.

(6) In section 69 references to applications for planning permission shall include references to applications for established use certificates.



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### 193 Supplementary provisions as to applications

(1) An application for an established use certificate shall be made in such manner as may be prescribed by a development order and shall include such particulars, and be verified by such evidence, as may be required by such an order or by any directions given under such an order, or by the local planning authority or, in the case of an application referred to the Secretary of State, by him.

(2) A development order may provide that an application for an established use certificate shall not be entertained unless it is accompanied by a certificate in such form as may be prescribed by the order and corresponding to one of those described in section 66(1) or section 67(3).

(3) Any such order may also—

(a) include requirements corresponding to section 66(2) to (6) (or, as the case may be, section 67(5), (6) and (11)) and section 71(2); and

(b) make provision as to who, in the case of any land, is to be treated as the owner for the purposes of any provision of the order made by virtue of subsection (2) or this subsection.

(4) If any person—

(a) issues a certificate which purports to comply with any provision of a development order made by virtue of subsection (2) or (3) and contains a statement which he knows to be false or misleading in a material particular, or

(b) recklessly issues a certificate which purports to comply with any such provision and contains a statement which is false or misleading in a material particular, he shall be guilty of an offence.

(5) A person guilty of such an offence shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(6) If any person, for the purpose of procuring a particular decision on an application (whether by himself or another) for an established use certificate—

(a) knowingly or recklessly makes a statement which is false in a material particular; or

(b) with intent to deceive, produces, furnishes, sends or otherwise makes use of any document which is false in a material particular; or

(c) with intent to deceive, withholds any material information, he shall be guilty of an offence.

(7) A person guilty of such an offence shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum, or

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.

### 194 Determination of applications

(1) On an application to the local planning authority under section 192, or on a reference to the Secretary of State under subsection (5) of that section, the authority or, as the case may be, the Secretary of State shall—

(a) if and so far as they are or he is satisfied that the applicant's claim is made out, grant him an established use certificate accordingly; and

(b) if and so far as they are or he is not so satisfied, refuse the application.

(2) An established use certificate may be granted—

(a) either for the whole of the land specified in the application, or for a part of it;

(b) in the case of an application specifying two or more uses, either for all those uses or for some one or more of them.

(3) An established use certificate shall be in such form as may be prescribed by a development order and shall specify—

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(a) the land to which the certificate relates and any use of it which is certified by the certificate as established;

(b) by reference to the paragraphs of section 191, the grounds on which that use is so certified; and

(c) the date on which the application for the certificate was made.

(4) The date mentioned in subsection (3)(c) shall be the date at which the use is certified as established.

(5) Provision may be made by a development order for regulating the manner in which applications for established use certificates are to be dealt with by local planning authorities.

(6) Such an order may in particular provide for requiring the authority—

(a) to give to any applicant within such time as may be prescribed by the order such notice as may be so prescribed as to the manner in which his application has been dealt with;

(b) to give to the Secretary of State and to such other persons as may be prescribed by or under the order, such information as may be so prescribed with respect to such applications made to the authority, including information as to the manner in which any application has been dealt with.

### **195 Appeals against refusal or failure to give decision on application**

(1) Where an application is made to a local planning authority for an established use certificate and—

(a) the application is refused or is refused in part, or

(b) the authority do not give notice to the applicant of their decision on the application within such period as may be prescribed by a development order or within such extended period as may at any time be agreed upon in writing between the applicant and the authority,

the applicant may by notice appeal to the Secretary of State.

(2) On any such appeal, if and so far as the Secretary of State is satisfied—

(a) in the case of an appeal under subsection (1)(a), that the authority's refusal is not well-founded, or

(b) in the case of an appeal under subsection (1)(b), that if the authority had refused the application their refusal would not have been well-founded,

he shall grant the appellant an established use certificate accordingly or, in the case of a refusal in part, modify the certificate granted by the authority on the application.

(3) If and so far as the Secretary of State is satisfied that the authority's refusal is or, as the case may be, would have been well-founded, he shall dismiss the appeal.

(4) In section 193(2) and (6) references to applications for established use certificates include references to appeals arising out of such applications.

