



## Notice of meeting of

### Planning Enforcement Ad Hoc Scrutiny Committee

**To:** Councillors Hyman (Chair), Douglas, Pierce, I Waudby and Wiseman

**Date:** Monday, 15 December 2008

**Time:** 1.00 pm

**Venue:** The Guildhall, York

### AGENDA

**1. Declarations of Interest**

At this point, members are asked to declare any personal or prejudicial interests they may have in the business on this agenda.

**2. Minutes** (Pages 3 - 30)

To approve and sign the minutes of the meeting of the Planning Enforcement Ad Hoc Scrutiny Committee held on 7 October 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. The deadline for registering is Friday 12 December 2008 at 5.00 pm.

**4. Planning Enforcement Scrutiny - Interim Report** (Pages 31 - 92)

This Planning Enforcement Scrutiny Interim Report asks the Committee to approve the proposed timetable for the remainder of the review and to decide whether they require any further evidence that is not set out in the timetable in paragraph 19 of the report. (Annex H to follow).

**5. Any Other Matters which the Chair decides are urgent under the Local Government Act 1972**

Democracy Officer:

Name: Laura Bootland

Contact details:

- Telephone – (01904) 552062
- E-mail – [laura.bootland@york.gov.uk](mailto:laura.bootland@york.gov.uk)

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

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

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### **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	PLANNING ENFORCEMENT AD HOC SCRUTINY COMMITTEE
DATE	7 OCTOBER 2008
PRESENT	COUNCILLORS HYMAN (CHAIR), DOUGLAS, PIERCE, I WAUDBY AND WISEMAN
IN ATTENDANCE	COUNCILLOR MOORE

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### 1. **DECLARATIONS OF INTEREST**

Members were invited to declare at this point in the meeting, any personal or prejudicial interests they might have in the business on the agenda. None were declared.

### 2. **PUBLIC PARTICIPATION**

The Chair reported that no registrations to speak had been received under the Council's public participation scheme.

### 3. **SCOPING REPORT**

Consideration was given to the suggested scoping report and timetable for the Planning Enforcement Scrutiny Review. The review aims 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.

Officers updated that a change was required to the timetable on page 5 of the report. Reference to a meeting on 7 November should read 7<sup>th</sup> October. Also that recommendation (d) on page 7 of the report should refer to paragraph 13 rather than paragraph 12.

Documents detailing Planning Enforcement figures for the East Area since June 2003, the possible routes to be taken by Enforcement Officers and the Executive Summary for a review into the Powers of Enforcement – Take Aways were distributed and are attached to these minutes at Annexes A, B and C.

The Authority's Head of Development Control gave Members a presentation entitled Planning Enforcement At York, attached at Annex D of these minutes. This gave Members an overview of Planning Enforcement at a local and national level, in particular the regulations that apply and the processes involved in tackling breaches of planning control.

Following on from the presentation, Members discussed the issues surrounding planning enforcement, in particular the timescale involved when bringing an enforcement case to a conclusion. Officers suggested that as part of the review it would be beneficial for Members to look at the current timetables for each stage of the enforcement process to establish where improvements can be made. Members went on to highlighted a number of other issues that were of concern to them such as :

- The role developers play in causing delays if any.
- The possibility of timings being introduced for the different stages of the enforcement process.
- How likely the authority is to bring court action against an individual.
- Whether delays are standard across all authorities
- If minor breaches could be tackled differently.

Members briefly discussed what they would like to see the review focused on but it was decided that queries such as the above, would be looked at in greater detail at future meetings.

Councillor Douglas expressed an interest in spending a day with an enforcement officer to obtain an overview of a typical day in the department and to see what the role involves.

In reference to the timetable for the review, Members suggested an additional meeting in December to enable the review to progress and it was decided that a training course on Planning Enforcement be held after the review.

RESOLVED: (i) That subject to the following changes to the timetable for the review, approval be given to the proposed timetable and scoping:

<p>Meeting 2 (informal meeting) on 5 November 2008. 1.30pm Start.</p>	<p>Presentations and discussions in relation to Key Objectives(iii), (iv) and (v).</p> <p>The Assistant Director (Planning and Sustainable Development) and Head of Development Control will give a presentation on the above key objectives.</p> <p>The following people will be invited to join the discussions after this:</p> <ul style="list-style-type: none"> <li>❑ Enforcement Officers</li> <li>❑ Representative from Legal Services</li> <li>❑ Planning Area Team Leaders</li> <li>❑ Chair of the West and City Centre Planning Sub –</li> </ul>
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	Committee and the recent Chair of the East Area Planning Sub Committee.
Meeting 3 December, tbc.	<ul style="list-style-type: none"> <li>□ To receive an interim progress report.</li> </ul>
Meeting 4 (formal) Mid January 2008	<ul style="list-style-type: none"> <li>□ To receive feedback from the evidence gathering session in the form of an interim report.</li> <li>□ Ideas and possible actions arising from the information gathered from the Assistant Director (Planning and Sustainable Development) and Head of Development Control</li> </ul>
Meeting 5 (formal)	<ul style="list-style-type: none"> <li>□ Draft Final Report (by April)</li> </ul>

- (ii) That the Chairs of the West & City Centre and East Area Planning Sub-Committees be invited to attend the November meeting.<sup>1</sup>
- (iii) That Members be updated on what recommendations have been followed up and what SMC have advised following the Powers of Enforcement – Takeaways Review.<sup>2</sup>
- (iv) That Enforcement figures for West & City Centre area be circulated to Members.<sup>3</sup>
- (v) That no co-optee be involved in the review.
- (vi) That a training course on Planning Enforcement be held after the review
- (vii) That there was no need to call the Chair and Vice Chair of the Powers of Enforcement – Take Aways Scrutiny review.

REASON: To ensure the progression of this review and compliance with Scrutiny procedures, protocols and work plans.

Action Required

- 1. Invite the Chairs of East and West & City Centre Planning Committees to the meeting on 5 November GR  
GR

2. Report back to Committee what recommendations have been followed up and what SMC have advised following the Powers of Enforcement – Takeaways Review.3 GR
3. Distribute Planning Enforcement figures for West & City Centre to Members

Councillor Hyman, Chair

[The meeting started at 5.00 pm and finished at 6.25 pm].

**Planning Enforcement - East Area since June 2003**

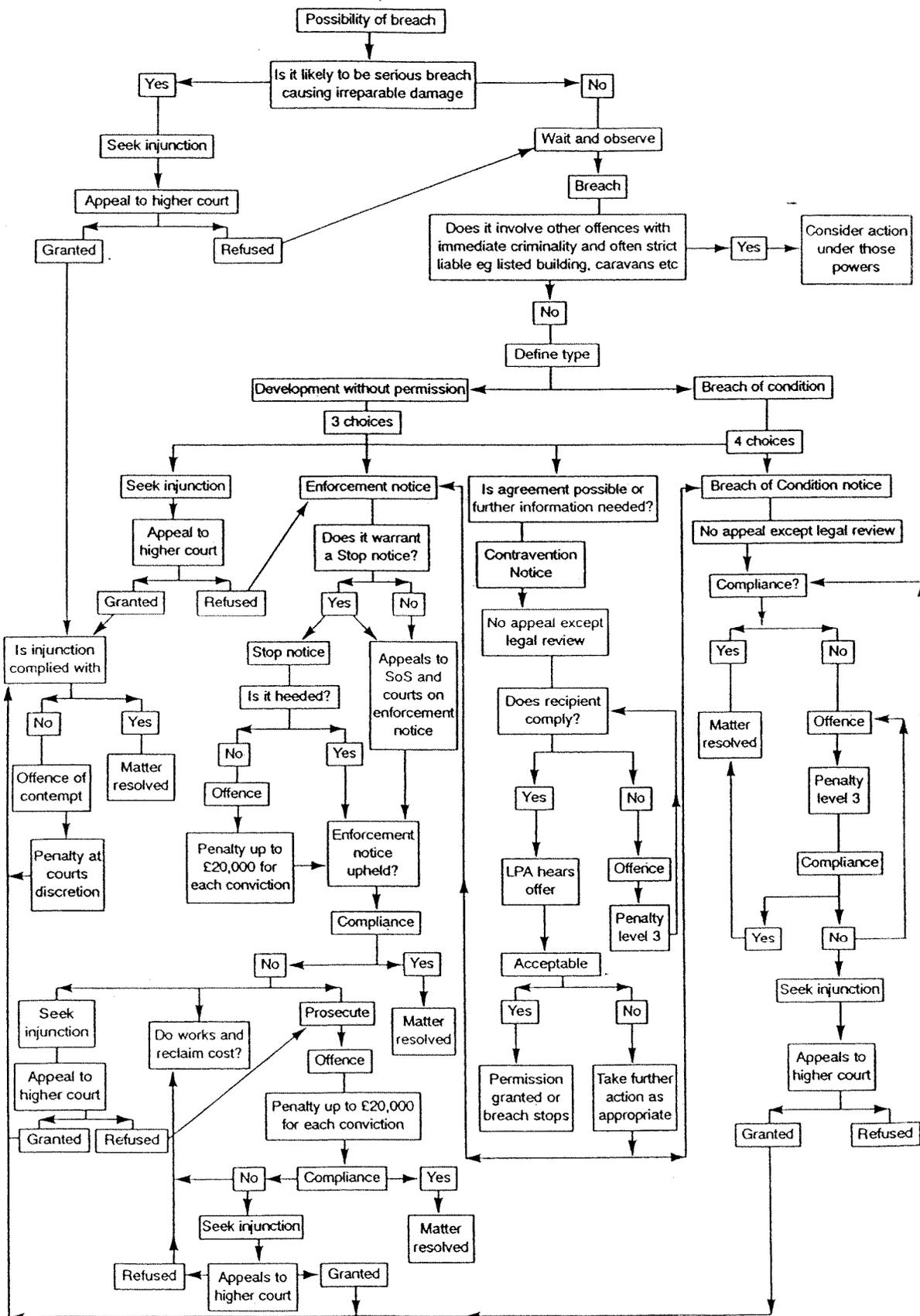
Date of report	Enforcement cases			Section 106 Agreements
	Opened	Closed	Outstanding	
July 2003	??	??	107	54
October 2003	80	80	101	55
January 2004	52	29	123	57
April 2004	??	??	125	61
July 2004	112	106	128	??
October 2004	87	70	127	??
January 2005	62	76	103	66
April 2005	72	22	150	66
July 2005	78	56	134	66
October 2005	88	88	127	??
January 2006	68	42	167	??
April 2006	64	44	159	30
July 2006	84	78	170	44
October 2006	80	79	168	39
January 2007	78	81	173	41
April 2007	89	84	175	48
July 2007	92	63	199	44
October 2007	94	74	212	40
January 2008	51	55	208	58
April 2008	76	69	219	62
July 2008	116	78	258	65
October 2008	86	63	283	71

Yes, I know the arithmetic's shot!!

Planning enforcement cases/Section 106 Agreements - East Area since June 2003



Figure 4: Enforcement - The Choice of Routes



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## **EXECUTIVE SUMMARY**

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'. This topic was progressed in response to the concerns of York residents who live near to take-away outlets and suffer from late night noise, anti-social behaviour and the deterioration in street hygiene which a proportion of premises attract.

The Board has conducted a series of investigative meetings with officers in Planning, Licencing and North Yorkshire Police. The Board believes that this report should support greater public understanding of the legislative framework and the public's role in lodging complaints to the right places in a timely manner. In addition, the Board believes its recommendations will help improve the partnership arrangements (both internal and external) necessary for the Council to address the issues of enforcement in a more efficient manner than has been done previously.

## **Summary of Recommendations**

### **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

Under Section 17 of the Crime & Disorder Act 1998 this information could, and should, be shared with North Yorkshire Police. This would allow Police Officers to assist in the collecting of evidence about late-night activities. The Environment and Sustainability Scrutiny Board would welcome the positive contribution that the success of the IT bid would make to addressing these issues.

### **Recommendation 3**

That activities be coordinated between all relevant City of York Council Departments (including Street Environment, Environmental Protection Unit, Planning Enforcement and Licensing Officers); especially at the point of determining which enforcement regime would be most effective. Working practices need to be agreed and joint training sessions considered where relevant, to avoid duplication or unwitting interference in each other's cases.

### **Recommendation 4**

That the Assistant Director in responsible for the Planning and Enforcement Team be instructed to review risk assessments carried out for all aspects of the officer's duties and to thereafter produce appropriate working practice agreements in consultation with the appropriate Officer In Human Resources.

