

Notice of meeting of

Planning Enforcement Ad Hoc Scrutiny Committee

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

Date: Monday, 18 May 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 15 April 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 17 May 2009 at 5.00 pm.

4. Planning Enforcement - Draft Final Report. (Pages 7 - 104)

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

Democracy Officer:

Name: Laura Bootland

Contact details:

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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
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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

MEETING	PLANNING ENFORCEMENT AD HOC SCRUTINY COMMITTEE
DATE	15 APRIL 2009
PRESENT	COUNCILLORS HYMAN (CHAIR), PIERCE, WAUDBY AND WISEMAN
APOLOGIES	COUNCILLOR DOUGLAS

16. DECLARATIONS OF INTEREST**17. MINUTES**

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

18. PUBLIC PARTICIPATION

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

19. PLANNING ENFORCEMENT SCRUTINY - INTERIM REPORT.

Members of the Committee were presented with an interim report which detailed further information on both the first and fifth key objectives of the review.

First Key Objective

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

Members were presented with 2 briefing papers, as requested at a previous meeting. The first of these concerned the use of the Local Land Charges Register and the second, the circumstances in which Councillors could be used as witnesses in planning enforcement cases.

They also received an update on the status of the pilot scheme regarding the use of mobile technology due to be undertaken by the Building Control department.

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.

The Scrutiny Officer updated that both she and the Chair of the Committee had looked at the recommendations arising from the 'Powers of Enforcement Take-Aways' review to establish whether they had been fully implemented. Annex C of the interim report detailed their findings.

The findings of the Chair and Scrutiny Officer had given rise to various issues that had required further clarification from the Planning Enforcement Team. A representative of the Planning Enforcement Team made the following comments regarding Annex C of the interim report:

- Recommendation 3 Planning Enforcement Officers confirmed that one Planning Enforcement Officer attended the joint meetings.
- Recommendation 4 The Planning Enforcement Officers confirmed that no one had been out with them at night to assess the level of risk.
- Recommendation 5 The nearest car park that Planning Enforcement Officers could use was the one in Marygate and this could be time consuming and difficult when dealing with urgent or emergency call outs as it took a while to walk to and from it. They also needed 48 hours notice to obtain a pool car for out of hours working.
- Recommendation 6 Existing Planning Enforcement Officers had not received any court training (e.g. preparation of files, display of evidence, what to do in court). One Planning Enforcement Officer was an ex-policeman and therefore had more knowledge than the other Planning Enforcement Officers regarding this.

Members then considered the recommendations arising from the 'Powers of Enforcement - Take-Aways' review as outlined in Annex C to the Interim Report alongside the information set out above. The following comments were raised:

Recommendation 5

Members queried why 48 hours notice had to be given for Enforcement Officers to have use of a pool car and why Bootham and St. Leonard's Place car parks could not be used. Planning Officers advised that the rules were the same for everyone requiring a pool car and that the journey on foot to Marygate car park was acceptable at 5 minutes, It was suggested that it would be useful if the notice period required to obtain a pool car

could be reduced to 24 hours and requested that this be looked at as part of Development Control's internal review.

Recommendation 6

Members were advised that the current Planning Enforcement Officers had not received legal training on how to compile evidence files or undertaken any court training. Planning Enforcement Officers were keen to learn about the processes needed to prepare a court case and a representative from legal services indicated that they were supportive of this.

Recommendations 7 and 8

Members were not satisfied that either of these recommendations had been fully implemented and they would, therefore, be addressed within the recommendations arising from the current review.

Draft Recommendations

Consideration was given to the suggested recommendations attached at Annex D to the Interim.

Members queried whether an additional recommendation was required in relation to how the money collected from Section 106 Agreements was spent. Officers advised a system was in place but Members thought that this needed to be reassessed.

In relation to draft recommendation 4, Members suggested first response kits and training be added to the list of requirements.

Members commented that the outcome of the internal Planning Enforcement review, should be communicated to all staff in development control.

RESOLVED: (i) That Members comments on the outstanding issues on the recommendations of the 'Powers of Enforcement Take-Aways' Review be included in the draft final report.¹

(ii) That the additional recommendation and amendments to the existing draft recommendations be incorporated into the draft final report.²

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

Action Required

1. That Members comments on the recommendations of the 'Powers of Enforcement Take-Aways' review be included in the Draft Final Report. GR GR
2. To add the additional recommendation and make amendments to the draft recommendations to be incorporated into the Draft Final Report.

Councillor Hyman, Chair

[The meeting started at 1.30 pm and finished at 2.50 pm].



Planning Enforcement Ad Hoc Scrutiny Committee

18th May 2009

Planning Enforcement – Draft Final 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 study 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.

Key Objectives

- 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. During the course of this review at both an informal session and formal meetings Members of the Committee gathered the information contained in the following paragraphs.