(5) For the purposes of the application of section 288(10)(b) in relation to an appeal in a case within subsection (1)(b) it shall be assumed that the authority decided to refuse the application in question.

(6) Schedule 6 applies to appeals under this section.

### **196 Further provisions as to references and appeals to the Secretary of State**

(1) Before determining an application referred to him under section 192(5) or an appeal to him under section 195(1), the Secretary of State shall, if either the applicant or appellant (as the case may be) or the local planning authority so wish, give each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.

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(2) Where the Secretary of State grants an established use certificate on such a reference or such an appeal, he shall give notice to the local planning authority of that fact.

(3) The decision of the Secretary of State on such an application or appeal shall be final.

(4) The information which may be prescribed as being required to be contained in a register kept under section 69 shall include information with respect to established use certificates granted by the Secretary of State.

(5) On such an application or appeal the Secretary of State may, in respect of any use of land for which an established use certificate is not granted (either by him or by the local planning authority), grant planning permission for that use or, as the case may be, for the continuance of that use without complying with some condition subject to which a previous planning permission was granted.

(6) In the case of any use of land for which the Secretary of State has power to grant planning permission under this section, the applicant or appellant shall be deemed to have made an application for such planning permission.

(7) Any planning permission so granted shall be treated as granted on that application.

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**PLANNING POLICY GUIDANCE:****ENFORCING PLANNING CONTROL**

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1. New and substantially improved powers to enforce planning control are given to local planning authorities (LPAs) by the Planning and Compensation Act 1991. The enforcement provisions of the Act are based on the main recommendations of the report by Robert Carnwath QC, entitled "Enforcing Planning Control" (HMSO, February 1989). The report also recommended (Recommendation No. 14) that current Ministerial policy guidance about enforcement, in DOE/WO Circulars, should be revised, taking account of the concern expressed about certain aspects of the current guidance. This Note gives revised guidance.

**THE NEW ENFORCEMENT RÉGIME**

2. The new and improved enforcement powers provided by the 1991 Act are:-

(1) the power to serve a "planning contravention notice" where it appears that there may have been a breach of planning control and the LPA require information about activities on the land, or the nature of the recipient's interest in the land (new section 171C of the Town and Country Planning Act 1990);

(2) the power to serve a "breach of condition notice" where there is failure to comply with any condition or limitation imposed on a grant of planning permission (new section 187A of the 1990 Act);

(3) the ability to seek an injunction, in the High Court, or County Court, to restrain any actual or expected breach of planning control (new section 187B of the 1990 Act);

(4) the power to serve a stop notice to prohibit the use of land as the site for a caravan occupied as a person's only or main residence, and to make a stop notice immediately effective where special reasons justify it (amended sections 183 and 184 of the 1990 Act); and

(5) improved powers of entry on to land for the LPA's authorised officer to obtain information required for enforcement purposes (new sections 196A, 196B and 196C of the 1990 Act).

3. The penalty provisions for enforcement offences have also been revised. The maximum summary penalty on conviction of the offence of contravening the requirements of an effective enforcement notice, or the prohibition in a stop notice, is increased from £2,000 to £20,000. And, when sentencing a convicted person for an enforcement notice or stop notice offence, the Court is to have regard to any financial benefit which has accrued, or appears likely to accrue, to him in consequence of the offence. These exceptional summary maxima are intended to signal clearly how seriously Parliament regards this type of offence. The increased penalties are consistent with Government policy stated in the White Paper entitled "Crime, Justice and Protecting the Public" (Cm 965), published in February 1990. Chapter 5 of the White Paper acknowledges that there is increasing

public concern about activities which damage the quality of people's lives (paragraph 5.8). It states:-

"If people ignore or flout laws and regulations designed to protect the public from serious harm, they should be properly punished, and the punishment should take account of the resulting profits or savings..."