### **Recommendation 5**

An official vehicle should be available during the day, or close parking provided for the on-call officer's personal vehicle. Council owned transport should be provided if the officer is working a night shift. Both marked and unmarked vehicles should be available, as required; especially for out of hours working.

### **Recommendation 6**

That Planning Enforcement Officers be enabled to process their own prosecutions, that at least one Planning Enforcement Officer to undergo formal Court Training in order to support this.

### **Recommendation 7**

That an investigation should be undertaken to assess which other officers are able to supplement the Planning Enforcement team.

**Recommendation 8**

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. The equipment list below should be taken as a starting point.

Fluorescent tabard	These should be marked to identify the Council and the officer's position, like Street Environment Officers.
Fleece	These should be supplied and marked accordingly.
Laptop	A laptop should be available to the duty officer to ensure access to the data at all times.
Digital camera	Each officer should have a camera.
Safety boots	All officers should be supplied with a pair of safety boots and safety wellingtons.
Attack alarms	Should be provided
Hard hats	Should be provided for use where appropriate
Torch	Should be provided for use where appropriate
Mobile phone	Should be provided for use when appropriate
First Response Kit	Officers should have access to a kit for personal use or in cases where the required level of training has been undertaken wider use as appropriate. This could be kept in the pool cars.
Hazard flashing light	These should be supplied to ensure the safety of officers when parked to remove illegal adverts, etc.
Cars (pool)	Access should be available during the working day. If an Officer is on a night shift they should not be expected to hazard the safety of their personal car, whilst performing duties for the Council.

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# Planning Enforcement at York



# What needs planning permission?

- The development of land, defined as:-
  - ‘The carrying out of building, engineering, minor or other operations in, on, over or under land or
  - The making of a material change of use of any buildings or other land’

T&CP Act 1990

# Breach of planning control

- a) carrying out development without the required planning permission, or
  - b) failing to comply with any condition or limitation subject to which planning permission has been granted
- Breach of control not a criminal offence

# Limitations

- Can only act within 4 years of initial breach if operational development or conversion to dwelling
- Can only act within 10 years if change of use or breach of condition

# Enforcement Powers:-

## Town and Country Planning Act 1990

- Enforcement Notice S 172
- Stop Notice S 183
- Section 215 Notice
- Planning Contravention Notice S171 C
- Breach of Condition Notice S.187A
- Injunction from County or High Court S 187B
- Stop Notice for caravans S.183 &184
- Powers of Entry to land S.196 A,B,C

# Planning and Compensation Act 2004

## Temporary Stop Notice Regulations 2005

- Temporary Stop Notice: –
  - Can be served without an accompanying Enforcement Notice
  - Allows for 28 day cessation of activity

# Expediency

- Power to take action discretionary and in the public interest
- Should be only used where it is expedient
- Appropriate to the scale and impact of the breach
- Maladministration if Council fails to take effective action where plainly necessary

# Complaints- The Process

- Complaint received and logged by LPA
- Acknowledge within 3 working days\*
- Check planning register and site history
- Establish facts – site visits (sometime with specialist officer), discuss with complainant/ owner
- May serve a PCN
- Decide on appropriate action
- \* See website pages for detail of timescales for initial investigation

# Types of Action

- Take no further action – where permission exists, development does not require consent, or breach minor with no harm to others
- Request retrospective application to regularise development, where conditions on an approval or amendment would suffice

# Types of Action ( Cont'd)

- Negotiate a solution to mitigate impact or secure removal/cessation



- Formal action to stop/remove/mitigate impact of a breach, with a Notice served. Notice specifies action required to correct or mitigate breach.

# Factors affecting Timescales

- Need to collect relevant, sound and satisfactory evidence
- Negotiations to resolve a complaint without formal action
- Submission of retrospective application
- Submission of appeal against a formal notice

# Enforcement Team in York



## **East**

Alan Kendall

Mandy Swithenbank

## **West and Centre**

Andy Blain

Hilary Shepherd

# Enforcement Officers' Role at York

- ‘Responsible for monitoring conformity with planning conditions, agreements and obligations, investigating, following-up and resolving or recommending appropriate courses of action where breaches of planning and related controls are alleged to have occurred.’

# Facts, and Stats and Issues

- 720 cases and investigated in 2007 including monitoring S106 agreement payments
- 17 Enforcement Notices, 9 Planning Contravention Notices, 1 Stop Notice served in 2007
- Timescales comparable to other LPAs
- No track record of Court action in York - negotiation favoured by LPA and Central Govt.
- No formal out of hours service

# Other Reading

- Planning Policy Guidance Note 18 - 'Enforcing Planning Control'
- CLG Publication 'Review of Planning Enforcement- Summary of Recommendations'
- Circular 10/97 - 'Enforcing Planning Control'
- CLG publication 'Planning Enforcement Good Practice Guide for Local Authorities'
- Website pages 'Planning Enforcement Service'

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## Planning Enforcement Ad Hoc Scrutiny Committee

15<sup>th</sup> December 2008

### Planning Enforcement - Interim Report

#### Background

1. This topic was registered by Councillor Wiseman to explore the possibilities of speeding up the period from opening to closing planning enforcement cases and to achieve a reduction in the number of outstanding cases. She had 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 would also propose that the Council's approach to court action is reviewed to investigate concerns that enforcement by the City of York Council has little threat of further legal action being taken.
2. 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 and 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 ongoing and as part of this review she would like to explore possible ways of completing these in a timelier manner.
3. A feasibility study and a draft remit were submitted to Scrutiny Management Committee (SMC) in July 2008 and after due consideration it was agreed to proceed with this scrutiny review based on the following remit:

#### Aim

4. 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 including Section 106 Agreements.
- 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 review the Council's processes and procedures to improve the handling of 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.

## **Consultation**

5. This review, has so far, been carried out in consultation with the following:
  - Assistant Director (Planning & Sustainable Development)
  - Head of Development Control
  - Planning Enforcement Officers
  - Officers from legal services
  - Elected Members with links to the Planning Committees
  - Area Team Leaders for East Area Planning & West & City Centre Planning Committees

## **First & Second Key Objectives**

- i. **To understand the Council's approach in relation to planning enforcement processes including Section 106 Agreements.**
- ii. **To understand City of York Council's approach to court action in relation to breaches of planning enforcement notices.**

## **Information Gathered**

6. At a formal meeting on 7th October the Assistant Director (Planning & Sustainable Development) and the Head of Development Control gave Members a presentation in relation to Planning Enforcement in York. The presentation gave Members an overview of Planning Enforcement at a local and national level, in particular regulations that apply and the processes involved in tackling breaches of planning control. A copy of this presentation is attached to the minutes of the meeting held on 7<sup>th</sup> October 2008.
7. The following documentation was also provided at this meeting:
  - Planning Enforcement Figures for the East Area of the City since June 2003 (a copy of this is attached to the minutes of the meeting held on 7<sup>th</sup> October 2008)
  - A flow chart showing the routes Enforcement can take (a copy of this is attached to the minutes of the meeting held on 7<sup>th</sup> October 2008)

### **Issues Arising**

8. The following issues were highlighted as a result of the information provided at this meeting:
- The length of time it took to complete some cases was concerning
  - The fact that Section 106 payments often take a long time to come through. This needed to be addressed and the processes for collection made more transparent. The possibility of reducing the number of trigger points from 2 to 1 was already being considered. There was a database of Section 106 payments within the City Strategy directorate but a cross directorate database was needed to be able to view all payments received. It was noted that non-payment occurred for several reasons i.e. because a trigger-point for payment had not been reached or because of slow responses from some developers.
  - Whether developers played any part in causing delays to the Enforcement processes.
  - Whether it would be possible to introduce timings for the different stages of the enforcement process.
  - How likely it was for the Council to bring court action against an individual. It was acknowledged that there had been delays in the past but this was now improving and the threat of court action from the Local Authority could prompt a response from developers.
  - If minor breaches could be tackled differently & cases closed more quickly.

### **Information gathered outside of the formal meeting**

9. At the formal meeting on 7<sup>th</sup> October 2008 it was suggested that a Member of the Committee might like to shadow one of the Enforcement Officers for the day to gain a valuable insight into their work. Councillor Douglas volunteered for this and has produced the following information regarding her experience:

‘ I shadowed a Planning Enforcement Officer on Wednesday 26<sup>th</sup> November. In the absence of a pool car, I was driven to 6 sites that were in need of enforcement on planning issues. Some issues were raised by the public, others picked up from invalid applications. So much extra information and other breaches are picked up this way and this is an extremely useful exercise.

The Planning Enforcement Officer was professional and took photographs of his findings, we talked about feeding information back to complainants and also about what was done in terms of follow up back at the office. The Officer handed his card out to people so that they had contact details and he always identified himself before stating his business there.

I feel that these enforcement visits are absolutely vital as not only can the developers be picked up on breaches before the building is completed but so much more information about other possible breaches can be seen. We observed a road having been built across land, which originates from the main

highway - do they have permission? Satellite dishes on the roofs and had the opportunity to check advertising signage without contacting the originators themselves. It would appear the Planning Enforcement Officer ticks some applications off but finds more oddments to add to the list as he goes.'

### **Third & fourth Key Objectives**

**iii. To examine why so many cases are outstanding**

**iv. To review the Council's processes and procedures to improve the handling of Planning Enforcement Cases.**

### **Information Gathered**

10. At an informal meeting on 5th November 2008 the Head of Development Control provided the Committee with information on the third and fourth key objectives. He informed Members that the following factors influenced the timescale for dealing with cases:
  - Process and Regulatory Procedure and;
  - Workload Issues which are split into the following categories:
    - ii. Increase in number of financial obligations
    - iii. Reduced officer capacity
    - iv. Managerial reporting arrangements
    - v. Filing systems
    - vi. Responses from consultees
    - vii. Input from legal services
11. In relation to the fourth key objective the planning department intended to hold a series of workshops with staff to review the service. This would map out the current processes and procedures and consideration would be given to improving working practices and resource allocation.
12. Further and more in depth information regarding the information in paragraphs 10 and 11 is attached at Annex A to this report.

### **Issues Arising**

13. Following the presentation the following issues were raised and discussed:
  - Whether the system for filing would change with the introduction of the Document Management System. Officers had put in a growth bid to allow them to have documents scanned to the new system. The outcome of this bid was still pending as part of the budget process.
  - Discussions were had regarding whether a breach could go undiscovered if nobody complained about it. Officers advised that it would go unnoticed unless spotted whilst Planning Enforcement Officers were out and about. A case could not be followed up, if after the initial complaint, nothing more was heard from the individuals concerned.

- Discussions were had regarding the quarterly reports that both planning sub-committees received regarding both open and closed enforcement cases. It was generally agreed that it was useful to continue to receive these.
14. Planning Enforcement Officers prepared a report, which was presented to Members at the informal session on 5<sup>th</sup> November 2008. This is attached at Annex B to this report. The presentation gave the Enforcement Officers' comments in relation to each of the five key objectives. The aim of the report was to provide Members of the Committee with information regarding enforcement processes in the hope that the end result will give an improved customer friendly, efficient and professional service to the residents and businesses of York and its outlying areas.
  15. Members were also given planning enforcement figures for the West & City Centre Area of the City since January 2006. These figures are attached as Annex C to this report.

### **Fifth Key Objective**

- v. **To explore the impact of the Scrutiny Review on 'Powers of Enforcement – Take-Aways' on the way planning enforcement is now conducted.**
16. Councillor Brian Watson had originally raised the above topic for review after numerous complaints had been received from residents in his Ward. The review had highlighted a number of concerns such as the disparity in equipment between planning enforcement officers and building control when doing a similar job, the support enforcement officers received during out of hours working and problems in processing complaints. An outcome of this review was that there should be more liaison between departments to provide assistance to the enforcement officers. This now seems to have been reduced to a monthly meeting between heads of department rather than direct help to enforcement officers. Councillor Moore, who was giving evidence regarding this review, suggested that as the planning enforcement team was small it needed assistance, support and appropriate equipment. He suggested that the scrutiny committee revisit the issues this review had highlighted in order to be satisfied that they had been implemented and a difference had been made. The executive summary of this review and the recommendations made by the committee are attached at Annex D to this report. All bar two of the recommendations were signed off by the Scrutiny Management Committee on 26 November 2007. The outstanding recommendations are numbers 1 and 2 as set out in Annex D to this report.

### **All objectives**

17. A number of questions from Committee Members were circulated prior to the informal session. These, and the responses to them, are attached at Annex H to this report .