First, Second and Third Key Objectives

- (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**
- 7. At a formal meeting on 7th October 2008 Members received a presentation from the Head of Development Control entitled 'Planning Enforcement at York'. This gave Members an overview of planning enforcement at both a local and national level, in particular the regulations that apply and the processes involved in tackling breaches of planning control. A copy of this presentation is attached at Annex A to this report. A definition of Section 106 Agreements is attached at Annex B to this report.
 - 8. The Committee received a flow chart entitled 'Planning Enforcement – The Choice of Routes', which illustrated the course planning enforcement took dependent on the kind of case being investigated. This is attached at Annex C to this report.
 - 9. Members of the Committee also received information on the number of planning enforcement cases opened, closed and outstanding for the period between January 2006 and July 2008. Information was also provided regarding the number of Section 106 Agreements dealt with. This is detailed in the tables below.

Table 1 - Planning Enforcement Cases - West and City Centre Area since January 2006

Date of Report	Enforcement Cases			Section 106 Agreements
	Opened	Closed	Outstanding	
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

Table 2 - Planning Enforcement Cases – East Area since January 2006

Date of Report	Enforcement Cases			Section 106 Agreements
	Opened	Closed	Outstanding	
Jan 2006	68	42	167	Not known
April 2006	64	44	159	30
Oct 2006 (2 Quarters)	164	122	Not known	83
Jan 2007	78	81	173	41
April 2007	89	84	175	48
July 2007	92	63	199	44
Oct 2007	94	74	212	40
Jan 2008	51	55	208	58
April 2008	76	69	219	62
July 2008	116	78	258	65

10. At the formal meeting on 7th October 2008 it was suggested that a Member of the Committee shadow one of the Planning Enforcement Officers for the day to gain a valuable insight into their work. Councillor Douglas volunteered for this and produced the following summary of her experience:

'I shadowed a Planning Enforcement Officer on Wednesday 26th November 2008. In the absence of a pool car, I was driven to 6 sites that were in need of enforcement on planning issues. Some issues had been 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? We also viewed satellite dishes on 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.'

11. To clarify their understanding of the processes surrounding planning enforcement the Committee asked various questions during the course of the review. Both questions and Officer responses are set out in Annex D to this report.
12. At an informal meeting on 5th November 2008 the Head of Development Control provided the Committee with information on the third key objective (to examine why so many cases are outstanding). He informed Members that the following factors influenced the timescales for dealing with cases:
 - Process and Regulatory Procedure, and;
 - Workload issues which are split into the following categories:
 - i. Increase in number of financial obligations
 - ii. Reduced officer capacity
 - iii. Managerial reporting arrangements
 - iv. Filing systems
 - v. Responses from consultees
 - vi. Input from legal services
13. Further information regarding the above is attached at Annex E to this report.
14. At the same meeting Members of the Committee asked for information regarding the planning enforcement departments at other similar Local Authorities for comparison with that at York. This is attached at Annex F to this report.

Issues Arising & Analysis

15. After due consideration of the information received on key objectives (i), (ii) and (iii) Members raised various points as detailed in the paragraphs below.

Section 106 Agreements

16. Section 106 payments often took a long time to come through for various reasons i.e. because a trigger point for payment had not been reached, because of slow responses from some developers or because of difficulties finding out who the land owner was. The original intention was for Planning Enforcement Officers to ensure that financial obligations were paid upon reaching the appropriate trigger point. With the introduction of the Draft Local

Plan in April 2005 Development Control now used planning conditions to secure financial contributions to the Council. This had increased the workload of the Planning Enforcement Officers as the number of financial obligation cases had doubled. The most widely used condition incorporated two trigger points and this needed extra Officer time in terms of processing and ensuring compliance with the condition, especially as a trigger point could indicate that payment would be due once a certain number of units had been occupied.

17. After further discussion the Committee agreed that non-payment of Section 106 obligations needed to be addressed as early as possible and Legal Services involved at an earlier stage than at present. Members acknowledged that investigations were already ongoing regarding the possibility of reducing the number of trigger points from two to one. There was a database detailing Section 106 payments within the City Strategy directorate but a cross directorate database would be preferable to allow the viewing of all payments received. It was also suggested, that in the interest of transparency, Section 106 Agreements be available to view through the Council's Planning Portal.
18. Discussions were also had regarding the importance of spending the Section 106 contributions on appropriate schemes. A process of accountability and transparency should be developed to ensure that this happened and a satisfactory record kept of all monies received and all schemes implemented.

Timings

19. Discussions were had regarding the possibility of introducing more rigid timings for the different stages of the enforcement process. The current process followed was set out in the Planning Enforcement Service guidelines available on the Council's website (website address listed in the background papers section of this report). This detailed the priorities for investigation and when a response/action to a complaint could be expected from a Planning Enforcement Officer. There were currently no timescales for completing a case as each had to be taken on its own merits. Members acknowledged that some cases were more difficult and time consuming than others but indicated that there were times when both developers and individuals 'played the system' causing unnecessary delays to the process.
20. Further deliberation found that at busy times management had to prioritise their time and due to statutory requirements and timescales processing of planning applications and planning appeals had to take priority over most planning enforcement work.

Minor Cases

21. The Committee raised concerns that some of the minor cases reported were often those that were the most important to local residents. It appeared that if the owner of the land could not be traced easily or a response was not received then the case could fade into the background and not be cleared up in a timely way. There was, therefore, a need to investigate whether appropriate timescales for clearing up cases could be introduced, especially in relation to the minor and less complicated cases.