4. During consideration of the Bill in Parliament, amendments to impose a general duty on LPAs to ensure compliance with planning control were proposed. Although these amendments were not accepted (because the Government considers that enforcement action should remain within the LPA's discretion), the Government's view is that the integrity of the development control process depends on the LPA's readiness to take effective enforcement action when it is essential. Public acceptance of the development control process is quickly undermined if unauthorised development, which is unacceptable on planning merits, is allowed to proceed without any apparent attempt by the LPA to intervene before serious harm to amenity results from it. Enactment of the new and improved powers summarised in paragraph 2 gives LPAs a wider choice of available enforcement options. Authorities will therefore need to assess, in each case, which power (or mix of powers) is best suited to dealing with any particular expected, or actual, breach of control, to achieve a satisfactory, lasting and cost-effective remedy. Rapid initiation of enforcement action is usually vital to prevent a breach of control from becoming well established and more difficult to remedy.

#### **THE GENERAL APPROACH TO ENFORCEMENT**

5. Nothing in this Note should be taken as condoning a wilful breach of planning law. LPAs have a general discretion to take enforcement action, when they regard it as expedient. They should be guided by the following considerations:-

(1) Parliament has given LPAs 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);

(2) the Commissioner for Local Administration (the local ombudsman) has held, in a number of investigated cases, that there is "maladministration" if the authority fail to take effective enforcement action which was plainly necessary and has occasionally recommended a compensatory payment to the complainant for the consequent injustice;

(3) in considering any enforcement action, the decisive issue for the LPA should be whether the breach of control would unacceptably affect public amenity or the existing use of land and buildings meriting protection in the public interest;

(4) enforcement action should always be commensurate with the breach of planning control to which it relates (for example, it is usually inappropriate to take formal enforcement action against a trivial or technical breach of control which causes no harm to amenity in the locality of the site); and

(5) where the LPA'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 (LPAs should bear in mind the statutory time limits for taking enforcement action).

## **WHERE DEVELOPMENT IS CARRIED OUT WITHOUT PERMISSION**

6. In assessing the need for enforcement action, LPAs should bear in mind that it is not an offence to carry out development without first obtaining any planning permission required for it. New section 73A of the 1990 Act specifically provides that a grant of planning permission may relate to development carried out before the date of the application. Accordingly, where the LPA's assessment indicates it is likely that unconditional planning permission would be granted for development which has already taken place, the correct approach is to suggest to the person responsible for the development that he should at once submit a retrospective planning application (together with the appropriate application fee). It may also be appropriate to consider whether any other public authority (eg the highway or environmental health authority) is better able to take remedial action.

7. While it is clearly unsatisfactory for anyone to carry out development without first obtaining the required planning permission, an enforcement notice should not normally be issued solely to "regularise" development which is acceptable on its planning merits, but for which permission has not been sought. In such circumstances, LPAs should consider using the new "planning contravention notice" to establish what has taken place on the land and persuade the owner or occupier to seek permission for it, if permission is required. The owner or occupier of the land can be told that, without a specific planning permission, he may be at a disadvantage if he subsequently wishes to dispose of his interest in the land and has no evidence of any permission having been granted for development comprising an important part of the valuation. As paragraph 14 of DOE Circular 2/87 (WO 5/87) points out, it will generally be regarded as "unreasonable" for the LPA to issue an enforcement notice, solely to remedy the absence of a valid planning permission, if it is concluded, on an enforcement appeal to the Secretary of State, that there is no significant planning objection to the breach of control alleged in the enforcement notice. Accordingly, LPAs who issue a notice in these circumstances will remain at risk of an award against them of the appellant's costs in the enforcement appeal.

## **WHERE UNAUTHORISED DEVELOPMENT CAN BE MADE ACCEPTABLE BY THE IMPOSITION OF CONDITIONS**

8. A LPA may consider that development has been carried out without the requisite planning permission, but the development could be made acceptable by the imposition of planning conditions (for example, to control the hours, or mode, of operation; or to carry out a landscaping scheme). If so, the authority may invite the owner or occupier of the land to submit an application, and pay the appropriate application fee, voluntarily. It can be pointed out to the person concerned that the authority do not wish the business, or other activity, to cease; but they have a public duty to safeguard amenity by ensuring that development is carried out, or continued, within acceptable limits, having regard to local circumstances and the relevant planning policies. LPAs should bear in mind the need to consult on such applications in the normal way and the possible effect of such development on the functions of statutory undertakers.