18. At the informal meeting on 5th November 2008 the Committee asked for information regarding the set up of planning enforcement at other Local Authorities. This is attached at Annex G to this report. The information is not yet complete and it is hoped that an updated version of this document will be provided at this meeting.

**Timetable for review**

19. SMC agreed a timetable of approximately 3 to 6 months for this review. Members are asked to consider the following proposed timetable for the remainder of this review.

15 <sup>th</sup> December 2008	To receive an interim progress report
January 2009	<ul style="list-style-type: none"> <li>• To receive ideas and possible actions gathered from the Assistant Director (Planning &amp; Sustainable Development) and Head of Development Control</li> <li>• To formulate some draft recommendations</li> </ul>
February 2008	To receive a draft final report

**Options**

20. Having regard to the aim and objectives of this topic remit Members may chose to:
- i. To agree or amend the timetable for the remainder of the review as set out in paragraph 19 of this report and to agree dates for both the January and February meetings (if appropriate).
  - ii. Consider whether they require further evidence and from whom.

**Implications**

- 21. **Human Resources (HR)** – Members should be aware of the ongoing heavy workload within the Development Control area of the City Strategy directorate.
- 22. **Legal** – There are no known legal implications associated with this report.
- 23. **Financial** – There are minimal funds allocated from within the scrutiny budget for research relating to ongoing review, therefore there are no financial implications associated with the recommendations within this report.
- 24. There are no known Equalities, Property, Crime and Disorder or other implications associated with the recommendations in this report.

## Corporate Strategy

25. This review relates to the following Value as set out in the Corporate Strategy 2007-2011:

'Encouraging improvement in everything we do'.

## Risk Management

26. In compliance with the council's risk management strategy, there are no known risks associated with the recommendations of this report other than the focus of the review and the progress of the Scrutiny Work Plan would be adversely affected if the review did not keep within the agreed timescales.

## Recommendations

27. It is recommended that Members consider and agree:
- i. The proposed timetable for the remainder of this review as set out in paragraph 19 of this report.
  - ii. Whether they require further evidence that is not set out in the timetable in paragraph 19 of this report.

Reason: To ensure compliance with scrutiny procedures, protocols and work plans.

## Contact Details

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Tel No: 01904 551004

Interim Report  
Approved



Date 05.12.2008

### Specialist Implications Officer(s)

None

### Wards Affected:

All

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

### Background Papers:

None.

## Annexes

### Annex A

Enforcement Scrutiny Presentation (05.11.2008)

### Annex B

Report from the Planning Enforcement Officers

### Annex C

West & City Centre Area Enforcement Figures

<b>Annex D</b>	Executive Summary – ‘Powers of Enforcement – Take-Aways’ Scrutiny Review
<b>Annex E</b>	Explanation of Stop Notices
<b>Annex F</b>	Planning Enforcement Officers Suggestions for Service Improvement
<b>Annex G</b>	Information Regarding Other Authorities
<b>Annex H</b>	Responses to Questions asked by Members of the Committee.

## **Planning Enforcement Ad Hoc Scrutiny Committee 5<sup>th</sup> November 2008**

### **Presentation of Assistant Director (Planning and Sustainability) and Head of Development Control on Committee Key Objectives (iii), (iv) and (v)**

#### **(iii) "To examine why so many cases are outstanding".**

1. The following factors influence the timescale for dealing with cases: -

#### **Process and Regulatory Procedure**

2. As explained at the previous meeting there are various factors determining the length of time taken to resolve each case, including: -
  - The nature of the original complaint and the priority given to it, time/number of visits required to monitor for a breach
  - The speed of response from the alleged party in responding to and then addressing a complaint,
  - The allowing of a reasonable period of compliance prior to escalating action/or deciding if no formal action is justified
  - The time taken to formulate a case for formal action - can include regathering of evidence, preparation of papers (e.g. history, land ownership, third party comments etc)
  - Requirement for signing off and checking of documentation prepared by legal services, and authorisation
  - The allowance of period for compliance with initial action
  - The prospect of appeal against formal action and/or submission of retrospective planning application to be dealt with, including possible negotiations on the detail of the application. And submission of amendments requiring reconsultation
  - The need to prepare further documentation if there is non-compliance with initial action

### Workload Issues

3. Whilst the of day to day working of enforcement officer has not been analysed as this part of this Review, there are a number of factors that can be identified at this stage:-

#### Increase in Number of Financial Obligations

4. An additional post was created within the Enforcement Section some years ago using interest received from financial contributions received via Section 106 agreements. Since the original setting up of the post, the number of applications which require the submission of financial contributions has increased dramatically. For example open space contributions are now applicable for schemes involving single dwellings whereas prior to 2005 the requirement applied to 10 dwellings or more. Similarly education contributions are now required for schemes involving any residential development comprising units of 2 bedrooms or more.
5. Each scheme would require an S 106 to secure the payment, prior to the issuing of decision. In order to ensure applications are determined in a timely manner despite this increase in number of obligations, conditions have been developed in accordance with Government guidance to require the relevant contribution to be made as part of a S106. Discussions have taken place to reduce the burden of this condition on Enforcement by reducing the number of trigger points in it from 2 to 1. Currently prior to commencement for the signing of the obligation and then prior to occupation for making the payment.
6. Whether this condition were to be used or not, the requirement for S106 monitoring arising from the greater number of schemes financial contributions would remain.
7. The time taken in monitoring agreements and payment needs to be quantified as part of the next stage of the review.

#### Reduced Officer Capacity

8. As part of required budget savings in 2006/07, 0.2 FTE was deleted from an Enforcement officer post, following approval of a request to reduce working hours from one member of staff. The implications for a reduced level service were highlighted at the time when the saving was made.

#### Managerial Reporting Arrangements

9. In a Directorate Restructure published in 2002/03, the Enforcement Officers were integrated into each of the Development Control area teams, with the intention of providing easier collaboration on cases and

increase the understanding and importance of enforcement to the DC case officers.

10. The focus in recent years has been to ensure that the section was removed from its Standards Authority Status for Development Control Performance. A substantial number of procedures and guidance has been produced to ensure the processing of applications more consistently and in timely way, where non previously existed.
11. Team Leaders have needed to prioritise application performance management, to some extent to the detriment of closer involvement with enforcement matters.
12. Other factors particularly for the east team is the physical location of the enforcement team away from the Team Leader and Assistant Team Leader (the east team is divided into 4 work areas within St Leonard's.)

#### Filing Systems

13. Members may be aware that much of the section's filing is stored off site at Elvington, which provides difficulties in terms of retrieval of individual files. Filing. However long standing arrangements for the return of enforcement files to secure storage at St Leonard's have recently been implemented and the files are now in the process of being returned, allowing immediate access to previous case files. This has also allowed improved filing of more recent case files

#### Responses From Consultees

14. The limited resources available within other sections of the Directorate and the competing priorities of other work areas can to lead to a delay in the time taken by specialists e.g. Highway Network Management, Conservation to give an opinion to the Enforcement Section on the acceptability or otherwise of a breach of control and the expediency of taking action. The recent appointment to the long-term vacant Head of Design, Conservation and Sustainable Development post provides an opportunity for a review of the process with the new appointee

#### Input from Legal Services

15. Perceived delays in the verification of case information and the processing of formal notices forwarded from the Enforcement staff to Legal Services colleagues led to a series of Improvement Workshops in 2004/05. Time constraint and workload of Legal Services officers were identified as major factors in causing delays. With staff changes in Legal Services the recommendations of the review were not fully addressed at the time. Pressure upon Legal services resources continues, with for example an increase in the number of large Planning Appeal inquiries to service.

**(iv). “To review the Council’s processes and procedures to improve the handling of Planning Enforcement Cases”**

16. From the Minutes of the previous Scoping meeting, the purpose of the next stage of the process following this meeting is to gather evidence and conduct a review of the processes and procedures involved, to be presented together with recommendations for possible actions at the next meeting (15<sup>th</sup> December 2008). The intention is therefore to collect information and hold a series of workshops with staff to review of the service ‘As Is’, mapping out current processes and procedures, and then to consider ‘to be’ scenarios to improve working practices or recourse allocation where benefits are identified.
17. In terms of current process and procedures, the guide to enforcement as posted on the Website sets out the process that the Authority follows. Other processes relate to section 106 agreements, Enforcement Notice appeals, logging new cases, closing cases, recording Enforcement Notices served. Processes were drafted out for new enforcement officers to follow in dealing with cases in 2006. Detailed guidance is available in the form of PPG 18 ‘Enforcing Planning Control’, Circular 10/97 ‘Enforcing Planning Control’, the Government publication ‘ Planning Enforcement Good Practice for Local Planning Authorities’. The Enforcement Officers have a clear and detailed knowledge of the operation of the planning system particularly relating to enforcement, as required by the current Job Description, and keep up to date on trends, issues and legislative changes in Development Control.
18. As has been produced for Development Control, the intention as part of the review of Enforcement was to provide a manual for enforcement staff to refer to for procedures and processes.
19. Once the review is completed and any new processes formulated, the manual will be produced and an enforcement policy/customer contract presented to Committee (along with the draft revised Development Control Customer contract) for adoption.

**(v).“To explore the impact of the Scrutiny Review on Powers of Enforcement Takeaways on the way planning enforcement is now conducted”**

20. Note: The Scrutiny Panel’s recommendations published in the agenda of 7<sup>th</sup> October 2008 meeting, recommendation 3 of the Panel’s Recommendations published on 23<sup>rd</sup> October 2005 having been omitted. The following relates to recommendations on the 7<sup>th</sup> October 2008: -
  - 1) Penalty Notice Support bid in the remit of Environmental Regulation
  - 2) Use of technology to integrate Planning Regulatory and Licensing functionality is being coordinated by colleagues in IT. In the meantime The UNiform system provides information including conditions imposed on

takeaways since 1996. This information is available to other Council departments. Environmental Regulation does now has access to UNIFORM, and can check for new takeaway applications received to enable them to comment. Limited information on Planning Enforcement cases is also available.

3) An enforcement protocol has been formulated and now being implemented. The Licensing Authority, Police, Fire, Environmental Protection Unit, Trading Standards meet on regular basis to discuss problem premises whether licensed or takeaways. Resulting from the Scrutiny and working with the above agencies conditions are attached to takeaway licences - for example conditions to reduce litter, noise nuisance or to prevent crime and disorder for example insisting on CCTV, Pager systems employing door staff. Working relationship with other Directorates is informal. Officers speak to each other, share information and apportion work depending on their statutory function

4) Risk assessments for loan working have been carried out and published. If there is a requirement for late night visits they are always carried out by officers in pairs, as are any other visits where there is potential for conflict, and using a Council vehicle where appropriate. Planning Enforcement use unmarked vehicles.

5) Both "marked" and "unmarked" pool cars are available during the day and in the evening, the latter subject to pre-booking. Planning Enforcement officers have permits valid for most Council owned car parks and residents parking zones in the City.

6) Enforcement officers have to date not processed their own prosecutions because of the lack of any although; officers have received training from Legal Services on how to prepare prosecution files. At least one enforcement officer has undergone Court Training, and officers have attended additional training in relation to formal cautions and prosecution procedures. Training budget is set aside for appropriate courses as and when they become available.

7) A 2007 internal report into the staffing resource shortfalls in Planning identified a requirements for dedicated enforcement and appeals administrative support, although resources and budgets constraints and other workload pressures for Support Services have to date prevented this issue from being addressed.

8) The equipment listed is available to Development Control and Enforcement staff, and can be purchased where replacement or additional equipment required.

21. In summary the impact and implications of the Takeaways Scrutiny Panel has been largely felt elsewhere in the Authority rather than within the Planning Enforcement.