Land Charges Register

22. Discussions were had regarding the possibility of using the Local Land Charges Register to flag up buildings where there was an enforcement issue. This initially raised concerns regarding confidentiality, possible compensation claims and usefulness in the majority of cases. The Head of Development Control, in conjunction with legal services prepared a briefing note on this to give Members further insight into the viability of using the Land Charges Register in this way. This is attached at Annex G to this report.
23. Discussions of the above showed that, used judiciously; this could be a useful tool. Whilst a solicitor undertaking searches for a client purchasing a property would be made aware of outstanding enforcement notices on a particular property they would not be made aware that a premises had not been constructed to plan. A purchaser may then, in good faith, buy the property without being aware that there was a problem.

Court Action

24. Discussions were had regarding the likeliness of City of York Council bringing 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 some developers in relation to breaches of planning conditions.

Office Administration

25. The Committee were keen to know whether the system presently used for filing would change with the introduction of the new Document Management System. Officers had put in a growth bid to allow them to have documents scanned to the new system and the outcome of this bid was still pending as part of the budget process. If successful it would mean that more documentation would be instantly on hand to the Planning Enforcement Officers and less time would be needed to request/wait for retrieval of archived documents from storage.

Reporting to Area Sub-Committees

26. At present the Planning Area Sub-Committees received quarterly reports regarding both open and recently closed planning enforcement cases. Members of the Committee agreed that these should still be received although further notification to Ward Members via e-mail may prove useful.

Members as Witnesses

27. The Committee expressed interest in knowing more about whether Members could be used as witnesses in planning enforcement cases. Currently Members can report breaches of planning regulations to the Planning Enforcement Officers who then decide whether to take a witness statement from them. Members asked for further information detailing if, and in what circumstances, Elected Members could be used as witnesses in all aspects of planning enforcement. A briefing note prepared by legal services is attached

at Annex H to this report. It was acknowledged that this would not, in any way, release the Planning Enforcement Officers from their crucial duty to investigate and/or personally witness any complaint.

28. Members discussed the above briefing note and agreed that an Enforcement Notice shouldn't be issued without a Planning Enforcement Officer witnessing the breach. They did, however, feel that Members could be used as witnesses provided common sense prevailed as to when it was useful/beneficial and when not.

Other

29. Further discussions also raised the following issues
- The need for the Parish Councils to have more feedback and be made more aware of Planning Enforcement issues in their areas
 - Whether Planning Enforcement Officers should have more legal training.
 - A pilot scheme was due to be undertaken in the Building Control Department which would look into the use of various kinds of mobile communication technology (laptops, PDA's, mobile phones etc) to assist with working on site visits. The pilot was expected to commence sometime between June and September 2009. Members thought that the outcome of the pilot scheme could possibly be beneficial to the Planning Enforcement Officers in terms of provision of appropriate equipment.
 - Wearing of High Visibility Jackets and whether these should be marked or unmarked.
 - Some Members of the Committee believed that planning enforcement, in general, was kept out of the public eye and was relatively low profile. Discussions ensued regarding making planning enforcement cases public but it was realised that this could be problematic in terms of keeping a complainant's identity confidential and complying with the Data Protection Act.

Fourth Key Objective

(iv) To review the Council's processes and procedures to improve the handling of planning enforcement cases

30. In relation to the fourth key objective the Planning Department intended to hold a series of workshops with staff to review the service. The intention of this was to map out the current processes and procedures and consideration would be given to improving working practices and resource allocation. Further information regarding this is attached at Annex I to this report. Staff within the services will undertake the review, and the process will necessitate involvement from colleagues within the Council upon which the Enforcement Service in particular relies. An outline for this review is attached at Annex H to this report and a summary of the discussions had so far attached at Annex I.

Issues Arising & Analysis

31. Members welcomed the work being undertaken via the internal review and noted that recommendations made within the internal review may give rise to service improvements and changes. Members agreed that both the scrutiny review and the internal review could run concurrently but did not feel that the internal review need cause any delay to the scrutiny process.
32. The Committee requested that, as part of the internal review, the managerial situation be investigated to look at the possibility of having one manager for the whole team rather than two. This would give a more consistent approach to advice given on planning enforcement matters. They also asked that the results of the review be reported to all members of staff within the department so that everyone was aware of the outcome.

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.

33. 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 Officers when doing a similar job, the support Enforcement Officers received during out of hours working and problems in processing complaints.
34. Councillor Moore gave evidence regarding the above review, and suggested that as the Planning Enforcement Team was small it needed assistance, support and appropriate equipment. He suggested that the Planning Enforcement Ad Hoc Scrutiny Committee revisit the recommendations the 'Powers of Enforcement – Take-Aways' Committee had made in order to be satisfied that they had been implemented and a difference to the service had been made.
35. The Executive Summary of the review and the recommendations arising from it are attached at Annex J to this report. All bar two of the recommendations were signed off by the Scrutiny Management Committee on 26 November 2007. The outstanding recommendations being 1 and 2 as set out in the aforementioned Annex J.
36. In light of the previous three paragraphs Members of the Committee asked the Chair and Scrutiny Officer to re-visit the recommendations of the 'Powers of Enforcement – Take-Aways' Review to see whether they had been implemented. Their findings are attached at Annex M to this report. This includes an update (provided by Environmental Protection Unit), on recommendations 1 and 2, which had been outstanding.