9. If, after a formal invitation to do so, the owner or occupier of the land refuses to submit a planning application in these circumstances, the LPA should consider whether to issue an enforcement notice. Section 173(4)(b) of the 1990 Act (as amended by the 1991 Act) provides that one of the purposes for which the LPA may, in an enforcement notice, require remedial steps to be taken is for "removing or alleviating any injury to amenity which has been caused by the breach". For that purpose, section 173(5) of the 1990 Act provides that an enforcement notice may require, among other things, "the carrying out of any building or other operations" (paragraph (b)); or "any activity on the land not to

be carried on except to the extent specified in the notice;" (paragraph (c)). Accordingly, where an owner or occupier of land refuses to submit a planning application which would enable the LPA to grant conditional planning permission, the authority would be justified in issuing an enforcement notice if, in their view, the unauthorised development has resulted in any injury to amenity, or damage to a statutorily designated site, which can only be satisfactorily removed or alleviated by imposing conditions on a grant of planning permission for the development. If an enforcement notice is issued to enable the LPA to grant conditional planning permission, they should explain clearly (in their statement of reasons for issuing the notice) what injury to amenity, or damage to the site, has been caused by the unauthorised development and how their conditional grant of permission will effectively remedy it. The owner or occupier will then have no doubt about the purpose of the enforcement action, or what he is required to do in order to remove or alleviate the perceived injury to amenity.

#### **WHERE THE UNAUTHORISED DEVELOPMENT IS UNACCEPTABLE ON THE SITE BUT RELOCATION IS FEASIBLE**

10. It is not the LPA's responsibility to seek out and suggest to the owner or occupier of land on which unauthorised development has taken place an alternative site, to which the activity might be satisfactorily relocated. But if, as part of their economic development functions, the authority are aware of a suitable alternative site, it will usually be helpful to suggest it, and to encourage removal of the unauthorised development to it.

11. If an alternative site has been suggested, the LPA should make it clear to the owner or occupier of the site where unauthorised development has taken place that he is expected to relocate to the alternative site (or some other site he may prefer). The LPA should set a reasonable time-limit within which relocation should be completed. What is reasonable will depend on the particular circumstances, including the nature and extent of the unauthorised development; the time needed to negotiate for, and secure an interest in, the alternative site; and the need to avoid unacceptable disruption during the relocation process. If a timetable for relocation is ignored, it will usually be expedient for the LPA to issue an enforcement notice. In that event, the compliance period in the notice should specify what the LPA regard as a reasonable period to complete the relocation.

#### **WHERE THE UNAUTHORISED DEVELOPMENT IS UNACCEPTABLE AND RELOCATION IS NOT FEASIBLE**

12. Where, in the LPA's view, unacceptable unauthorised development has been carried out, and there is no realistic prospect of its being relocated to a more suitable site, the owner or occupier of the land should be informed that the authority are not prepared to allow the operation or activity to continue at its present level of activity, or (if this is the case) at all. If the development nevertheless provides valued local employment, the owner or occupier should be advised how long the LPA are prepared to allow before the operation or activity must stop, or be reduced to an acceptable level of intensity. If agreement can be reached between the operator and the LPA about the period to be allowed for the operation or activity to cease, or be reduced to an acceptable level, and the person concerned honours the agreement, formal enforcement action may be avoided. But LPAs should be aware of the possibility of intensification of the development after expiry of the statutory period for enforcement action. If no agreement can be reached, the issue of an enforcement notice will usually be justified, allowing a realistic compliance period for the unauthorised operation or activity to cease, or its scale to be acceptably reduced. Any difficulty with relocation will not normally be a sufficient reason for delaying formal enforcement action to remedy unacceptable unauthorised development.



**WHERE THE UNAUTHORISED DEVELOPMENT IS UNACCEPTABLE AND IMMEDIATE REMEDIAL ACTION IS REQUIRED**

13. Where, in the LPA's view, unauthorised development has been carried out and the LPA consider that:-

- (1) the breach of control took place in full knowledge that planning permission was needed (whether or not advice to this effect was given by the LPA to the person responsible);
- (2) the person responsible for the breach will not submit a planning application for it (despite being advised to do so); and
- (3) the breach is causing serious harm to public amenity in the neighbourhood of the site,

the LPA should normally take vigorous enforcement action (including, if appropriate, the service of a stop notice) to remedy the breach urgently, or prevent further serious harm to public amenity.

