



## Notice of meeting of

### Planning Enforcement Ad Hoc Scrutiny Committee

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

**Date:** Wednesday, 15 April 2009

**Time:** 1.30 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 - 6)

To approve and sign the minutes of the meeting of the Planning Enforcement Ad Hoc Scrutiny Committee held on 4 March 2009.

**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 Tuesday 14 April 2009 at 5.00 pm.

**4. Planning Enforcement Scrutiny - Interim (Pages 7 - 24) Report.**

This Interim Report asks the Committee to address the outstanding issues on the recommendations of the 'Powers of Enforcement – Take-Aways' Review for inclusion in the draft final report and draw conclusions on the impact this review has had on planning enforcement. The Committee is also asked to consider whether they wish to make further recommendations or amend the draft recommendations for inclusion in the draft final report.

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

## **Scrutiny Committees**

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

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

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City of York Council

Committee Minutes

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MEETING	PLANNING ENFORCEMENT AD HOC SCRUTINY COMMITTEE
DATE	4 MARCH 2009
PRESENT	COUNCILLORS HYMAN (CHAIR), DOUGLAS, PIERCE, WAUDBY AND WISEMAN

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## 12. DECLARATIONS OF INTEREST

Members were asked 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.

## 13. MINUTES

RESOLVED: That the minutes of the meeting held on 4 February 2009 be approved as a correct record and be signed by the Chair.

## 14. PUBLIC PARTICIPATION

It was reported that there had been no registrations to speak under the Councils Public Participation Scheme on general issues within the remit of the Sub-Committee

## 15. PLANNING ENFORCEMENT DRAFT FINAL REPORT

Consideration was given to the draft final report of the Planning Enforcement Ad Hoc Scrutiny Committee and the recommendations, which had arisen from the Committee's review.

The Scrutiny Officer highlighted paragraphs 40 to 43 of the draft final report that suggested the option of gathering further information, prior to the Committee making their final recommendations. Members were advised that if they chose to do this, then the draft final report would require changes. Should Members feel that they needed more information, a request for a time extension would need to be submitted to the Scrutiny Management Committee.

Members considered the draft recommendations and suggested some minor amendments to be made to them in terms of wording. These would

be reported back to the Committee when the draft final report was presented to them at their May meeting.

Members agreed that they required the following further information to complete the review:

- A briefing note regarding the pilot scheme currently being run by Building Control
- A briefing note regarding the possible use of the Land Charges Register to assist with planning enforcement cases.
- A briefing note regarding in which circumstances Members could be used as witnesses in planning enforcement cases.

Members also agreed that further clarity was needed regarding the outstanding recommendations from the 'Powers of Enforcement Take Aways' Review and this would be included in the next report to Committee.

RESOLVED: (i) That briefing notes be prepared for the next meeting in relation to the following:

- The Pilot Scheme on Electronic Equipment.<sup>1</sup>
- The circumstances in which members can be used as witnesses in Enforcement cases.
- The use of the Land Charges register.

(ii) That a report be prepared for Scrutiny Management Committee requesting a time extension to this review.<sup>2</sup>

(iii) That the timetable for completing the review be as follows:

15 <sup>th</sup> April 2009 at 13:30	Planning and Legal Officers to provide briefings.
Monday 18th May 2009 at 13.30	To receive a Draft Final Report

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

Action Required

1. Briefings to be prepared for the next meeting of the Planning Enforcement Scrutiny Committee GR  
GR
2. A report requesting a time extension be prepared for inclusion on the agenda for the next Scrutiny Management Committee

Councillor Hyman, Chair

[The meeting started at 1.30 pm and finished at 2.00 pm].