**Report of the Planning Enforcement Officers  
5<sup>th</sup> November 2008**

- 1.1 The purpose of this report is to enable the Committee to have a greater understanding of the work undertaken by the Enforcement Officers.
- 1.2 Enforcement is a vital part of the planning system and an integral part of development control but it is not a straight forward procedure comprising a set of rigid rules. It is not a series of actions which follow each other automatically. Each action in the chain of events is independent. While each step may depend on its predecessors, it should be taken on its own merits. Overriding everything is the question of expediency.
- 1.3 Before the taking of enforcement action, it can have considerable consequences for those at the 'receiving end', it is essential that enforcement action is not only carried out in accordance with the appropriate legislation, but also after having taken into account all available guidance and advice. At the end of the day the cessation of the breach is most important, and an amicable solution is surely the best solution.
- 1.4 This report by the Enforcement Team has been undertaken in the light of the Scrutiny Committee's key objectives to try to answer some of the questions that the Committee have highlighted. It is also in the hope that the end result will give an improved customer friendly, efficient and professional service to that which we currently offer to the residents and businesses of York and its outlying areas.
- 2.0 KEY OBJECTIVE (i) - To understand the Council's approach in relation to planning enforcement processes including Section 106 Agreements.**
- 2.1 The first part of this objective has been covered in the previous meeting by Mike Slater & Jonathan Carr.
- 2.2 The Planning Enforcement Section became involved with formal Section 106 Agreements in 2002. The intention was that the Enforcement Officers would ensure that financial obligations were paid upon reaching the appropriate trigger point. The only duty for the Enforcement Officer would be the chasing of the remittance to the Authority in a timely manner.
- 2.3 The adoption of the Draft Local Plan in April 2005, which brought policy L1c, has led to the Development Control department now using a planning condition to secure financial contributions to the Council. This has caused a knock on effect on the Enforcement Section in that the number of financial obligation cases raised has more than doubled. A process has been written (attached for information) to try to ensure that an Enforcement case is raised each time the condition is used, however it is not foolproof.
- 2.4 The condition that is widely used incorporates two trigger points and this has further compounded the extent of Officer time that is required to ensure compliance with the condition.
- 2.5 The actual wording of the condition is : - Open Space

*No development shall commence unless and until details of provision for public open space facilities or alternative arrangements have been submitted to and approved in writing by the Local Planning Authority. The Open space shall thereafter be provided in accordance with the approved scheme or the alternatives arrangements agreed in*

writing by the Local Planning Authority and thereafter implemented, prior to first occupation of the development.

*Reason: In order to comply with the provisions of Policy L1 of the City of York Draft Local Plan.*

**INFORMATIVE:**

*The alternative arrangements of the above condition could be satisfied by the completion of a planning obligation made under Section 106 of the Town and Country Planning Act 1990 by those having a legal interest in the application site, requiring a financial contribution towards off site provision of open space. The obligation should provide for a financial contribution calculated at £XXXX.*

*No development can take place on this site until the public open space has been provided or the Planning Obligation has been completed and you are reminded of the local planning authority's enforcement powers in this regard.*

2.6 The use of this condition has left the Enforcement Section being under resourced to ensure compliance.

2.7 The process associated with the s106 is at Annex A.

**3.0 KEY OBJECTIVE (ii) To understand City of York Council's approach to Court action in relation to breaches of planning Enforcement Notices.**

3.1 This objective has been covered in the previous meeting by Mike Slater & Jonathan Carr.

**4.0 KEY OBJECTIVE (iii) To examine why so many cases are outstanding.**

4.1 In the list below are some of the factors contributing to delays in dealing with Enforcement Investigations.

1. Disjointed command structure, difficult to know which manager to approach when wanting to task admin officers.
2. Lack of partnership working with internal consultees i.e. Conservation and property services. Property services can tend to drag their heels in relation to sites that are owned by the Council that need applications submitting to cover the problem.
3. Members of the public delay in replying to letters sent to them and then delaying taking action on matters that would not all ways be subject to actual enforcement action i.e. not expedient to do so due to the minor nature of the complaint.
4. Architects/ Agents by not submitting applications as requested to regularise sites that are subject of enforcement cases.
5. The lack of filing of closed files, files from previous years are still waiting to be filed causing a loss of time when searching for previous enforcement cases on troublesome sites.
6. The waiting for the return of closed files from Elvington. Currently old files are at Elvington and they can be required quite urgently in relation to old enforcement sites.

7. Admin, with the logging of cases (delay in logging), dealing with enforcement notices and their appeals, admin training (staff not trained in certain aspects of enforcement).
8. The need for streamlining of authorisation reports.
9. Need the ability to view other data bases (read only) held by the Council i.e. Electoral Roll, Council Tax, Property, EPU, Licensing, Building Control.
10. Lack of I.T. equipment- lap top with 'Razz' connection giving ability to work in the respective areas and home when required.
11. Land registry moving from York hampering detailed enquiries needed to identify property/land.
12. No dedicated Manager, prior to 2001 the enforcement teams line manager was a Principal Enforcement and Appeals officer.
13. Dealing with management issues such as ensuring accuracy in admin tasks and dealing with applications.
14. Legal department were historically slow in dealing with issues.
15. The reduction of officer hours (Mandy not working on a Friday)
16. Lack of available pool car, 48 hours notice is required if one is needed especially if required for night work. There is no close by parking.
17. Lack of Enforcement Cover i.e. sickness.
18. Unenforceable conditions - no enforcement input when considering conditions for planning applications.
19. Lack of condition discharging of pre-conditions prior to commencement on site of the development.

**5.0 KEY OBJECTIVE (iv). To review the Council's processes and procedures to improve the handling of Planning Enforcement Cases**

- 5.1 There are very few existing processes relating to the Enforcement Function. Apart from the s.106 process reproduced at Annex A, there are processes for:
  - The Logging of Enforcement cases – reproduced at Annex B,
  - The Recording of the Service of Enforcement Notices – reproduced at Annex C,
  - Enforcement Notice Appeals – reproduced at Annex D, and,
  - The Closing of Enforcement cases – reproduced at Annex E.
- 5.2 The majority of these relate to work carried out by the Support Service Assistant, however, if no Enforcement Notice is served, they have no further involvement with the cases that have been raised.
- 5.3 The Enforcement Contract on the Council's website was written by the Enforcement Officers in February 2007 to get maximum Pendleton Points to satisfy criteria for Planning Delivery Grant on the 1 April 2007. The Enforcement Officers are not aware of the adoption of this contract by the Council, but it has nonetheless remained on the website since then, even though other things (such as the Register of Enforcement Notices) have been taken off again.

**6.0 KEY OBJECTIVE (v). – To explore the impact of the Scrutiny Review on Powers of Enforcement – Take Aways on the way planning enforcement is now conducted.**

- 6.1 The Environment and Sustainability Scrutiny Board's 'Powers of Enforcement – Take-aways' was in response to residents concerns in respect of late night noise, anti-social behaviour and street hygiene.
- 6.2 The only impact of the above for Planning Enforcement Officers is the supplying of wet weather gear and individual cameras.
- 6.3 We make the following comments on the implementation of some of the recommendations of the Scrutiny on Powers on Enforcement – Takeaways.

**Recommendation 1.** No comment

**Recommendation 2.** Planning Enforcement does not have read only access to any consultees databases.

**Recommendation 3.** No working practices have been agreed in respect of co-ordinated activities.

**Recommendation 4.** No out of hours risk assessment has been carried out in respect of out of hours working – the working practices which the enforcement officer should carry out i.e. ringing a senior officer when we finish work is highly unpopular with senior officers.

**Recommendation 5.** Official vehicles are not always available during the day and officers personnel vehicles have no close parking. 48 hours notice is required for out of hours working.

**Recommendation 6.** No Planning Enforcement Officer has received formal Court Training and no agreed process for prosecutions.

**Recommendation 7.** Development Control Officers should supplement the Planning Enforcement Team. This has only happened once and it was not a success, there is no effective long term sickness cover.

**Recommendation 8.** No laptop has been supplied.

**7.0 INFORMATION GATHERING**

- 7.1 As part of this review, the Enforcement Officers have looked at their caseload in terms of new cases received and closed over the last few years. It is felt that this provides a revealing insight as to what is happening with the caseload and how the current situation compares with past performance.
- 7.2 Attached are graphs for total number of cases received & closed for both Enforcement Areas combined and for s106 Monitoring Cases. The figures are shown as a monthly average derived from annual totals, for each calendar year. This allows for easier comparison with a period of time that is less than a full year.

- 7.3 The figures have been collated from 1 January 2003, as before this period there were area changes and other kinds of cases that would not compare directly with the current set up of the enforcement function.
- 7.4 The graphs are reproduced as annexes as follows:  
Annex F – Graph of New cases received and closed from 1/1/03 to 30/9/08  
Annex G – Graph of s106 cases received and closed from 1/1/03 to 30/9/08  
Annex H – Graph of total Formal Enforcement Notices and Other Formal notices served each year from 2003
- 8.0 CONCLUSION**
- 8.1 The Planning Enforcement Section has been excluded from a number of departmental re-structures and reviews to which the post holders expressed concern at the time. Even with the lack of supplementary planning guidance, written processes and policies the Enforcement Officers have tried to competently investigate cases within the resources available.
- 8.2 The duties of the Enforcement Officer entail high levels of stressful contact with the CYC customer base and the Officers feel this element amongst others has not been historically recognised and this has been highlighted in the downgrading of Officers in the Job Evaluation process. This has contributed to low morale.
- 8.3 The Enforcement Officers would like to thank the Members, for taking the time to consider this report and hope that the outcome of this Scrutiny Committee will provide clear guidelines for the post holder to follow when undertaking their duties.

**Contact Details****Author:****Author's name**

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**Annexes**

Annex A - Officer Procedure Note - Planning Obligation /Section 106 Agreements

Annex B - Logging of Enforcement Cases

Annex C - Procedure for the Inputting of Enforcement Notices in to Uniform

Annex D - Enforcement Appeals Procedure

Annex E - Notes For Enforcement Officers On Procedure Of Closing Cases.

Annex F – Graph of New cases received and closed from 1/1/03 to 30/9/08

Annex G – Graph of s106 cases received and closed from 1/1/03 to 30/9/08

Annex H – Graph of total formal notices and other notices served each year from 2003

**ANNEX A –****OFFICER PROCEDURE NOTE - PLANNING OBLIGATION /SECTION 106 AGREEMENTS****OFFICER PROCEDURE NOTE  
PLANNING OBLIGATION /SECTION 106 AGREEMENTS****Purpose**

This Note is intended to provide officers with a framework for dealing with Section 106 matters relating to new planning applications and prospective applications. A Planning Advice Note is also be available for Developers.

The tasks involved in the process are set out by officer below:-

**AREA TEAM LEADER**

Team Leader to identify likely S. 106 issues when allocating applications, ensure internal consultees are notified at that stage.

Delegated Decisions to only be signed off if accompanied by Updated S106 Checklist and (where an actual S106 is likely) a completed Memo to Legal Services, (**MLEGSE**)

**DC OFFICER****Pre - application**

- Issue Planning Obligation/Section 106 Guidance Note to developers where obligation is likely to be required.
- Refer developers to relevant Supplementary Guidance or Advice Notes
- Applicants to agree heads of terms and submit confirmation of this with application. Where affordable housing likely, applicants should be asked to provide an Affordable Housing Plan (guidance in the Advice Note) and to identify the Registered Social Landlord at pre application stage or at least at application stage, where affordable housing is required.

**Application**

- Where no pre- application discussion has been held, flag up S. 106 issues with developer at the earliest stage (i.e. on first receipt of application) prior to negotiations

on scheme details and amounts of any S.106 payments. Pre application procedure above should be used.

- If likely to be via a formal agreement ( i.e. larger schemes), once Officer satisfied application likely to be approved, details forwarded to Legal Services as a formal instruction for drafting of agreement (see instruction Memo template **MLEGSE**). This can occur early in the process, need not wait for the conditional approval to be issued or for a resolution to approve subject to S.106.
- Copy of the Obligation/S.106 Progress Checklist should be kept on file and updated as appropriate (see template).

### Report

- Obligations should be subject to conditions, or (where a S106 is required prior to approval) the report should give details of Heads of Terms in the Delegated/Committee report.
- On the Uniform Recommendation Screen, the 'Legal Agreement' box is filled in with a  then click on the chevron and complete the Legal Agreement Details screen.



Agreement No.	Type	Received	Signed	Effective	Notes
1	S106 - Section 106 Agreemen				

This will help to ensure that the S. 106 monitoring system is kept up to date.

- Report to team leader and Draft decision notice referring to a S106/financial obligation must be accompanied by :-
  - Up to date Checklist
  - Where an actual S106 is likely to result, completed **MLEGSE** if not already done.

### Post - Resolution

- If draft S.106 not already prepared, target is final document to applicant within 1 week of resolution. Copy of Progress Checklist to City Strategy Finance (Jane Wynn) and relevant consultee(s).
- In cases where the applicant or developer issues payment without entering into an agreement, officer will acknowledge the payment and issue standard letter giving assurance it will be spent in accordance with the terms of the relevant condition (or authorise Support Services Assistant to do so).
- In cases where a developer sends a payment with a Unilateral Obligation, Legal Services should comment on it and then respond to case officer to confirm acceptance of the obligation, effectively discharging the condition.