**UNAUTHORISED DEVELOPMENT BY SMALL BUSINESSES OR SELF-EMPLOYED PEOPLE**

14. Although some breaches of control are clearly deliberate, the LPA may find that an owner or operator of a small business, or a self-employed person, has carried out unauthorised development in good faith, believing that no planning permission is needed for it. The cost of responding to enforcement action may represent a substantial financial burden on such a small business, or self-employed person. LPAs should consider this in deciding how to handle a particular case.

15. The initial aim should be to explore - in discussion with the owner or operator - whether the business can be allowed to continue operating acceptably on the site at its current level of activity, or perhaps less intensively. The LPA should carefully explain the planning objections to the current operation of the business and, if it is practicable, suggest ways to overcome them. This may result in the grant of a mutually acceptable conditional planning permission, enabling the owner or operator to continue in business at the site without harm to local amenity. If the site's owner or occupier is at first reluctant to negotiate with the LPA, the service of a "planning contravention notice" may help to convey the LPA's determination not to allow the development to go ahead by default.

16. If a mutually satisfactory compromise cannot be reached, and formal enforcement action is essential, the LPA should make their intentions clear, at the outset, to the owner or operator of a small business or a self-employed person. Unless it is urgently needed, formal enforcement action should not come as a "bolt from the blue" to a small business or self-employed person. It should be preceded by informal discussion about possible means of minimising harm to local amenity caused by the business activity; and, if formal action will clearly be needed, by discussion of the possible relocation of the business to another site. As explained in paragraph 10, it is not the LPA's responsibility to take the initiative in finding or providing a suitable alternative site. If formal enforcement action is likely to compel a small business or self-employed person to relocate their trading activities, the LPA should aim to agree on a timetable for relocation which will minimise disruption to the business and, if possible, avoid any permanent loss of employment as a result of the relocation. Once an enforcement notice has taken effect, LPAs should bear in mind that, where the circumstances justify it, new section 173A of the 1990 Act enables them to withdraw the notice; or to waive or relax any requirement in it, including the compliance period. A reasonable compliance period, or an extension of the initial period, may make the difference between enabling a small

business or self-employed person to continue operating, or compelling them to cease trading.

17. The Government remains committed to fostering business enterprise, provided that the necessary development can take place without unacceptable harm to local amenity. LPAs should bear this in mind when considering how best to deal with unauthorised development by small businesses. Nevertheless, effective enforcement action is likely to be the only appropriate remedy if the business activity is causing irreparable harm.

#### **UNAUTHORISED DEVELOPMENT BY PRIVATE HOUSEHOLDERS**

18. When they are considering the possibility of enforcement action involving unauthorised development by a private householder, LPAs should bear in mind that independent professional advice about whether planning permission was needed for the development may sometimes not have been readily available, or affordable. This is particularly true where the householder may have relied on "permitted development" rights in the General Development Order (the GDO) as authorisation for the development, but a specified limitation has been exceeded in carrying it out. In these circumstances it is inappropriate to initiate a prosecution of a householder, under new section 187A(9) of the 1990 Act (prosecution for the offence of failure to secure compliance with the limitation imposed on a grant of planning permission by virtue of the GDO), unless the breach of condition notice served on the householder includes a full explanation of the allegedly unauthorised development and he has failed to take satisfactory steps to regularise it, despite being allowed adequate time to do so. In considering whether it is expedient to take enforcement action against development carried out in excess of the permission granted by the GDO, the LPA should have full regard to what would have been permitted if the development had been carried out in strict accordance with the relevant provisions. LPAs should not normally take enforcement action in order to remedy only a slight variation in excess of what would have been permitted by virtue of the GDO provisions.