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## Planning Enforcement Ad Hoc Scrutiny Committee

15 April 2009

Report of the Head of Civic, Legal & Democratic Services

### 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 also proposed that the Council's approach to court action was reviewed to investigate concerns that enforcement by City of York Council had 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 was aware that some cases were very complex and needed a lot of time there were still too many minor cases ongoing and as part of the review she suggested exploring possible ways of completing these in a timelier manner.
3. A feasibility and a draft remit were submitted to the 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.
  - (i) To understand the Council's approach in relation to planning enforcement processes including Section 106 Agreements.
  - (ii) To understand the 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 was 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 Planning Committees
  - Area Team Leaders for East Area Planning and West & City Centre Planning Committees.

## **Information Gathered**

- 6. At their last meeting Members of the Committee received a draft final report, incorporating their draft recommendations arising from the review. On consideration of this report Members agreed that they required further information to complete the review and requested information on the following:
  - Briefing note on the possible use of the Land Charges Register to assist with planning enforcement cases.
  - Briefing note on when Members can be used as witnesses in planning enforcement cases
  - Briefing note on the pilot scheme currently being undertaken by Building Control
- 7. The final report had included recommendations requesting that the briefing notes on the use of the Land Charges Register and using Members as witnesses be presented to Scrutiny Management Committee (SMC) on completion of the review. On reflection, Members decided that they would like this information to form part of the review.
- 8. Members of the Committee also requested that the Chair and Scrutiny Officer revisit the recommendations arising from the 'Powers of Enforcement – Take-Aways' Review to establish which of these was still outstanding and what action, if any needed to be taken to ensure that these were fully implemented.
- 9. In light of the above Committee agreed to hold two further meetings (15<sup>th</sup> April 2009 & 18<sup>th</sup> May 2009) and requested a time extension from SMC. This was granted at a meeting on 24<sup>th</sup> March 2009.
- 10. The following paragraphs detail the further information requested.

**First Key Objective**

**i. To understand the Council's approach in relation to planning enforcement processes including Section 106 Agreements.**

11. At previous meetings Members of the Committee had discussed the possibility of using the local Land Charges Register to flag up buildings where there was an enforcement issue. This had raised concerns regarding confidentiality, possible compensation claims and usefulness in the majority of cases. In light of this Members of the Committee requested further information on the topic and this is attached at Annex A to this report.
12. Discussions had also been had regarding the circumstances in which Councillors could be used as witnesses in planning enforcement cases. Legal Services have prepared a briefing note, which gives more detail on this subject, and this is attached at Annex B to this report.
13. At previous meetings officers in Development Control had mentioned a pilot scheme being undertaken by the Building Control Department into the use of various kinds of mobile communication technology (laptops, PDAs, mobile phones etc) to assist with working on site visits. Members of the Committee had asked for an update on the progress of this scheme to gain clarity for a proposed recommendation. The following response had been received from Building Control:

'CYC are still in the process of contractual negotiations with two mobile providers. This is resulting in a delay to the commencement of the pilot scheme due to be undertaken by Building Control. It is intended that the scheme will proceed, and it is now hoped that the pilot will be able to commence sometime between June and September 2009.'

**Issues Arising & Analysis**

14. At their last meeting Members considered some draft recommendations arising from this review. Members may wish to consider making amendments to these now that further information has been presented to them. The draft recommendations, including the amendments suggested at the last meeting, are attached at Annex D 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.**

15. At the meeting of the Committee held on 4<sup>th</sup> March 2009 Members asked the Chair and Scrutiny Officer to revisit the recommendations from the above review in order to clarify which were still outstanding and which had been implemented. The recommendations arising from the review are set out in Annex C to this report; alongside the comments received from Senior Officers in the Planning Department, the Planning Enforcement Officers and the

Environmental Protection Unit where appropriate. The conclusion of Annex C contains the comments from the informal discussion between the Chair and Scrutiny Officer.