Issues Arising & Analysis

37. The findings of the Chair and Scrutiny Officer gave rise to various issues that required further clarity from the Planning Enforcement Officers. These are detailed below and should be seen as an addition to Annex M to this report:

Recommendation 3 Planning Enforcement Officers confirmed that one Planning Enforcement Officer attended the joint meetings.

Recommendation 4 The Planning Enforcement Officers confirmed that no one had been out with them at night to assess the level of risk

Recommendation 5 The nearest car park that Planning Enforcement Officers could use was the one in Marygate and this could be time consuming and difficult when dealing with urgent or emergency call outs as it took a while to walk to and from it. They also needed to give 48 hours notice to obtain a pool car for out of hours working.

Recommendation 6 Existing Planning Enforcement Officers had not received any court training (e.g. preparation of files, display of evidence, what to do in court). One Planning Enforcement Officer was an ex-policeman and therefore had more knowledge than the other Planning Enforcement Officers regarding this.

38. Discussions were had regarding the information provided in Annex M and the Planning Enforcement Officers' clarification on the outstanding points. Members agreed that recommendations 1, 2 and 3 were now fully implemented. On weighing up all the information they had been given regarding recommendation 4 they were also satisfied that this had been satisfactorily implemented.
39. In terms of recommendation 5 the Committee asked further questions of the Planning Enforcement Officer in attendance at the meeting on 15th April 2009. Clarity was sought on how long it took to walk from the office to Marygate car park and this was approximately 5 to 10 minutes. The representative of the Planning Enforcement Team indicated that this could be a problem if they needed to go out several times in a day or to an urgent call out. In terms of visiting take-away premises specifically, they did not need to do this on a regular basis and therefore the Committee felt that it was not unreasonable for Planning Enforcement Officers to continue to use the car park in Marygate.
40. Further discussions ensued regarding the 48-hour notice period needed for a pool car for out of hours working. The main reason for this length of notice period was because other officers took the pool cars home at night and they would need to make alternative transport arrangements should the pool car be needed elsewhere. It was suggested that this 48-hour notice period could be

looked at as part of the internal Review being undertaken in Development Control. In summary Members of the Committee agreed that this recommendation had been satisfactorily signed off in the context of the 'Powers of Enforcement – Take-Aways' Review.

41. Recommendation 6 raised issues around court training for Planning Enforcement Officers and Members of the Committee agreed that it would be hard to give thorough training at this stage because no prosecutions had taken place. Planning Enforcement Officers were keen to learn about the processes needed to prepare a court case and a representative from legal services indicated that they were supportive of this.
42. Both recommendations 7 and 8 were not fully implemented but had been addressed again in the recommendations arising from this review. They therefore agreed that in the context of the 'Powers of Enforcement – Take-Aways' Review they could be signed off.

Planning Enforcement in Relation to Premises Licensed under the Licensing Act 2003

43. Consideration was given to various concerns expressed outside of Planning Enforcement Ad Hoc Scrutiny Committee formal meetings about a perceived lack of planning enforcement in relation to premises licensed under the 2003 Licensing Act. The concerns mainly focused on various fast food take-aways where there was a conflict between planning restrictions and licensing restrictions (for example a premises may be licensed until 2am under the Licensing Act 2003 but be obliged to close at 11pm under planning conditions). At some Licensing Hearings premises licence owners had conceded to working outside their permitted planning hours.
44. In an e-mail circulated to the Committee at their formal meeting on 4th February 2009 Councillor Merrett, Ward Councillor for Micklegate, raised concerns that there was an ongoing problem in relation to enforcement of planning conditions attached to some fast food take-aways in his Ward. He suggested that Development Control set up arrangements to periodically check up late night/closing time adherence by late night take-away establishments and to respond within a set timescale to complaints about breaches of planning conditions. He also suggested that Development Control be involved in the Nightsafe Task Group and an integrated approach to managing the late night economy area be taken that was both compatible with reasonable street condition and residential amenity.
45. Discussions between both Officers and the Committee on the above concerns indicated that the Planning Enforcement Team only received 1 or 2 complaints per year regarding late night take-aways working outside their permitted hours and these were always investigated. Anomalies between planning and licensing hours were beginning to be regularised now as licensees applied to bring both their planning and licensing operating hours in line with each other. Officers said that with the current workload and the resources available it would be difficult to offer a proactive rather than a reactive service.

All key objectives

46. The four Planning Enforcement Officers prepared a report, which was presented to Members at an informal session on 5th November 2008. This is attached at Annex N to this report. The aim of the report was to provide Members of the Committee with information regarding all planning enforcement processes and the five key objectives of this review from the viewpoint of the Planning Enforcement Team.