#### **ENFORCEMENT OF PLANNING CONTROL OVER MINERAL WORKING**

19. Minerals planning control is well established as part of the general planning system and there are no separate enforcement powers for unauthorised minerals working. The general policies and principles applicable to enforcement apply equally to minerals cases. Nevertheless, unauthorised minerals working sometimes poses particular enforcement problems, both in terms of the occasionally irremediable nature of the working and the speed at which damage can be caused. Certain of the new powers in the 1991 Act should therefore be helpful to mineral planning authorities (MPAs), to prevent damage which would otherwise be virtually or totally irremediable, either to the site itself or to its surroundings.

20. It is clearly preferable for effective liaison and contacts between MPAs and minerals operators to be sufficiently good for contraventions of planning conditions to be avoided, and for any problems to be resolved through discussion and co-operation. In cases where formal enforcement proceedings are necessary, it is important to ensure that action is taken quickly. MPAs need to be able to stop an unauthorised activity as soon as it is detected. Examples are where a mineral operator is moving soil materials in contravention of clear planning conditions, so as to jeopardise the restoration and aftercare of the site; or where unauthorised excavation outside the permitted boundary causes irremediable damage, or endangers the safety and stability of the surrounding land. Section 183 of the 1990 Act (as amended by section 9 of the 1991 Act) enables a stop notice to be served at the same time as the copy of an enforcement notice; and section 184(3) (as amended) now enables a stop notice to take effect before the expiry of 3 days, or immediately, where special reasons justify it - for example to prevent irremediable damage. The planning injunction provisions of section 187B are also

available in respect of unauthorised minerals development.

21. Further guidance on any more detailed aspects of enforcement of planning control over mineral working will be included, where necessary, in revisions to the relevant Minerals Planning Guidance Notes (MPGs).

#### **THE ORGANISATION OF THEIR ENFORCEMENT FUNCTIONS BY LPAS**

22. How LPAs organise the administrative function of enforcing planning control is for each authority to decide. The organisation should correspond to the volume and complexity of enforcement casework in each LPA's area and be sufficiently flexible to adapt to short-term increases in the demand for enforcement. All authorities should ensure that there is a close and co-operative working relationship between the Planning Department and the Solicitor's (or Secretary's or Chief Executive's) Department. Without such an effective working relationship, formal enforcement action (which depends for its success upon speed of assessment and process) may be hampered by poor communications and misunderstandings. Public criticism is then likely, especially if statutory time-limits for taking enforcement action are allowed to expire because of administrative delay. Unless they have done so recently, all LPAs are recommended to carry out a thorough review of the effectiveness of their procedural arrangements for planning enforcement; and, where necessary, to introduce revised arrangements.

23. When complaints about alleged breaches of planning control are received from parish or community councils, or members of the public, they should always be properly recorded and investigated. If the LPA decide to exercise their discretion not to take formal enforcement action, following a complaint, they should be prepared to explain their reasons to any organisation or person who has asked for an alleged breach of control to be investigated.

#### **CANCELLATION OF ADVICE**

24. The following PPGs are cancelled:-  
PPG 1 (January 1988) - paragraphs 30 and 31;  
PPG 4 (January 1988) - paragraph 19.  
Paragraphs 15 and 16 of, and Annex B to, DOE Circular 22/80 (WO 40/80) are also cancelled.

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1-4-06 to 31-3-07	E.R.Y.C.	N Lincolnshire	Hull	Hereford	Telford	York	W Berkshire	Average
No of Parishes	157	50	0	138	23	30	53	64
No of Town Councils	12	8	0	6	3	1	3	5
Area in Sq Miles	933	328	27.6	840	112	100	272	373
Population	327,400	153,000	242,000	177,800	164,600	191,800	145,000	200229
Cases Investigated	1963	800	457	853	656	737	700	881
No of Enforcement Notices	22	14	12	28	17	0	33	18
No of BCN	2	0	4	24	12	0	1	6
No of PCN	3	4	0	86	22	7	46	24
No of Stop Notices	0	0	0	1	0	1	1	0
No of Temporary Stop Notices	0	0	0	0	1	0	0	0
No of Injunctions	0	0	0	0	1	0	0	0
No of Amenity Notices	1	0	4	1	3	0	2	2
No of Discontinuance Notices	0	0	0	0	0	0	0	0
Total Notices per year	28	18	20	140	56	8	83	50
								0
No of Proactive Checks	212	800	0	100	150	173	0	205
No of Enforcement Officers	6	2	4	5	2	4	4	4
No of Planning Apps per year	4,927	2,005	1,672	4,200	1,600	2,509	3,000	2845