### **SUPPORT SERVICES**

Decision with condition requiring Financial Contributions only  
( i.e. S 106 not likely)

- Issue decision notice and complete file in usual way
- Arrange for the decision notice to be scanned and file to be returned to Admin
- Update the S106 Checklist with the relevant dates
- Make 3 + copies of the completed **S106 Checklist**
- Put the original S106 Checklist on the planning file. (The S106 Checklist should be updated when the Enforcement Record is closed – as should the Uniform record.)
- Go into Enforcement module and create a record with S106 suffix and put in a thin plastic pocket copy each of
  - Decision notice
  - Completed S106 Checklist
  - Enforcement worksheet
  - Map of site

Pass to EO in thin plastic pocket

- Write the Enforcement number on the S106 checklist (Key action 'f')
- Send a copy of the S106 checklist and a copy of the decision notice to Jane Wynn (City Strategy Finance)
- Send a copy of the S106 checklist to each Consultee/Directorate who requested a financial contribution
- If applicant submits payment with a Unilateral obligation, update the planning file Checklist and copy the Obligation to Legal Services for comment / agreement (with case officer's details for response)

Decision with condition definitely requiring S106 Agreement (with or without involving the payment of contributions)

- Issue decision notice and complete file in usual way
- Arrange for the decision notice to be scanned and file to be returned to Admin
- Update the **S106 Checklist** with the relevant dates
- Go into Uniform (Recommendation screen), Enter Y if the Planning Condition requires a Section 106 Agreement.
- Make 3 + copies of the completed **S106 Checklist**
- Make 2 copies **MLEGSE**
- Put the original S106 Checklist and MLEGSE on the planning file. (The S106 Checklist should be updated when the Enforcement Record is closed – as should the Uniform record.)
- Go into Enforcement module and create a record with S106 suffix and put in an orange file a copy each of:-
  - Decision notice
  - Completed S106 Checklist
  - Completed MLEGSE
  - Enforcement worksheet
  - Map of site
- Write the Enforcement number on the S106 checklist (Key action 'f')
- Send a copy of the S106 checklist and a copy of the decision notice to Jane Wynn (City Strategy Finance)
- Send a copy of the S106 checklist to each Consultee/Directorate who requested a financial contribution

- Copy of the S.106 once completed should be scanned and retained on the planning file and (where contribution involved) monitoring file.
- If applicant submits payment with a Unilateral Obligation, update the planning file Checklist and copy the Obligation to Legal Services for comment / agreement (with case officer's details for response)

### **Post-decision notice procedure for monitoring a signed S106 agreement with Financial contributions**

- Issue decision notice and complete file in usual way
- Arrange for the decision notice to be scanned and file to be returned to Admin
- Copy of the S.106 should be scanned and retained on the planning file and (where contribution involved) monitoring file.
- Update the S106 Checklist with the relevant dates
- Go into Uniform (Recommendation screen), Enter Y (if not already entered); click on chevron and complete the 'Legal Agreement Details'
- Make 2 + copies of the completed **S106 Checklist**
- Put the original S106 Checklist on the planning file. (The S106 Checklist should be updated when the Enforcement Record is closed – as should the Uniform record.)
- Go into Enforcement module and create a record with S106 suffix and put in an orange file copy each of:-
  - Decision notice
  - Completed S106 Checklist
  - Completed MLEGSE
  - Enforcement worksheet
  - Map of site
- Write the Enforcement number on the S106 checklist (Key action 'f')
- Send a copy of the S106 checklist and decision notice to Jane Wynn (City Strategy Finance)
- Send a copy of the S106 checklist to each Consultee/Directorate who requested a financial contribution

### **ENFORCEMENT OFFICER**

- The monitoring procedure is the same as if a Section 106 has been signed, since a financial contribution prior to certain completion or occupation on site is expected as a result of the condition/obligation.
- Reception should receive the cheque, and send details to the Enforcement Officer monitoring the obligation. The relevant consultee e.g. Education Services will be informed by Finance.
- In cases where the applicant or developer issues payment without entering into an agreement, the Enforcement Officer monitoring the requirement should update the S.106 Uniform record and file and pass to case officer (who will write to acknowledge receipt of the payment and issue assurance that the contribution will be used in accordance with the terms of the relevant condition - or request Support Services Assistant to do so). This effectively discharges the condition. Where no further payments are needed the plastic pocket with documents can be filed numerically in lever arch.
- In cases where a developer sends a payment with a Unilateral Obligation, the Enforcement Officer monitoring the case will acknowledge receipt of the payment (or

request Support Services Assistant to do so) and pass to the Support Services Assistant to update the planning file Checklist and copy the Obligation to Legal Services for comment / agreement.

- If there are no other financial obligations attached to the application, the monitoring case can be closed.
- If non compliance with condition , issue non compliance letter (**S106BR**)
- Second letter (**S106BR2**) issued after expiry of period for compliance set out in **S106BR** stating intention to serve BCN in XX days unless actions in **S106BR** started.
- If no response to requests for payment, referral of matter to Legal Services for drafting of BCN appropriate to the circumstances of the enforcement case.
- If non compliance with obligation of an actual S106, write to developer to chase, pursue payment and as necessary to refer to Legal Services to commence formal proceedings.

## APPENDIX A

**Common Types of Obligation, Threshold Details and Details Needed to Formulate Heads of Terms**

- **Education** - 4 dwelling units or more (a check can be made with Education Planning on 01904 554447 to establish the need for this). How much, how calculated, how spent, when to be spent or if not spent, when to be repayable. (Supplementary Guidance Note available)
- **Public Open Space** – Any housing development (applicable where the on site standards outlined Policy L1c cannot be met). What to provide, how calculated, where to provide, when to provide, future maintenance/use (Supplementary Guidance Note available)
- **Affordable Housing** - Sites of 0.3ha/15 units in urban areas and 0.03ha/2units in rural areas. Is application outline or full, if latter identify plot numbers and parking spaces and prices (Supplementary Guidance Note Available)
- **Off site highway works** - where a scheme would be unacceptable without improvements or changes to a local traffic Regulation Order. Description of works/improvements, when to be carried out, by whom to be carried out, future maintenance, form of S.278. TRO – amount of contribution to making, when to be paid
- **Commuted payments in lieu of a shortfall in on site car and/or cycle parking.** – Used to improve public transport links and local cycle parking provision. Amount, when payable, how calculated, what to be spent on, when to be spent or failing which to be repayable. Thresholds within Appendix E of Local Plan
- **CCTV contributions** – often required for new A3 (food and drink) proposals and used to improve and maintain CCTV coverage in the City Centre or local centre. See Policy GP3. Amount, how calculated, on what to be spent, when to be paid, when to be spent or failing which to be repayable.

A number of other types of obligations may also be sought: -

- **Green Travel Plans or Transport Policy Statements** – Required for new or extended business premises (usually resulting in sites with 50 employees or more). Expected to demonstrate a commitment to reducing dependence of the car for work related travel. Description, when to be implemented/maintained, by whom to be implemented/ maintained. (Travel Plan Guidance Note available)
- **Energy Efficiency measures** – To demonstrate the sustainability of a scheme in accordance with National and Local Planning. Policies. A statement could include

description, when to be implemented/maintained, by whom to be implemented/maintained.

(New Housing Sustainable Development Briefing Note available).

- **Restrictions on use of adjacent land to ensure an adequate level of amenity are available for future residents** e.g. farming activities adjacent to barn conversions. Description, when to be implemented/maintained, by whom to be implemented/maintained.
- **Riverside walkways** – To comply with the Council’s draft policies identifying the route of riverside walkways. Requirement to enter into agreement, the form of which is annexed to the S.106
- **Drainage and flooding protection measures** – To protect new development and to ensure new development does not result in flooding of adjacent areas. Description, when to be provided/maintained, by whom to be provided/maintained.
- **Revocation of old/ other relevant permissions** – Where a new proposals would only be acceptable if a previously approved development did not take place. Describe development authorised by other permission, giving its application reference no.
- **Environmental Improvements** – To improve amenity levels available and/or to mitigate against other impacts of a development. Description, when to be provided/maintained, by whom to be provided/maintained

## APPENDIX B

**Useful Contacts****Education Contributions****Jake Wood****4447**

Policy Support Officer, Learning Culture and Children's Services , Education Planning & Resources

**Affordable Housing****Andy Kerr****4153**

Housing Development Manager, Community Services, Strategic Services - Investment & Development

**Derek Gauld****1470**

Principal Development Officer - City Development, Environment & Development, City Development & Transport

**Open Space****Brian Williams****3392**

Parks & Open Spaces Officer, Education and Leisure, Lifelong Learning & Leisure

**Highway Works and Contributions, Green Travel Plans**

## East Area

**Richard Bogg****1335**

Area Engineer (Highways DC) - Network Management, Environment & Development, City Development & Transport

## West and Centre Area

**Howard Watson****1332**

Area Engineer (Highways DC) - Network Management, Environment & Development, City Development & Transport

**Energy Efficiency Measures****Kristina Peat****1666**

Sustainability Officer, Environment & Development, Planning & Design

**Drainage and Flooding Protection Measures****Mike Tavener****1473**

Project Manager (Structures & Drainage) - Engineering Consultancy, Environment & Development, City Development & Transport

APPENDIX C

**Supplementary Guidance and Internal Guidance Notes**

(Not an exhaustive list and Subject to Change)

- **Affordable Housing Advice Note ( July 2005)**
- **Developer Contributions to Education Facilities ( updated) April 2007**
- **Open Space Advice Notes:**
- **Open Space in New Developments – A guide to Applicants**
- **Provision of Open Space in New Housing Development ( Harrogate B.C. April 2005) – for calculating payments**
- **CCTV - Requests for Contributions ( Officer Note)**
- **Guidelines for Preparation of Transport Impact Assessments and Transport Policy Statements**

**Annex B –****Logging of Enforcement Cases,****Enforcement Cases****Complaint Tab**

The below notes give details of logging an enforcement case.

Postcode Search  
 Street Search  
 Address Search  
 Map Search

Right click in address field and retrieve property using

Click ok to return to complaint details screen, and double click in case ref to open the generate key screen.

1. Either enter type of application or drop down the menu to select the application type i.e. CARREP and click ok, this will generate the next number. Please be aware that you may need to force the year when logging cases at the end of each calendar year. The case should be logged in accordance with the date it was received.

The case number will then download into the screen. Tab to the address field and do street search and again select the required property and ok. The full address should then load into the address field.

Tab into Date received and amend with the date the complaint was received. Tab into *all blue fields* and complete or use drop down menus as appropriate and please fill in DC Refs if relevant, occurrences can be added if necessary.

Case Ref.	<input type="text" value="07/00384/CARREP"/>	U.P.R.N.	<input type="text" value="100050593112"/>
Breach Type	<input type="text" value="CARREP - Unauthorised car repairs"/>	Address	<input type="text" value="29 Tudor Road&lt;br/&gt;York&lt;br/&gt;YO24 3AY"/>
Status	<input type="text" value="2_PCO - Pending Consideration"/>		
Appeal Status	<input type="text"/>		
Map Ref (E)	<input type="text" value="457565"/> (N) <input type="text" value="450801"/>	 	
Date Received	<input type="text" value="02.07.2007"/> Time <input type="text" value="09:34"/>	How	<input type="text" value="COUNC - Via Councillor"/>
Received By	<input type="text" value="GSHEPH - Gill Shepherd"/>	Allocated To	<input type="text" value="ABLAIN - Andy Blain"/>
Subject	<input type="text" value="Owner"/>	Area Code	<input type="text" value="WESCEN - West/Centre Area"/>
Nature	<input type="text" value="Car repair business from premises"/>	Ward	<input type="text" value="WESFLD - Westfield"/>
Alt. Reference	<input type="text"/>	Parish	<input type="text" value="NOPAR - No Parish"/>
		Dist. Office	<input type="text"/>
		Related DC Refs.	<input type="text" value="07/00791/FUL"/> <input type="button" value="»"/>

*How – click on drop down menu*

*Received by - again drop down menu or use the officers initials.*

*Allocated to – enter Enforcement Officers initials.*

*Subject - Owner or the full title of the person the complaint is about (if known).*

*Nature - A brief description of what the complaint is about.*

*Check the parish and ward are correct.*

*Related DC Ref - try to find a relevant case.*

To enter Owner Details click on **options** menu and from the drop down menu click on Interested Party Details.