Issues Arising & Analysis

47. The report prepared by the Planning Enforcement Officers offered the Committee a valuable insight into some of the problems they faced on a day-to-day basis. It is hoped that many of these would be addressed either during the course of the internal review or within the recommendations attached to this report.

Corporate Priorities

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

‘Encouraging improvement in everything we do’.

Options

49. Having considered the information contained within this report and associated annexes, Members may decide to:
 - i. Amend and/or agree the content of and the recommendations within this report.

Implications

50. **Financial** – There are no known financial implications associated with this report or the recommendations within it. It is possible that recommendations made during the course of the Planning Enforcement Internal Review could lead to some.
51. **Human Resources** – There are no Human Resources implications directly involved within this report and the recommendations within it other than the temporary and informal reallocation of staff to assist the Planning Enforcement Team in quiet moments. It is, however, possible that recommendations arising from the Planning Enforcement Internal Review could lead to some.
52. **Legal** – There are no known legal implications associated with this report or the recommendations within it.
53. There are no known Equalities, Property, Crime & Disorder or other implications associated with the recommendations within this report.

Risk Management

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

Recommendations

55. In light of the above report Members are asked to agree the following recommendations:

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 areas.

2. That, once trigger points are reached and payment has not been received, Section 106 Agreements are promptly passed to Legal 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 in the process

4. That the expenditure of Section 106 monies be made entirely in accordance with the Council's Financial Regulations.

Reason: To ensure that Section 106 monies are spent appropriately.

5. That Planning Enforcement Officers be issued with:

- (i) Appropriate mobile communication technology (i.e. laptop, mobile phone, PDA, laser rule) subject to the outcome of the pilot scheme to be undertaken by Building Control and to funding being available.
- (ii) A First Response Kit and any appropriate training to use this.

Reason: To ensure the safety of Planning Enforcement Officers and to allow them to easily gather and record information when on site visits.

6. 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.

7. That the Head of Development Control make available other people to help with planning enforcement when possible.

Reason: To reduce the number of outstanding cases.

8. That the results of the Development Control Internal Review be fully communicated to all departmental staff.

Reason: To ensure that all members of the department are fully aware of the outcome of the Internal Review.

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**Final Draft Report
Approved**



Date 23rd April 2009

Specialist Implications Officers

Legal

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

Wards Affected:

All

For further information please contact the author of the report

Background Papers:

- **Minutes of the meetings of Scrutiny Management Committee on both 26.11.2007 and 28.07.2008 can be found on the Council website at:**
<http://democracy.york.gov.uk/ieListMeetings.asp?CId=144&Year=2009>
- **PPG18 (Planning Policy Guidance 18: Enforcing Planning Control**
<http://www.communities.gov.uk/publications/planningandbuilding/planningpolicyguidance18>
- **Planning Enforcement in York**
http://www.york.gov.uk/environment/Planning/Planning_enforcement/

Annexes

Annex A	Presentation – ‘Planning Enforcement at York’
Annex B	Definition of Section 106 Agreements
Annex C	Planning Enforcement – Choice of Routes
Annex D	Questions and Answers Arising Through the Course of the Review
Annex E	Further Information on Key Objective (iii)
Annex F	Information Comparing York and Other Local Authorities
Annex G	Briefing Note Regarding Land Charges Register
Annex H	Briefing Note on when Elected Members can be used as Witnesses
Annex I	Further Information on Key Objective (iv)
Annex J	Outline of Internal Review
Annex K	Outline of Discussions Regarding Internal Review
Annex L	Executive Summary ‘Powers of Enforcement – Take-Aways’ Scrutiny Review
Annex M	Update on the Recommendations arising from the ‘Powers of Enforcement – Take-Aways’ Scrutiny Review
Annex N	Report prepared by Planning Enforcement Officers

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 investigations in 2007 including monitoring S106 agreement payments
- 17 Enforcement Notices, 9 Planning Contravention Notices, 1 Stop Notice served in 2007
- Timescales comparable to other Local Planning Authorities (LPA)
- No track record of Court action in York - negotiation favoured by LPA and Central Government.
- 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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Section 106 Agreements