### **Issues Arising & Analysis**

16. Having examined the recommendations arising from the 'Powers of Enforcement – Take-Aways' Review the Chair commented that they appear not to have been fully implemented as yet, however the outstanding matters have been incorporated into the draft recommendations of the Planning Enforcement Ad Hoc Scrutiny Review. Until these recommendations have been implemented it is not possible to fully explore the impact that the 'Powers of Enforcement – Take-Aways' Review has had on the planning enforcement service.

### **Corporate Priorities**

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

'Encouraging improvement in everything we do'.

### **Overall Analysis**

18. Information from this meeting will be fed into the draft final report, which will be presented to Members for their comments and amendments at the meeting scheduled for 18th May 2009.

### **Options**

19. Having considered the information contained within this report and associated annexes, Members may decide to:
- (i) Address the outstanding issues on the recommendations of the 'Powers of Enforcement – Take-Aways' Review (contained within Annex C) for inclusion in the draft final report and draw conclusions on the impact this review has had on planning enforcement.
  - (ii) Make further recommendations or amend the draft recommendations contained within Annex D to this report in order that they may be incorporated into the draft final report

### **Implications**

20. **Financial** – There are no known financial implications associated with this report or the recommendations within it.
21. **Human Resources** – There are no known Human Resources implications directly involved with this report and the recommendation within it.
22. **Legal** – There are no known legal implications associated with this report or the recommendations within it. There are, however, some implications

associated with the content of Annexes A and B to this report and these are contained within the documents themselves.

23. There are no known equalities, property, crime & disorder or other implications associated with the recommendations in this report.

### **Risk Management**

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

### **Recommendations**

25. Members are asked to:

- (i) Address the outstanding issues on the recommendations of the 'Powers of Enforcement –Take-Aways' Review (contained within Annex C) for inclusion in the draft final report and draw conclusions on the impact this review has had on planning enforcement.
- (ii) Consider whether they wish to make further recommendations or amend the draft recommendations contained within Annex D to this report in order that they may be incorporated into the draft final report

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

### **Contact Details**

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**Chief Officer Responsible for the report:**

Quentin Baker  
Head of Civic Legal & Democratic Services  
Tel: 01904 551004

**Interim Report  
Approved**



**Date** 03.04.2009

### **Specialist Implications Officer(s)**

**Legal**

Glen McCusker/Martin Blythe  
Senior Solicitor/Senior Assistant Solicitor  
Tel: 01904 551048/551044

**Wards Affected:**

**All**

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

**Background Papers:**

None

**Annexes**

<b>Annex A</b>	Land Register Briefing Note
<b>Annex B</b>	Briefing Note on using Members as Witnesses
<b>Annex C</b>	Update on Recommendations arising from the 'Powers of Enforcement – Take-Aways' Review
<b>Annex D</b>	Draft Recommendations of the Planning Enforcement Ad Hoc Scrutiny Committee

## PLANNING ENFORCEMENT AD HOC SCRUTINY COMMITTEE

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

#### Background

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

#### Legal Context

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

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

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

(i) imposed by a local authority or National Park authority on or after 1st January 1926 (including any prohibition or restriction embodied in any condition attached to a consent, approval or licence granted by a local authority or National Park authority on or after that date), or

(ii) enforceable by a local authority or National Park authority under any covenant or agreement made with them on or after that date, being a prohibition or restriction binding on successive owners of the land affected;.....

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

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

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

### **Analysis**

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

### **Conclusion**

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

## **PLANNING ENFORCEMENT AD HOC SCRUTINY COMMITTEE**

### **Briefing Note: Circumstances in which Members can be used as witnesses in planning enforcement cases.**

#### **General Background**

1. When evidence is being gathered for planning enforcement purposes it is important to bear in mind the quality standards attached to evidence. If evidence does not meet certain standards it may not be admitted. The usual rule is that evidence must be reliable, relevant, truthful and convincing. It may be excluded in proceedings if it is hearsay, opinion, prejudicial, irrelevant, or obtained unlawfully.