Owner - If you do not know the name of the person that the complaint is about then type Owner.

Address - This is the address of the site, if you have not been given any separate details of the owner of the site. Double click to pull through site address.

Click onto Complainant tab

Remembering not to use the ok button or accept, complete all blue mandatory fields.

Category - F3 to use the menu behind.

Date Received - as above.

Name - Name of person making the complaint.

Address - Address of person making the complaint.

To Remain Anonymous – Y

Date Acknowledged - this is system generated.

If the complainant is a Councillor the button next to the name will change from black line (as shown above) to , by clicking on this it will pull up the Councillors details for the relevant ward. Click and ok on the one you want and their details will pull through. Re-enter CLLR in category as this disappears when details pull through.

Next Inspections and Actions screen to enter VST details.

Type in *visit pending* and drop down menu to pull through VST – Site Visit as above. The date to enter is 5 working days from when the Complaint is logged. Enter case officer from drop down menu.

Then click on Print.

From the Special List select Complaint Acknowledgement, change Document Mode to Print Only, Copies to 1 and select Print (this will then put the date in the Complainant tab for Date Acknowledged), and then from the Documents List print the Enforcement Worksheet for File.

**These have to be printed separately or the Complainant Acknowledgement Sent date doesn't appear on the worksheet.**

Next click on the Map tab and print off (from Spatial menu, print map) a copy of a map size 1:1250 and 1:2500, so that the Officer can locate the site from a major road as well as close up. If you have related the EN case to a DC case you will be prompted to copy over the polygon. Click yes.

The map may not be your site, so double click the address field on the left to bring up the site in question.

**Finally, print off a copy of property history for the site and request any relevant history files from the basement for the Enforcement Officer (if unsure what to retrieve check with the EO for the case).**

**Summary: -**

- Complaint received, case logged on Uniform
- Complaint, map and worksheet put into a thin plastic pocket by SSA and passed to Enforcement Officer (EO) in-tray. - Put into "New Enforcement Cases Tray" for West/Centre team. East team place in individual officers' tray.
- Enforcement Officer puts into their own plastic folder/file for initial investigation.
- Case either passed to Area Team Leader to close if no further action needed and then filed in lever arch (by Uniform reference number), if the case needs further actions it will be passed to SSA to be made up into pink enforcement file and then passed back to relevant Enforcement Officer.

**Annex C –****Procedure for the Inputting of Enforcement Notices in to Uniform**

When an enforcement investigation creates the service of a formal notice these are the processes that require attention from both Enforcement Officers and Area Team Admin.

**Enforcement Officer tasks**

Once the Enforcement Officer has had their authorisation report signed in full they (Enforcement Officers as Area Admin do not have the level of access to enter such details) should enter the basic details on the NOTICES screen by inputting as follows: -

Notices tab, Notices Screen

1. Retrieve the relevant case
2. Drop down list to allocate the type of notice
3. Tab through the next two fields to Date Authorised – input the date the authorisation report was signed by all parties.
4. Store the changes and leave the screen.

Notice Type	ENFOP - Enf. Notice Operational Development	Status	COMPLY - Notice Complied With
Date Authorised	05.12.2007	By	ALANK - Alan Kendall
		Date Issued	

When the notice is served, a copy of the notice and whom it was served upon should be put on the enforcement file by the Enforcement Officer and then passed to Area Team Admin to enter the notice on the system.

**Area Team Admin tasks**

On receiving an Enforcement Notice enter information onto computer as follows: -

Go to Enforcement Module

Notices tab, Notices Screen

1. enter Date Notice Served, By (drop down list and select Mike Slater) and How Served (as on Legal memo)

Date Served	05.12.2007	By	MIKE - Mike Slater	How Served	RECDLV - Recorded Delivery
-------------	------------	----	--------------------	------------	----------------------------

2. Date Effective see point number 6 or 7 on Enforcement Notice

Date Effective	18.01.2008
----------------	------------

3. Date All Served Informed: same as served date in point 1.
4. Certificate of service enter N

Certificate of Service (Y/N)?	N
Appeal Notes Supplied (Y/N)?	Y

5. Appeal Notes Supplied always answer Y

6. Date to Comply By (see point number 5 or 6 on Enforcement Notice and work out the date from calendar and enter) NB. If more than one date take the latest date please.
7. Enter Name of Address of all persons the notice was served on, click on chevron >> to add Names and addresses.

The screenshot shows a window titled 'ENFCRECI5.7.3.1C Interested Party Details'. It contains the following fields:

- Address Type: A dropdown menu with a yellow highlight.
- IP Type: A dropdown menu with 'OWNER - Owner' selected.
- Name: A text box containing 'Joe Bloggs'.
- Address: A text box containing 'Marsh Manor', '346 Strensall Road', 'York', and 'YO32 9SW'.
- Comments: An empty text box.
- Contact Types: A dropdown menu.

At the bottom right, it says 'Record 3 of 3' and has a 'Close' button.

Then close and return to main Notices screen, and add occurrence for next person served.

The screenshot shows a table titled 'People Served With Notices' with the following data:

Name	Interest	
Joe Bloggs	OWNER - Owner	>>
Mr James	OWNER - Owner	>>
Joe Bloggs	OWNER - Owner	>>

At the bottom right, it says 'Record 1 of 3'.

So each person served appears on the main screen, and their address shows when you click the chevron.

Then store.

Go to Reception tab and Breach Screen

Go to 'Details of Breaches' and enter

1. within 'Details' insert text from point number 3 on Enforcement Notice
2. within 'Actions to Rectify' insert text from point number 4 or 5 on Enforcement Notice
3. within 'Reasons for Issue' insert text from point 4 on Enforcement Notice
4. within 'Time Allowed' add number of days quoted in point number 6 on Enforcement Notice

Then store and go to

Inspections and Actions Screen

1. Click on Inspection Type then F4 to add occurrence and select PROS from list
2. tab across to 'date'. Enter date to comply by (same date used in Notices screen) which is calculated as per point number 6 on Enforcement Notice
3. insert initials of Officer who deals with that area or as per unique instructions.

Then go to

Print tab

1. Please raise 2 copies of ADVNOT - 'Advise notice served' letter to the complainant(s), post one copy out and file the second after stamping with file copy.

Photocopy notice and whom it was served on.

File Memo, Certificate of Service and Enforcement Notice on the enforcement File and return to Enforcement Officer with photocopy.

NB. Depending on the Enforcement Notice served the point numbers above may vary. They are in place as a guide for you, so check when you receive one what information is where and input accordingly.

If you are entering more than one notice, i.e. ENFOPDEV or ENFCOU then you can add occurrences for each notice in both notices screen and breach details screen.

When the Enforcement Officer receives the enforcement file after input of the notice, the enforcement officer should use the photocopy to ensure that the details are entered on the Enforcement Register through Access located in W/GROUP/Enforcement Registers/CYC Enforcements/Current CYC Enforcement Register. This is an access database and the details should be added as another record (shortcut forward arrow star at the bottom navigation keys) of the table enf\_reg located in the tables menu and that the copy is filed in the lever arch files stored in Paul's room. Please also print off a copy of the last page of the report found in the reports menu under CYC Enforcement Register, so that the register is kept up to date.

**Annex D –****Enforcement Appeals Procedure**

When the Enforcement Officer passes you notification of the appeal from the Planning Inspectorate confirming the appeal has been lodged with the related Enforcement file and any planning back history, ensure that the Enforcement Officer has completed the questionnaire up to question 23 if not pass back for completion.

Then go to Enforcement module and Notices screen and pull through the relevant case. Check that the Enforcement Notice has been entered, if this has not been completed pass the file back to the Enforcement Officer to complete.

If more than one notice has been served on the site if it is not obvious from the letter, check with the PI which notice is being appealed.

If the notice has been served on more than one person, all have the right to appeal the notice, this is logged as one appeal with multiple appellants, each appellant has their own appeal reference. Uniform will assume that the first person upon whom the notice was served will be the first appellant.

If the notice screen is fully completed go to Appeal Reception screen and complete as below.

- Complete Appeal type (F3 to chose Enforcement Notice if Discontinuance Notice please contact Karen as procedure is different)
- Complete the date lodged (Date Enforcement Appeal Form date stamped)
- Click on create appeal
- Make up orange file with sticker on front (Council Ref is original enforcement case reference number)
- Click on Appeal Details screen and complete:
  - Date Valid – date PI letter was written (same as starting date)
  - Alt. Ref – enter Agent's reference for case if any (in future this will be used to store the PI's email address)
  - Enter procedure from drop down list (Written Representations, Informal Hearing or Public Inquiry).
  - Started – Starting date will be quoted in PI letter (usually date letter was written)
  - DETR Ref – found on top right hand side of PI letter, starts with APP/.....
  - Case Officer – Double click to choose from list (check with Team Leader which Development Control Officer will be dealing)
  - Check and update if necessary the appellant and agent details.
  - Then enter the grounds of appeal from the letter from PI the grounds are lettered a,b,c,d,e,f,g for enforcement appeals and a – k for listed building and conservation area enforcement appeals. Tick boxes as appropriate ok then store.

If multiple appellants add occurrence (F4) in Appellant name field and enter details of second appellant (and third and fourth etc as many as necessary), enter the specific DOE reference for that appellant in bottom field on left hand side as per below:-

Appellant	Mr Jones
Address	Asdmfomjdfdkmvfd Sdmvdkdfmv Ldm'lkdd
Phone	
Appel Ref.	
	APP/C2742/C/052002159

Remember to enter the grounds of appeal for each appellant as they may differ. To enter grounds click on the Grounds button. Then enter the grounds of appeal again from the letter from PI the grounds are lettered a,b,c,d,e,f,g for enforcement appeals and a – k for listed building and conservation area enforcement appeals. Tick boxes as appropriate ok and store.

Once you have added all appellants and grounds store.

If a fee is required a letter from the PI will indicate this, when payment is received, from Appeal menu select Appeal Fees and enter amount paid per appellant if applicable. Then click on payment details at the bottom of the screen and enter how the fee was paid i.e. cheque, how much was paid and the receipt number and save. Complete for each appellant. Remember fee may not be received until the time the questionnaire goes out and only one appellant has to pay, although more than one may.

#### WITHIN 2 WEEKS OF STARTING DATE:

All enforcement appeal templates are located in the Enforcement module and are printed from the Enforcement print letter screen.

For every type of Appeal you will need to consult the neighbours and the parish ask the DCO to identify any additional consultees. There may be some neighbours already entered into the neighbours screen these will be any complainants who have requested to be involved in the appeal process.

If there has not been a previous planning application on the site you will need to identify the neighbours remember to consult all abuts (front, back and both sides) manually enter the addresses into the neighbours screen in Enforcement module plus the parish/planning panel and any consultees identified by the DCO.

If there are multiple appellants on the appeal the template is set up so that a copy of the notification letters will run for every appellant bringing through the grounds specific to that appellant (as there is a repeat statement in the programming a headed page will print at the end of each neighbours set of letters). As the programming is so complicated please double check that all grounds have been pulled through on to the letters.

To produce letters, in the enforcement neighbours screen, double click to pick appropriate letter from Letter for Selected Neighbour box. Tab to bring up request box and choose Yes to send letter to all neighbours.

The letters to use are

- Written Reps Enforcement Neighbour (1),
- Hearing Enforcement Neighbours (1)
- Public Inq Enforcement Neighbours (1).

If the appeal is for a Listed Building the letters to use are:

- Written Reps Listed Bdg Neighbour (1a),
- Hearing Listed Bdg Neighbour (1a)
- Public Inq Listed Bdg Neighbour (1a).

Print 1 copy to send out and photocopy one of the letters for the file).

If there is more than one appellant you will need to print off the neighbour multiple appellant explanation letter, which is printed from the enforcement neighbours screen the letter will be either:

- Written Reps Multi Appel Neighbour (2),
- Hearing Multi Appel Neighbour (2)
- Public Inq Multi Appel Neighbour (2).

Print 1 copy and attach to the front of the neighbour letters to send out, photocopy one of the letters for the file).

All Councillors are now to be notified of appeals this is now done via an automatic email template. The email is triggered by printing the template.

Go to print letters screen in Enforcement module select from documents list either

- Written Reps Councillor Notification (3),
- Hearing Councillor Notification (3)
- Public Inq Councillor Notification (3).

If the appeal is for a Listed Building the letters to use are:

- Written Reps Listed Bdg Councillor (3a),
- Hearing Listed Bdg Councillor (3a)
- Public Inq Listed Bdg Councillor (3a).