Definition

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

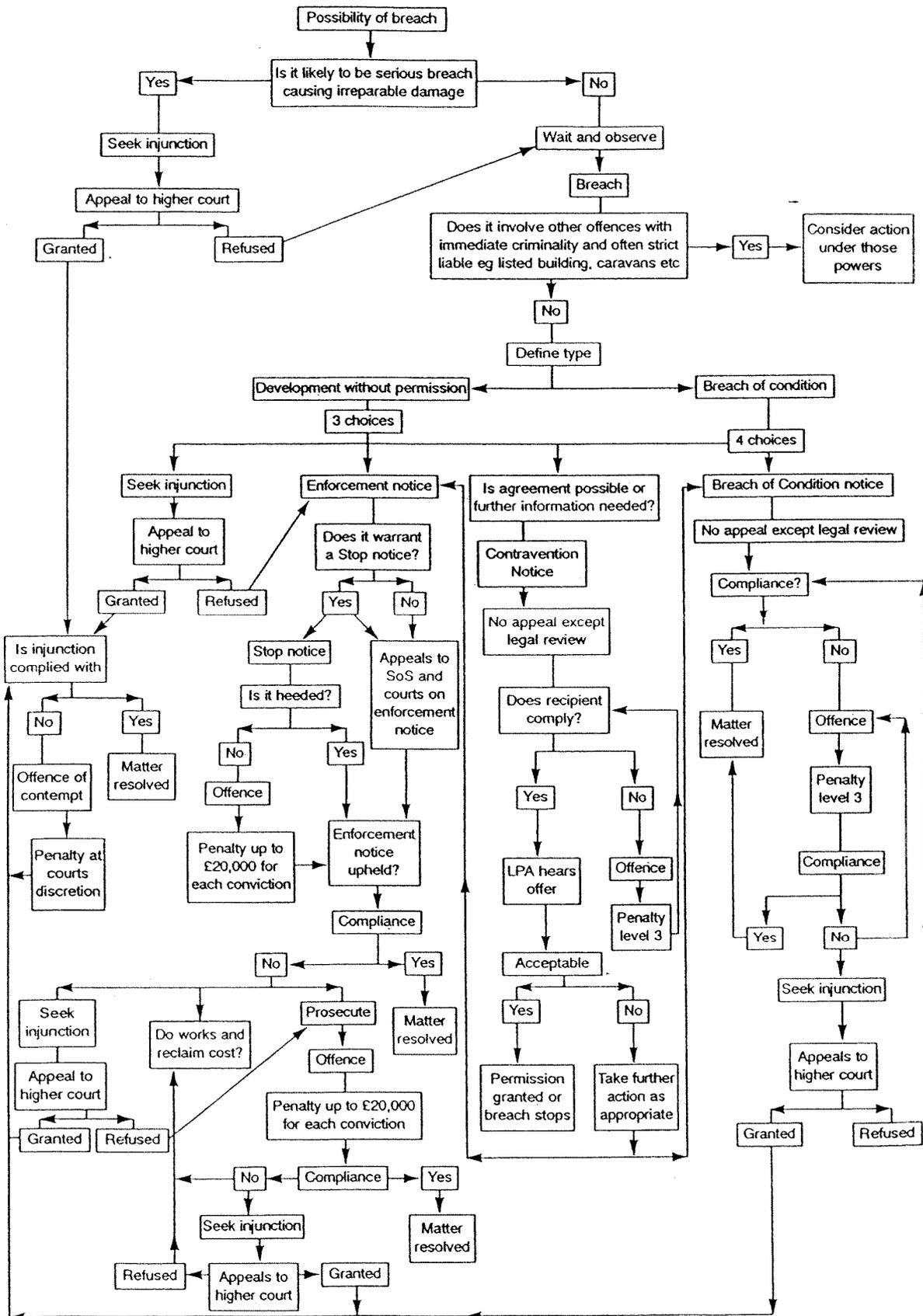
Such agreements can cover almost any relevant issue and can include sums of money. Possible examples of S106 agreements could be:

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

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

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Figure 4: Enforcement - The Choice of Routes



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Questions submitted by Members and responses from the relevant Officers

Question 1

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

Answer

This all depends on the seriousness of the breach and the harm that has been done. It is a judgement call but there could be more clarity regarding this.

Question 2

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

Answer

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 dwelling house
- 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.

Question 3

3. 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

Officers within the planning department would be guided by legal services regarding this but common sense and reasonability would always be at the forefront.

Question 4

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

Answer

- i. Principal Enforcement/Appeals Officer
 - Avoid inconsistencies
 - Time to deal with Enforcement issues when required
- ii. Delegated Reports Authority
 - Why Assistant Director and Councillors
- iii. Special Planning Guidance (Adverts, Illumination, Paint Colours)
- iv. 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
- v. Dedicated Admin/Support
 - Enable understanding of Enforcement processes; time to do the logging as per policy, giving support to the Officers
- vi. Re-instatement of the 1 day lost through budget cuts for one enforcement officer

- Loss of 5% resource
- vii. Laptop, broadband, key fob
- Office facilities on the move
- viii. Process for internal consultees (Conservation,) and also Service Level Agreements for other departments e.g. Legal/Property/EPU
- ix. Career Development/Training/Cover for sickness and leave
- x. Close by parking (as recommended by the Take-away Scrutiny Committee)

Question 5

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

Answer

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. 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

6. 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

Legal services rely on instructions from the Planning Enforcement Officers in conjunction with the Chair & Vice-Chair of the Planning Committee and the Assistant Director (Planning & Sustainable Development). [In the past the Local Authority has tried for court action but the Planning Enforcement Officers did not have the training and knowledge required and the then solicitor would not entertain this.]

Question 7

7. 'The Highways Department frequently do not comment on planning applications when they are initially made, if this has happened, what input do they then have and what support do they give to the planning enforcement team should any enforcement be necessary?'

Answer

Highway Network Management (HNM) provides comments on all applications they are consulted upon (often around 100 per month). The intention is to consult HNM with all applications, which have a material highway, traffic or transport issue.