#### **Form of witness evidence**

2. Generally, witnesses can only give evidence of facts, which they have personally observed. However, an expert can give evidence of their opinion, provided a court is satisfied that the witness is suitably qualified or experienced to give such an opinion.
3. In planning enforcement cases, evidence of fact will usually be provided by members of the public and Officers and expert evidence will be given by Officers, and/or other expert witnesses.

#### **Gathering evidence**

4. Many matters of planning enforcement begin by virtue of a complaint from a member of the public. Enforcement Officers investigate the complaint and decide what action, if any, to take. If a decision is made to take the matter further, the Enforcement Officer will usually attend the site concerned to witness a possible breach themselves. This means that members of the public are protected from giving evidence and their anonymity is maintained. It also means that the Officer concerned can satisfy themselves that a breach has occurred, and give opinion evidence as well as evidence of fact.

#### **Can Members be used as witnesses?**

5. Members may sometimes receive a complaint from a member of the public about a possible planning breach. They should refer this to the Enforcement Team to investigate. Members may also, on occasions, witness something, which they suspect may amount to a breach of planning law. In this situation they should, again, refer the matter to the Enforcement Team to investigate.
6. In certain situations, the Enforcement Team may wish to take a statement from a Member of what they have witnessed. This might, for example occur when the Enforcement Team have not been able to witness the breach themselves, or in cases where the evidence needs to be corroborated.

### **Implications of Members acting as witnesses**

7. Nevertheless, the primary role of Members is to represent their constituents, not act as professional witnesses for the Council. Nevertheless, Members may on occasions witness a suspected planning breach and provide evidence. This could result in them attending court to give evidence. In such cases, Members should be aware that the Defence are entitled to ask for evidence of bad character, such as previous convictions.
8. Members should at all times observe the general obligations in the Members Code of Conduct and must not, for example, conduct themselves in a manner which could reasonably be regarded as bringing their office into disrepute. A recent example of this involved a Birmingham City Councillor who trespassed on to private land to video what he considered to be a breach of planning law, and was found to have breached the Code of Conduct.
9. Members should also be careful to avoid doing anything which may amount to covert surveillance. Members should not carry out any covert surveillance for the purpose of a specific investigation, which is planned. For example, if a Member planned to watch a late-night takeaway covertly from an adjoining dwelling, this would probably be classified as directed surveillance and would be unlawful under the Regulation of Investigatory Powers Act 2000 (RIPA).
10. Officers of the Enforcement Team can obtain RIPA authority to conduct directed surveillance if it should be necessary.
11. Finally, any Member who is asked to provide witness evidence should not take any part in the decision to prosecute an offender, to avoid a conflict of interest and the allegation of bias.

### **Summary**

12. In the circumstances outlined above, Members can be used as witnesses of fact, but must always be mindful of their role, responsibilities and legal obligations referred to in this note.
13. Under the Code for Prosecutors, Planning Enforcement Officers have the responsibility of ensuring that there is enough evidence to proceed, and consequently the decision on whether to use the evidence of a Member must always be at the discretion of the Officer.

## **Update on Recommendations arising from the ‘Powers of Enforcement – Take-Aways’ Scrutiny Review**

Senior Officer comments and Planning Enforcement Officer comments have been taken from documentation previously submitted to the Committee. Comments from the Environmental Protection Unit (EPU) were received 31<sup>st</sup> March 2009.

### **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 address these issues.**

#### Comments from Senior Officers in Development Control

The Penalty Notice Support bid is the remit of Environmental Regulation.

#### Comments from Planning Enforcement Officers

No comment

#### Comments from EPU

The bid referred to was the Local Performance Service Agreement 2 bid (LPSA2) to provide a weekend nighttime noise enforcement service. This “Noise Patrol” has been in operation since April 2006 and was funded for the 1<sup>st</sup> 2 years from LPSA2. Since April 2006 the Noise Patrol has received nearly 3000 calls, made nearly 1800 visits, served 160 noise abatement notices and prosecuted 23 offenders. The powers for the Noise Patrol to serve fixed penalty notices under the Clean Neighbourhoods and Environment Act 2005 did not become law until October 2008. EPU set up procedures to serve fixed penalty notices for night time noise offences and trialled them, but they were found to be bureaucratic and time consuming and no substitute for our existing powers under the Environmental Protection Act 1990 and the Noise Act 1996.