Then Select print only, 1 copy and click on print. An email of the letter will then go to the Councillors. In the same print screen take the letter to view only and print a copy from word for the file. (If there are multiple appellants, the email will contain letters relating to each appellant.)

Go to Appeal Process screen and complete actual dates for notification of 3<sup>rd</sup> Parties. Then print 2 screen dumps of this screen one to attach to the inside cover of the file as a worksheet (this now has the due dates for the statement etc), the other for Legal see below.

For public inquiries notify Legal by going to Enforcement Print Menu and selecting Public Inq Legal Memo (4) selecting print only and 1 copy and print. (Attach copy of Appeal Process Screen).

## **QUESTIONNAIRE**

The Enforcement Officer should have completed the questionnaire down to question 23, and enclosed any necessary copying related to those questions they have answered. They should also pass to you for copying the following documents.

- A true copy of the enforcement notice.
- A true copy of the plan attached to the enforcement notice.
- The names and addresses of all persons upon whom the notice was served.

And should tell you which Development Plan policies need to be copied.

You will need to answer questions 24, 25 and 26, of the appeal questionnaire.

Question 24 is asking about who the DCO highlighted as consultees i.e. Yorkshire Water or English Heritage, etc write the names and addresses on the questionnaire form (these will have been entered onto the neighbours screen).

Question 25 requires information on persons notified, do screen dumps of the neighbours screen for this, also do a photocopy the neighbour letter and on the form complete the deadline for the neighbours to respond to the PI, i.e. six weeks from the starting date of the appeal. (See below for number of copies needed).

Question 26 write the name of any Development Plan highlighted by the Enforcement Officer in the box provided. And copy policies as per below.

Sign and date the forms when completed correctly.

Number of copies required:

- 1 for appeal file,
- 1 for PI
- 1 each appellant

To produce covering letters to send out with the Questionnaire go to enforcement print menu and select either

- Written Reps Quest Let App (4),
- Hearing Quest Let App (4)
- Public Inq Quest Lett App (5).

This letter pulls through details of all appellants. Select 2 copies (one for file) and print. Attach enclosures referred to above.

A separate covering letter is required for the PI select either:

- Written Reps Quest Let PI (5),
- Hearing Quest Let PI (5)
- Public Inq Quest Lett PI (6)

This letter pulls through details of all appellants. Select 2 copies (one for file) and print. Attach enclosures referred to above.

Go to Appeal Process screen and complete actual date for Questionnaire sent update sheet on file.

Pass file to DCO.

WITHIN 6 WEEKS OF STARTING DATE:

## **STATEMENT**

When the statement is passed to you by the DCO print letters to enclose statement. Go to Enforcement Print Menu and select either

- Written Reps Statement PI (6),
- Hearing Statement PI (6)
- Public Inq Statement PI (7)

2 copies (one for file) and print.

Send statement and ensure copy of statement goes on the appeal file. Go to Appeal Process screen and complete actual date for Statement sent update sheet on file.

WITHIN 9 WEEKS OF STARTING DATE:**COMMENTS ON APPLICANTS REPRESENTATIONS**

If the DCO passes you comments he has written on the appellants statement or complainant/neighbour representations then send these with the following covering letter:

From the Enforcement Print Menu select either:

- Written Reps Comm on Apps Reps (7),
- Hearing Comm on Apps Reps (7)
- Public Inq Com on Apps Reps (8),

Print 2 copies one for PI, one for the file, photocopy enclosures for file.

Go to Appeal Process screen and complete actual date for Comments on Statement of Case sent update sheet on file.

**2<sup>nd</sup> PUBLICITY (informing of date and venue)**

For hearings and inquires the file will be passed back to you so that you can advise of the date and venue of the hearing/inquiry.

Upon receipt of the letter from the PI confirming the date of the hearing/inquiry a venue needs to be booked (Sara Bell, Ext 1049 – Guildhall, or our admin as usual).

Once the venue has been confirmed, go to Appeal Events screen and double click in top left hand field, select Venue from the drop down list. In the large text box enter the Venue (i.e The Guildhall, St Helen's Square, York) as it needs to appear in the letter and store.

Enter the date of the hearing/inquiry in the Actual field in Appeal Process screen and store. Then in the inspector field double click and select the number of days the inquiry/hearing is due to last if indicated in the letter.

To send letters out:

From enforcement menu select print letters, and choose either:

- Hearing Date and Venue Cllrs (8)
- Public Inq Date and Venue Cllrs (9).

Then Select print only, 1 copy and click on print. An email of the letter will then go to the Councillors. In the same print screen take the letter to view only and print a copy from word for the file.

To produce the neighbour letters, go to neighbours screen, double click to pick either

- Hearing Date and Venue Neighbours (9)
- Public Inq Date and Venue Neighbour (10)

from Letter for Selected Neighbour box. Tab to bring up request box and choose all neighbours. Copy letter for file.

Using free text letter Enforcement Appeal Free Letter – PI notify them of the venue for the hearing or inquiry and enclose a location plan. Remember to retain a copy of the letter for the file.

Go to Appeal Process screen and complete actual date for 2<sup>nd</sup> publicity sent update sheet on file.

Check with DCO whether hearing should be advertised in the Yorkshire Evening Press. If press advert is required follow instructions under 4 weeks before public inquiry below. Make note in outlook diary if press advert is required for hearing.

### **Car Parking Space**

When we receive notification of the date of the inquiry/hearing reserve a parking space, here in St Leonard's, which is done through an email to Jane Benson.

### **4 WEEKS BEFORE PUBLIC INQUIRY**

### **PROOF OF EVIDENCE**

Officer will prompt you to send the Proof of Evidence to the PI. In Enforcement module go to print letters and select:

- Public Inq Proof of Evidence (11)

from the documents list select 2 copies and print. Send one copy to the PI with PoE attached, one copy for file with PoE attached.

Go to Appeal Process screen and complete actual date for Proof of Evidence sent.

From Enforcement Print letter screen take a copy of Enforcement Appeal Press Advert (12) to view and email to PPU to advertise in the press. (All inquiries to be advertised, hearings at discretion of the DCO.) Ensure copy of press advert obtained for file.

### **FREE TEXT LETTERS**

The following free text letters are available for use in the Enforcement module:

- Enforcement Appeal Free Letter – App (Appellant – remember to print one for each),
- Enforcement Appeal Free Letter – Nei (Neighbours if there are lots ask SSO/SSM to change template),
- Enforcement Appeal Free Letter – PI
- Enforcement Appeal Free Let - no address.

Remember for any letters printed through word to print an extra file copy.

### **Finishing Off**

When a decision comes in from PI the officer will pass over decision letter.

Decisions should be entered on computer – go to Appeal Decision Screen, complete decision, made on and date received box.

Also enter any conditions which maybe attached by double clicking in lined text box (Condition Text)

Original decision letter to be placed on Appeal File, with copy placed on enforcement file and if appropriate, planning file.

Place copy on Appeals Register File and enter onto Appeals Database 2003 - date which can be found in Word, L Drive, Group, Planproc, Appeals Database 2003 - date.

Pass decision to Karen for scanning, await confirmation file has been scanned. Send electronic copy of decision via email to Councillors and circulate round DC. The email address for all Councillors is DEEDS Planning Appeals.

### **Electronic copies of Decisions**

Copies of appeal decisions can now be emailed, by opening the case in uniform, click view image, open first page of document (if more than one). Go to file drop down menu and save as. Enter a name for the file i.e. App Dec pg1 and click save. Do this again for any more pages of the document saving them as different file names i.e. App Dec pg2 etc.

Then open word and a new document, from the insert drop down menu select picture and from file, then go to the first page you saved and double click. The scanned document page will open in word, you can then go to insert menu select break and page to get a new page and insert picture from file again to insert the next page of your document i.e. App Dec pg2, and repeat until all pages are displayed in word.

Then save the document in word i.e. 73 Layerthorpe – Appeal Decision then you can email the document as a word attachment.

Please put the appeal decision address in the subject field on the email, as per you saved the word document (73 Layerthorpe – Appeal Decision).

**Annex E –****Notes For Enforcement Officers On Procedure Of Closing Cases.**

When you are in a position to recommend closure of an investigation, please follow the below criteria: -

Retrieve the relevant record in the Enforcement Module go to Inspections and Actions screen

1. Update the Survey field by entering text at the end of the existing text – **Do not use carriage returns.**
2. F3 or double click in the date closed field at the bottom of the screen

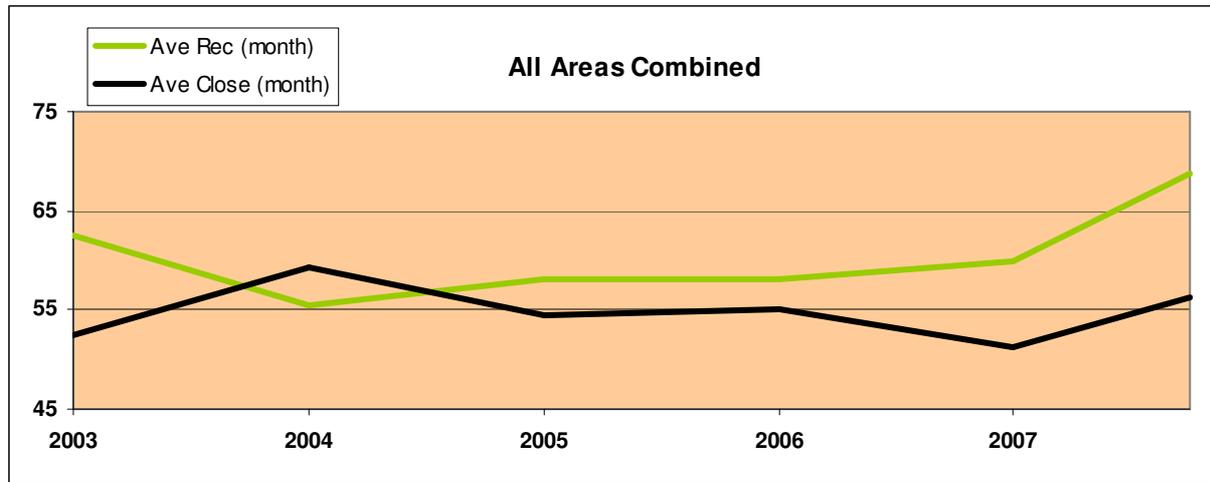
Store and F6 to Print Menu

Enter Print Letters screen and print off one copy of the Enforcement Worksheet for File

Place the copy of the worksheet on top of the Enforcement Investigation File and any relevant planning files, band all together and present or leave with ATL for countersignature.

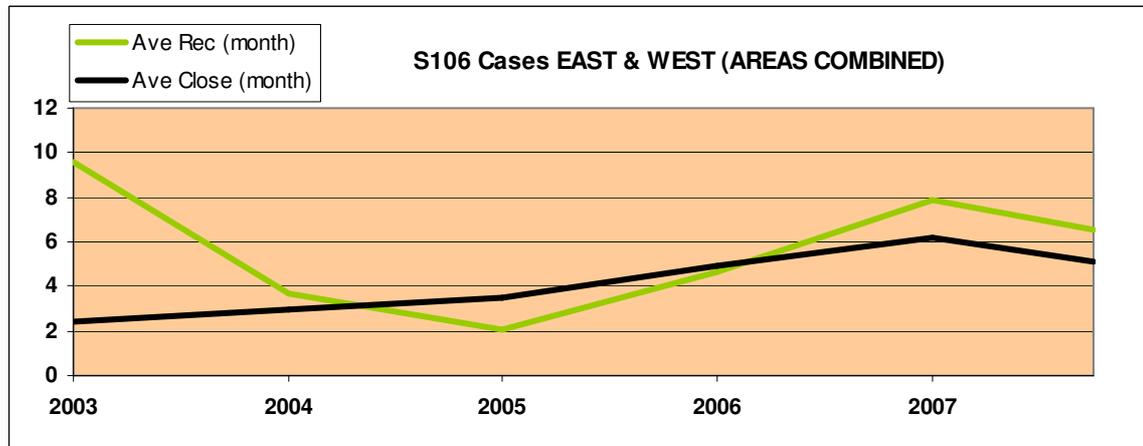
Once the ATL has confirmed that the investigation can be closed, advise complainants and owners(if relevant) placing copies of letters or notes of telephone call if applicable on the file.

Stamp up the front cover “Closed” and place in filing tray in Karen’s room.