In terms of enforcement issues, officers from the team do work with planning enforcement officers should the need arise.

Question 8

8. How many complaints were received by City of York Council regarding the investigation of planning enforcement cases in the past 3 years (including the number of Ombudsman cases)?

Answer

From January 2006 there appear to have been 14 complaints regarding the investigation of planning enforcement cases, with 2 Ombudsman cases (both closed).

Planning Enforcement Ad Hoc Scrutiny Committee

Briefing Note: 5th November 2008

Prepared by the Assistant Director (Planning and Sustainability) and Head of Development Control on Key Objective (iii)

Key Objective (iii)

(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 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 day to day working of enforcement officers has not been analysed as 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 a S106 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 a 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. 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 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.

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	Bath	Cambridge	Chester	Norwich	YORK
Population	178,000	117,900	120,600	121,600	191,800
Number of Enforcement Officers (FTE)	4.0 + 1.0 Senior Enf Officer	3.0 (including the s106 officer)	2 + 1 Senior Planning Enforcement Officer	1.0	3.8
Dedicated Enforcement Manager	Yes Team Leader for Enforcement and Major applications	Yes but also deals with Certificates of lawfulness	Yes Senior enforcement officer	No	No
Annual cases	Approx 875	Approx 400	Average 563	200	687
EO Equipment	Mobile phone, laser measuring tool (from Building Control),	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.	Mobile phone, and access to a pool car which is unmarked (although all pool cars are brand new white VW polos)	Mobile phone, hard hat, boots, coat, fleece, torch, attack alarm, unmarked pool car, digital camera
S 106 monitor	No	Dedicated officer within enforcement	No	No	Yes (financial contributions) 70 cases logged in 2008

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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.

Planning Enforcement Ad Hoc Scrutiny Committee

Briefing Note: 5th November 2008

Prepared by the Assistant Director (Planning and Sustainability) and Head of Development Control on Key Objective (iv)

Key Objective (iv)

(iv) To review the Council's processes and procedures to improve the handling of planning enforcement cases.

1. 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 (15th December 2008). The intention is therefore to collect information and hold a series of workshops with staff to review 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.
2. 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.
3. 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.
4. 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.

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Development Control Review; **Enforcement and Support Services**

Vision

- A more clearly defined effective and efficient Planning Enforcement service with an improved public and Member perception.
- The provision of cost effective and efficient support services to Development Control (DC) and Enforcement.

Background and Reasons For Review

The focus of the 2006 restructure was in DC (which introduced DC Assistant posts, Assistant Team Leader posts Admin Assistant posts and increased training budget for the section), was to maintain improvements in performance and create a career ladder to establish a grow your own culture and retention of planning staff. The intention was for the restructure to be reviewed.

Government published a series of recommendations on Planning Enforcement November 2006. The Section needs to be ready to implement the requirements stemming from these recommendations.

A Council Scrutiny Panel review was commenced in October 2008 to understand the Council's approach in relation to planning enforcement processes, court action and Section 106 Agreements, and to look at ways of improving the processes and procedures to improve the handling of cases. The Panel will issue recommendations for changes to the Enforcement service once it has concluded its review (March 2009).

The 2006 restructure created 3 new support posts for the electronic scanning and indexing of planning applications and to deal with personal searches. Whilst the number of DC case workers was increased as part of that review, the level of support to cover the increased application and appeal work as well as enforcement work was not reviewed. The national changes to validation, condition discharging and appeals procedures have also increased the complexity of the support services workload.

The scanning process has experienced issues of staff retention, and inefficiencies caused by the 'add-on' status of the scanning service. The supervision and management of support posts within the area teams and of the current scanning posts is not clearly defined

A review is proposed to consider how these issues can be addressed and how new processes can be best integrated into the workload of the support staff to provide more efficient ways of working.

Objectives

- To define the optimum level of enforcement and support services that can be achieved within the resources allocated

- To provide a clear set of guidelines to work within, with necessary tools available (documentation/authorisation and physical equipment)
- To ensure clearly defined and appropriate management of the Enforcement and Support Services
- To improve the perception of the services amongst staff, Members and the public
- To provide flexibility of technical support by ensuring a training regime is embedded into the operation of Support Services

Scope

The review will focus largely on the services themselves and the processes and allocation of resources within the Section. Staff within the services will undertake the review, and the process will necessitate involvement from colleagues within the Council upon which the Enforcement Service in particular relies.

Provisional Timetable

Tasks	Start Date	Done By
Initial Meeting		19.12.08
Identify Current Processes	22.12.08	16.1.09
Process Review Workshops	19.1.09	23.1.09
The Way Forward	2.1.09	13.2.09
Round up meeting		16.2.09
Report published		28.2.09
Start changes	9.03.09	
Track/measure benefits	1.06.09	

Planning Enforcement Internal Review
Summary of findings based on discussions with Enforcement Officers

This is a summary of the findings based on discussions held with the enforcement officers involved in our review, and does not include any issues identified by others e.g. line managers etc as yet.

They have expressed concern that the review is by no means complete and it has not reached an in-depth level as yet, such that Members should be made aware of this, if the intention is to use the feedback to help inform their consideration of recommendations.