Although the Noise Patrol deals predominantly with noise complaints, some of these are from licensed premises. Any complaints and actions taken are passed to licensing, trading standards, the police and other appropriate agencies. Breach of licence conditions and planning conditions can also be referred to the Noise Patrol, who will collect evidence for enforcement by the respective teams.

### **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 and 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 address these issues.**

#### Comments from Senior Officers in Development Control

The 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 take aways since 1996. This information is available to other Council departments. Environmental regulation does now have access to UNIFORM, and can check for new take away applications received to enable them to comment. Limited information on planning enforcement cases is also available.

#### Comments from Planning Enforcement Officers

Planning Enforcement does not have read only access to any consultees' databases.

#### Comments from EPU

Work began on an IT system, but was not progressed, effectively being replaced by the response under Recommendation 3 below.

### **Recommendation 3**

**That activities be coordinated between all relevant CYC departments (including Street Environment, EPU, Planning Enforcement Officers 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.**

#### Comments from Senior Officers in Development Control

An enforcement protocol has been formulated and now being implemented. The Licensing Authority, Police, Fire, EPU and Trading Standards meet on a regular basis to discuss problem premises whether licensed or take-aways. Resulting from the 'Powers of Enforcement – Take-Aways' and working with the above agencies conditions are attached to Take Aways' licences – e.g. conditions to reduce litter, noise nuisance or to prevent crime and disorder, for example, insisting on CCTV, pager systems, employing door staff. Working relationships with other directorates is informal. Officers speak to each other, share information and apportion work dependent on their statutory function.

Comments from Planning Enforcement Officers

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

Comments from EPU

Licensing enforcement meetings now take place every 2 months and include licensing officers, EPU, trading standards, planning enforcement, the fire service and the Gambling Commission. This involves intelligence sharing, planning joint visits and enforcement activities, setting priorities and determining appropriate courses of action inc. lead officers for each case.

**Recommendation 4**

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

Comments from Senior Officers in Development Control

Risk assessments for lone 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 Officers use unmarked vehicles.

Comments from Planning Enforcement Officers

No out of hours risk assessment has been carried out in respect of out of hours working – the working practices that the Enforcement Officers should carry out e.g. ringing a senior officer when we finish work is highly unpopular with senior officers.

**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.**

Comments from Senior Officers in Development Control

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.

Comments from Planning Enforcement Officers

Official vehicles are not always available during the day and officers' personal vehicles have no close parking. 48 hours notice is required 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.**

Comments from Senior Officers in Development Control

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.

Comments from Planning Enforcement Officers

No Planning Enforcement Officer has received formal court training and there is no agreed process for prosecutions.

**Recommendation 7**

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

Comments from Senior Officers in Development Control

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

Comments from Planning Enforcement Officers

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

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:

<b>Fluorescent tabard</b>	<b>These should be marked to identify the council officer's position, like Street Environment Officers.</b>
<b>Fleece</b>	<b>These should be supplied and marked accordingly.</b>
<b>Laptop</b>	<b>A laptop should be available to the duty officer to ensure access to data at all times.</b>
<b>Digital camera</b>	<b>Each officer should have a camera.</b>
<b>Safety Boots</b>	<b>All officers should be supplied with a pair of safety boots and safety wellingtons.</b>
<b>Attack Alarms</b>	<b>Should be provided.</b>
<b>Hard Hats</b>	<b>Should be provided for use where appropriate.</b>
<b>Torch</b>	<b>Should be provided for use where appropriate.</b>
<b>Mobile Phone</b>	<b>Should be provided for use where appropriate.</b>
<b>Fist Response Kit</b>	<b>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 pool cars.</b>
<b>Hazard Flashing Light</b>	<b>These should be supplied to ensure the safety of officers when parked to remove illegal adverts etc.</b>
<b>Cars (pool)</b>	<b>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.</b>

### Comments from Senior Officers in Development Control

The equipment listed is available to Development Control and Enforcement Officers and can be purchased where replacement or additional equipment is required.