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## ANNEX E

[City Of York Council](#)**Planning Enforcement Service**> [Online planning breach investigation form](#)

Enforcing planning control is vital to safeguard the quality of the landscape and buildings in the City of York. This guide has been published to provide you with further information on the enforcement process and to give a clear statement of the Authority's approach and procedures for enforcing planning control in the City of York. It also outlines what you can do if you are concerned that a development is proceeding without the necessary consent or is not in accordance with a consent already granted; and explains the level of service you can expect from us.

**Our approach to enforcement**

In assessing possible breaches of planning control, the Authority has to exercise a careful balance between the rights of the developer, user or owner of the land or buildings and the wider public interest. It is important to note that the power to take formal enforcement action is discretionary and is to be used by the Authority only when it is 'expedient' to do so. This means that the Authority must make a judgement in each case as to whether the unauthorised development harms the amenities of nearby residents and/or the special qualities of the landscape and buildings in the vicinity to the extent that formal action should be taken. Government advice is that any action taken should be appropriate to the scale and impact of the unauthorised development.

**This guide lets you know:**

1. What you can expect from us if you report an alleged breach of planning control
2. What we will require from you
3. What you can expect if you are responsible for breaking planning regulations.

**Our commitment to you is that we will:**

4. Treat all complaints as confidential
5. Acknowledge your complaint within 3 working days
6. Act upon your complaint within 1 working day if it is category A, 10 working days if it is category B and 15 working days if it is category C.
7. Let you know when formal action is to be taken
8. Inform you when and why a case is closed.

**What happens to your complaint**

To deal with any enforcement complaint we may:

9. Check the planning register to make sure that planning permission has not been granted for the development and that it is not permitted development
  - Establish the facts. We will make a site visit, and if necessary hold discussions with the owner and/or complainant
  - We may also serve a Planning Contravention Notice (PCN) which requires the developer to provide further information to the Authority
  - Try to get a full picture of the situation by investigating the planning history of the site, photographs and information from other agencies
  - Pass on any relevant information to other agencies such as the Highway Authority or Environment Agency who may have an interest in the case

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- Decide on an appropriate course of action.

If we establish that there has been no breach of control you will be advised in writing.

### **Priorities for investigation**

Investigating complaints is often complex and time consuming. In order to make most effective use of staff resources, it is usually necessary to give priority to those cases where the greatest or irreversible harm is being caused. The following is a guide to how cases are prioritised:

#### **Category A; Within 1 Working Day**

**(If works are in progress and there is someone on site)**

- Unauthorised demolition, substantial or irreversible alterations are being made to a Listed Building.
- Unauthorised works to protected trees or trees within a Conservation Area
- Unauthorised demolition within a Conservation Area causing irreparable harm

(Where these unauthorised works are not in progress or they have been completed, they will be dealt with in accordance with Category B. This does not however reduce the level of enforcement action that may be taken against the breach)

#### **Category B; Within 10 Working Days ( Normally 5 - 10 days)**

- Unauthorised removal of protected Landscaping Features
- Minor alterations to a Listed Building
- Ongoing unauthorised engineering works
- Non-compliance with approved plans
- Breaches of Planning Conditions

#### **Category C; Within 15 Working Days (Normally 10 - 15 days)**

- Material Change of Use, e.g. a business is being operated from a dwelling
- Unauthorised Development which is complete.
- Adverts
- Satellite dishes
- Untidy land
- Any other breach of planning control

Please note that these timescales are subject to formal approval by the Council.

### **What action can the Council take?**

It is a criminal offence to carry out unauthorised works to a Listed Building or to a tree protected by a Tree Preservation Order. Prosecution will always be considered for any breach of this type and can ultimately lead to a conviction in the Criminal Courts.