**Annex F –****Graph of New cases received and closed from 1/1/03 to 30/9/08**

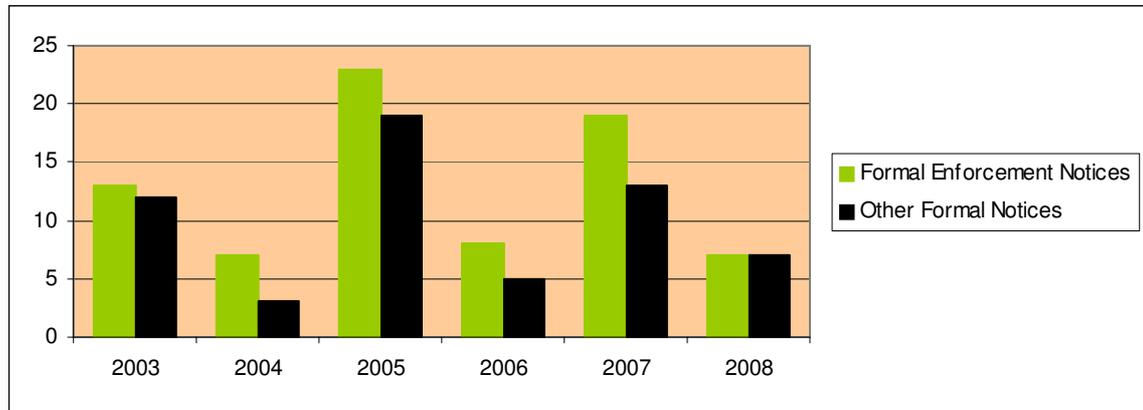
	<b>EAST &amp; WEST (AREAS COMBINED)</b>				
	Ave Rec (month)	Ave Close (month)	Rec (year)	Closed (year)	
2003	62.5	52.4	750	629	
2004	55.4	59.3	665	711	
2005	58.1	54.4	697	653	
2006	58.0	55.0	696	660	
2007	60.0	51.2	720	614	
2008	68.7	56.2	618	506	Up to 30 Sep

This graph compares the annual number of new cases received against the annual number of cases closed, displayed as monthly averages.

**Annex G –****Graph of s106 cases received and closed from 1/1/03 to 30/9/08**

S106 Cases EAST & WEST (AREAS COMBINED)					
	Ave Rec (month)	Ave Close (month)	Rec (year)	Closed (year)	
2003	9.6	2.4	115	29	
2004	3.7	2.9	44	35	
2005	2.1	3.5	25	42	
2006	4.7	4.9	56	59	
2007	7.9	6.2	95	74	
2008	6.6	5.1	59	46	Up to 30 Sep

This graph compares the annual number of new s106 cases received against the annual number of cases closed displayed as a monthly average.

**Annex H –****Graph of total formal notices and other notices served each year from 2003**

	<b>Formal Enforcement Notices</b>	<b>Other Formal Notices</b>
2003	13	12
2004	7	3
2005	23	19
2006	8	5
2007	19	13
2008	7	7

Formal Enforcement Notices includes Enforcement, Breach of Condition and Stop Notices.

Other Formal Notices includes PCNs, s16 Notices, s330 Notices

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**Planning Enforcement - West and City Centre Area since January 2006**

<b>Date of Report</b>	<b>Enforcement Cases</b>			<b>Section 106 Agreements</b>
	<b>Opened</b>	<b>Closed</b>	<b>Outstanding</b>	
Jan 2006	77	91	110	27
April 2006	70	64	114	30
Oct 2006 (2 Quarters)	150	126	135	44
Jan 2007	95	84	117	50
April 2007	76	75	118	45
July 2007	70	47	129	53
Oct 2007	87	60	167	43
Jan 2008	47	66	152	53
April 2008	80	66	171	47
July 2008	69	69	179	43

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**EXECUTIVE SUMMARY**

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'. This topic was progressed in response to the concerns of York residents who live near to take-away outlets and suffer from late night noise, anti-social behaviour and the deterioration in street hygiene which a proportion of premises attract.

The Board has conducted a series of investigative meetings with officers in Planning, Licencing and North Yorkshire Police. The Board believes that this report should support greater public understanding of the legislative framework and the public's role in lodging complaints to the right places in a timely manner. In addition, the Board believes its recommendations will help improve the partnership arrangements (both internal and external) necessary for the Council to address the issues of enforcement in a more efficient manner than has been done previously.

## **Summary of Recommendations**

### **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

Under Section 17 of the Crime & Disorder Act 1998 this information could, and should, be shared with North Yorkshire Police. This would allow Police Officers to assist in the collecting of evidence about late-night activities. The Environment and Sustainability Scrutiny Board would welcome the positive contribution that the success of the IT bid would make to addressing these issues.

### **Recommendation 3**

That activities be coordinated between all relevant City of York Council Departments (including Street Environment, Environmental Protection Unit, Planning Enforcement and Licensing Officers); especially at the point of determining which enforcement regime would be most effective. Working practices need to be agreed and joint training sessions considered where relevant, to avoid duplication or unwitting interference in each other's cases.

### **Recommendation 4**

That the Assistant Director in responsible for the Planning and Enforcement Team be instructed to review risk assessments carried out for all aspects of the officer's duties and to thereafter produce appropriate working practice agreements in consultation with the appropriate Officer In Human Resources.

### **Recommendation 5**

An official vehicle should be available during the day, or close parking provided for the on-call officer's personal vehicle. Council owned transport should be provided if the officer is working a night shift. Both marked and unmarked vehicles should be available, as required; especially for out of hours working.

### **Recommendation 6**

That Planning Enforcement Officers be enabled to process their own prosecutions, that at least one Planning Enforcement Officer to undergo formal Court Training in order to support this.

### **Recommendation 7**

That an investigation should be undertaken to assess which other officers are able to supplement the Planning Enforcement team.

**Recommendation 8**

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. The equipment list below should be taken as a starting point.

Fluorescent tabard	These should be marked to identify the Council and the officer's position, like Street Environment Officers.
Fleece	These should be supplied and marked accordingly.
Laptop	A laptop should be available to the duty officer to ensure access to the data at all times.
Digital camera	Each officer should have a camera.
Safety boots	All officers should be supplied with a pair of safety boots and safety wellingtons.
Attack alarms	Should be provided
Hard hats	Should be provided for use where appropriate
Torch	Should be provided for use where appropriate
Mobile phone	Should be provided for use when appropriate
First Response Kit	Officers should have access to a kit for personal use or in cases where the required level of training has been undertaken wider use as appropriate. This could be kept in the pool cars.
Hazard flashing light	These should be supplied to ensure the safety of officers when parked to remove illegal adverts, etc.
Cars (pool)	Access should be available during the working day. If an Officer is on a night shift they should not be expected to hazard the safety of their personal car, whilst performing duties for the Council.

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## Planning Enforcement Scrutiny Committee Briefing Note

### Stop Notices

This is a measure used in conjunction with an enforcement notice to bring an immediate cessation to an alleged breach of planning control.

There is no right of appeal against a stop notice.

A Stop Notice is issued in conjunction with an Enforcement Notice in order to secure the cessation of a use before the period specified for compliance in the enforcement notice; i.e. before the Enforcement Notice takes effect. In fact a Stop Notice may not be issued once the Enforcement Notice becomes effective.

A Stop Notice may prohibit:-

- a use of land, whether ancillary or incidental to the main use of land
- a particular activity taking place on part of the land
- intermittent or seasonal uses
- However, a Stop Notice may not prevent:-
- the use of any building as a dwellinghouse
- the carrying out of any activity which is not 'operational development' or the deposit of refuse or waste materials, if that activity has been undertaken for more than 4 years prior to the date of the notice.

Failure to comply with a Stop Notice can result in summary conviction and fines of up to £20,000, or an unlimited fine if convicted on indictment. The financial benefits derived from the breach of planning control will also be taken into account.

Stop Notices are used rarely and usually in extreme circumstances. Improper use of a Stop Notice can result in the Council incurring claims for compensation, so they are used only when other measures have, or are likely to, prove unsuccessful in preventing a breach of planning control.

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**List of improvements that could be made**  
**Prepared by the Planning Enforcement Officers**

- 1 Principal Enforcement/Appeals Officer  
Avoid inconsistencies  
Time to deal with Enforcement issues when required
- 2 Delegated Reports Authority  
Why Assistant Director and Councillors
- 3 Special Planning Guidance (Adverts, Illumination, Paint Colours)
- 4 Overall/formation of procedures and written processes  
Written agreed procedures and processes that Officers can refer to as to why letters issued when and also taking on board the tone of the letters relating to adverts, LBC and TCA issued
- 5 Dedicated Admin/Support  
Enable understanding of Enforcement process; time to do the logging as per policy, giving support to the Officers
- 6 Re-instatement of the 1 day lost through budget cuts for one enforcement officer  
Loss of 5% resource
- 7 Laptop, broadband, key fob  
Office facilities on the move
- 8 Process for internal consultees (Conservation,) and also Service Level Agreements (SLAs) for other departments e.g. Legal/Property/EPU
- 9 Career Development/Training/Cover for sickness and leave
- 10 Close by parking (as recommended by the Take-away Scrutiny Committee)

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**Planning Enforcement Information from other Local Authorities**

	<b>Bath</b>	<b>Cambridge</b>	<b>Chester</b>	<b>Norwich</b>
Population	178,000	117,900	120,600	121,600
Number of Enforcement Officers (FTE)		3.0 (including the s106 officer)	2 + 1 Senior Planning Enforcement officer	1.0
Dedicated Enforcement Manager		Yes but also deals with Certificates of lawfulness	Yes Senior enforcement officer	No
Annual cases		Approx 400		200
EO Equipment		Mobile phone, digital camera	Mobile phone, hard hat, rigger boots and fluorescent jacket Each. team has a digital camera, 2m rule and long tape. We use our own cars on lease or mileage. We use our own cars on lease or mileage.	Mobile phone, and access to a pool car with is unmarked (although all 20 odd pool cars are brand new white VW polos
S 106 monitor		Dedicated officer within enforcement	No	No

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**Responses to questions asked by Committee Members****Question 1 - open to any Officer within the Planning Department to respond**

1. Why are enforcement notices put 'on hold' whilst another application is submitted as the enforcement notice is to the previous application?

**Answer**

2. Planning policy guidance and best practice advocates that proceeding to/with formal notices should be a last resort and that every effort should be made to resolve any harmful effect of a breach by negotiation and persuasion, with the person(s) in breach being given the opportunity to re-mediate/regularise the unauthorised development. Cases vary in complexity and severity of harm and so in some instances a notice may still be progressed despite an application being submitted.

**Question 2 – open to any Officer within the Planning Department to respond**

3. Please explain a 'stop notice' and its effects?

**Answer**

4. A briefing note was circulated at the meeting explaining Stop Notices. This is attached at Annex E to this report.

**Question 3 - open to any Officer within the Planning Department to respond**

5. Where an unauthorised development is unacceptable and relocation is not feasible Section 12 of Planning Policy Guidance (PPG18) reads: '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' – What is this 'realistic compliance period?'

**Answer**

6. Officers would be guided, to some extent, by Legal Services regarding this but common sense and reasonableness would always be applicable. In cases involving impact on a business or residential occupancy for example, experience through the appeal process suggests longer periods should be given (notices are often varied by Inspectors to increase the time for compliance).

**Question 4 – to the Planning Enforcement Officers**

7. What improvements would Planning Enforcement Officers like to be made to existing procedures, arrangements, internal management and resources?

**Answer**

8. A list answering this question is attached at Annex F to this report.

**Question 5 - open to any Officer within the Planning Department to respond**

9. Why does City of York Council appear unwilling to use more S215 notices (land in an untidy state)?

**Answer**

10. What is untidy to a community may not be serious enough to warrant a notice being served. Officers advised that in enforcement terms, the team has no authority to write a letter to ask an individual to tidy premises unless a complaint has been made. Due to the workload already being undertaken, it would be unjustified to be writing out to people when the outcome would probably not be for enforcement action.

**Question 6 – to Officers within Legal Services**

11. We haven't had any court action for a long time; is this because matters are resolved before court action is needed or are we reluctant to take this route?

**Answer**

12. Legal Services act on instructions from the Planning Enforcement Officers after they have discussed the issue with the Chair & Vice Chair of Planning Committee and the Assistant Director (Planning & Sustainable Development). Legal Services have had few instructions to take court action the last 2 years, but have acted on any instructions received.