### Comments from Planning Enforcement Officers

No laptop has been supplied.

## Conclusions

In summary, senior officers, felt that the impact and implications of the 'Powers of Enforcement – Take-Aways' Review had been largely felt elsewhere within CYC rather than within the Planning Enforcement

Department. The Planning Enforcement Officers felt that the only impact on them had been the fact that they were now provided with a digital camera each and wet weather gear.

On revisiting the recommendations of the 'Powers of Enforcement – Take-Aways' Review the Chair and Scrutiny Officer present the following findings to Members of the Committee. Clarity is required on various outstanding issues and these are outlined below:

Recommendation 1	Comments from EPU indicate that this has been implemented
Recommendation 2	EPU's comments suggest that IT began work on this but it was not progressed. It has been effectively surpassed by the initiative laid out in the comments under Recommendation 3
Recommendation 3	Comments suggest that this has been implemented but the Chair and Scrutiny Officer felt that further clarification was needed from the Planning Enforcement Officers as to whether they attended these meetings
Recommendation 4	Comments from senior officers in Development Control indicate that this has been implemented. Clarity needs to be sought as to how this information was filtered down to the Planning Enforcement Officers
Recommendation 5	Comments from senior officers indicate that this has been implemented; pool cars can be booked and permits have been issued to Planning Enforcement Officers for most council owned car parks. Clarity needs to be sought on any problems the Planning Enforcement Officers might be experiencing with this.
Recommendation 6	Clarity needs to be sought on this as during the course of this review mention was made that one of the Planning Enforcement Officers had now received training on this
Recommendation 7	Committee are making recommendation in the Planning Enforcement Ad Hoc Scrutiny Review to address this
Recommendation 8	Mainly implemented but there is also a recommendation arising from the Planning Enforcement Ad Hoc Scrutiny Review to look at the most suitable mobile communication technology for Planning Enforcement Officers

## **Draft Recommendations Arising from the Planning Enforcement Ad Hoc Scrutiny Review**

1. That the Head of Development Control:

- (i) Prioritise new complaints/cases
- (ii) Reconsider the response time to letters sent in relation to breaches of planning regulations with a view to shortening timescales
- (iii) Introduce a weekly alert detailing new planning enforcement cases, split by Ward

Reason: To ensure that all cases are dealt with in a timely manner and that Ward Members are kept fully informed of new enforcement cases in their Wards.

2. That once trigger points are reached and payment has not been received, Section 106 Agreements are promptly passed to Legal Services for action.

Reason: To ensure City of York Council can pursue non-payment of Section 106 Agreements in a timely manner.

3. That Section 106 Agreements be placed on the planning portal.

Reason: To ensure transparency and accessibility for Members of the Public.

4. That Planning Enforcement Officers be issued with appropriate mobile communication technology (e.g. laptop, mobile phone, PDA, laser rule) subject to the outcome of the pilot scheme currently being undertaken by Building Control and to funding being available.

Reason: To allow Planning Enforcement Officers to easily gather and record information when on site visits.

5. That Planning Enforcement Officers be issued with high visibility jackets marked with 'CYC Planning Enforcement Officer' and these should be worn at appropriate times.

Reason: To enable Planning Enforcement Officers to be easily identified.

6. That the Head of Development Control make available other people to help with planning enforcement when they become available.

Reason: To reduce the number of outstanding cases.

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