It is not a criminal offence to carry out other works or changes without planning permission (unless a formal Notice has been served). However any unauthorised work is carried out at the owner's risk, and if there is proven harm, enforcement action may be pursued to rectify the breach of control.

### **Type of action**

There are several courses of action available to the Authority where a clear breach of control is established:

10. Take no further action, for instance where the breach is minor in nature and does not harm the amenities of adjoining occupiers or the landscape or buildings in the City of York



## ANNEX E

11. Request a retrospective application to regularise the development where the breach could be made acceptable by amendment or the imposition of conditions
12. Negotiate a solution to mitigate the impact of the development or secure its removal altogether
13. Formal action to stop and/or remove the development, which involves serving a notice on the relevant parties. The Notice specifies what action is required to correct the breach and by when. A register giving details of all Enforcement Notices served is available for inspection at the Planning Department Offices.

To view copies of enforcement notices on request please phone: (01904) 551709. It is not always possible to anticipate how a particular case will develop and the timescale for resolving a complaint can be difficult to predict. Factors that can delay progress include:

1. Collection of relevant and satisfactory evidence
2. Negotiation to resolve a complaint without using formal enforcement powers
3. The submission of a retrospective application, or
4. An appeal against a formal notice.

### How to make an enforcement complaint

If you are concerned that a development or activity is taking place without planning permission or does not comply with a consent that has already been granted, you can report this to the enforcement team in writing, by telephone, email or using our online complaint form.

You should provide:

- Clear details of what is causing you concern
- Details of the location and address of the land or property
- Your name, address and telephone number in order that we can contact you regarding the investigation
- If known, details of the landowner/developer's name and address.

Anonymous complaints will be only be recorded on file and investigated where it appears that there could be significant harm to the special qualities of the City of York and/or residential amenity.

Your details are confidential and will only ever be given out with your agreement. This is a requirement of the Local Government Act 1972 which protects informants details.

### Contact Enforcement Officers

Contact Enforcement officers using the contact details on the right hand side of this page. Any case raised this way will need to contain sufficient detail to allow us to log it and acknowledge it without delay. You can contact us by phone or by email on the following numbers and addresses:

East (S) Area: (01904) 551376

East (N) Area: (01904) 551324

West/Centre Area: (01904) 551314 or (01904) 551647

### Download the form

You can download the planning breach investigation form from the right hand side of this page at the top.

Return your completed form, by post, to the contact address also at the top right hand side of this page.

## ANNEX E

### Online

You can also raise your complaint using the planning breach investigation online form. Please give as much detail as possible particularly about the location.

[Online planning breach investigation form](#)

If you are not satisfied with the level of service you receive you can contact the Head of Development Control at the same planning contact address.

# Section 106 Agreements

## Definition

Section 106 (S106) of the Town and Country Planning Act 1990 allows a local planning authority (LPA) to enter into a legally-binding agreement or planning obligation, with a land developer over a related issue. The obligation is sometimes termed as a 'Section 106 agreement'.

Such agreements can cover almost any relevant issue and can include sums of money. Possible examples of S106 agreements could be:

- the developer will transfer ownership of an area of woodland to a LPA with a suitable fee to cover its future maintenance
- the local authority will restrict the development of an area of land, or permit only specified operations to be carried out on it in the future eg, amenity use
- the developer will plant a specified number of trees and maintain them for a number of years
- the developer will create a nature reserve

S106 agreements can act as a main instrument for placing restrictions on the developers, often requiring them to minimise the impact on the local community and to carry out tasks, which will provide community benefits.

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## **Suggested Remit for the Scrutiny of Planning Enforcement**

### **Overall Aim**

To identify ways of bringing enforcement cases to an earlier completion through reviewing City of York Council's approach to planning enforcement and court action.

### **Key Objectives**

- i. To understand the Council's approach in relation to planning enforcement processes.
- ii. To understand City of York Council's approach to court action in relation to breaches of planning enforcement notices.
- iii. To examine why so many cases are outstanding.
- iv. To make appropriate recommendations in relation to the Council's processes and procedures for handling planning enforcement cases.
- v. To explore the impact of the Scrutiny Review on Powers of Enforcement – Take-Aways on the way planning enforcement is now conducted.

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