Issues raised by Enforcement as affecting performance and the delivery of the enforcement service:-

- Comments and Issues emerging from Enforcement Review:
Enforcement staff's comments:-
- Dispersal of staff within St Leonard's. The Enforcement Officers (EOs) are in different rooms of the building, and the east team EOs do not sit with their Team Leader. This leads to inconsistencies in terms of approaches and procedure, and there are some differences of opinion as to the better process to follow. Inconsistencies in Management decisions and approaches to enforcement have also been raised as an issue.
- Shortage of procedure notes for enforcement processes, particularly in relation to formal action (which is becoming more relevant).
- Administrative support varies, again partly due to dispersal and also due to changeovers in support staff, the lack of full time employees in these posts and different approaches to dealing with enforcement tasks, and pressure to perform other duties and priorities. A lack of coordination of administrative support or attention to Enforcement support requirements
- Team leaders have not had the time to allocate sufficient resource to supporting and managing the enforcement officers, due to other Development Control pressures.
- On site, the inability to refer to information stored on the system can inhibit urgent action required. e.g. to require a cessation of works to a listed building, need to be sure no permission exists for the works.
- Training in appropriate areas has not always been available, e.g. PACE interviews

- The current Scheme of Delegation for enforcement can lead to delays in the authorisation of action e.g. need for Chair, Vice Chair and Assistant Director's consideration and signatures for each Notice
- History of lack of prosecutions leading to service being held in lower regard by developers, and less inclination to comply with for example, conditions of approval.
- Difficulties with obtaining views from Directorate and inter-Directorate consultees, due to their lack of availability or low priority given in their work programmes to contributing to planning enforcement, resulting in a perceived lack of cooperation e.g. in relation to specialist area such as conservation or landscape tree advice
- Concerns over the enforceability of conditions used to secure financial contributions, say for example open space payments

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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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 31st 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 1st 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:

Fluorescent tabard	These should be marked to identify the council 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 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 where 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 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.

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

**Report of the Planning Enforcement Officers
5th 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 straightforward 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**

Planning Enforcement Officers (Mandy Swithenbank, Alan Kendall, Andy Blain, Hilary Shepherd)

Dept Name: City Strategy

Tel Nos. 551376/551324/551314/551647

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 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. Polices. 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
York
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="text"/>

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.

ENFCRECIPI5.7.3.1C Interested Party Details

Address Type

IP Type

Name

Address

Comments

Contact Types

Click onto Complainant tab

Category

Date Received

Name

To Remain Anonymous?

U.P.R.N.

Address

Date Acknowledged

Contact Types

Actual Response Time (days)

Actual Resolution (days)

Notes

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 Complainant 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 field containing 'Joe Bloggs'.
- Address: A text field containing 'Marsh Manor', '346 Strensall Road', 'York', and 'YO32 9SW'.
- Comments: An empty text area.
- 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 two columns: 'Name' and 'Interest'. The table contains three rows of data:

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

Each row has a chevron button (>>) to the right of the Interest field. 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 3rd 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.

2nd 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 2nd 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

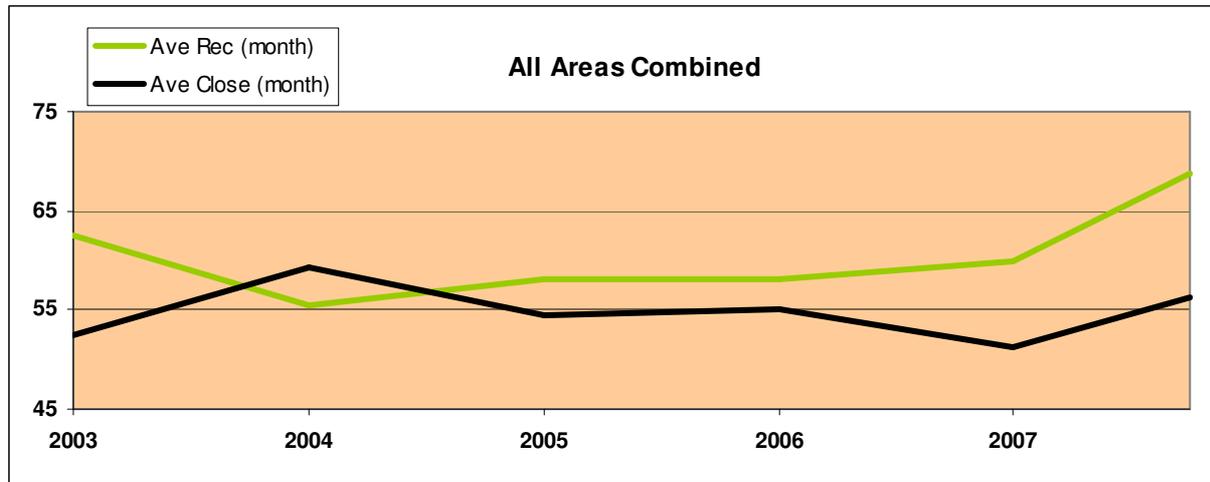
Store and F6 to Print Menu

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.

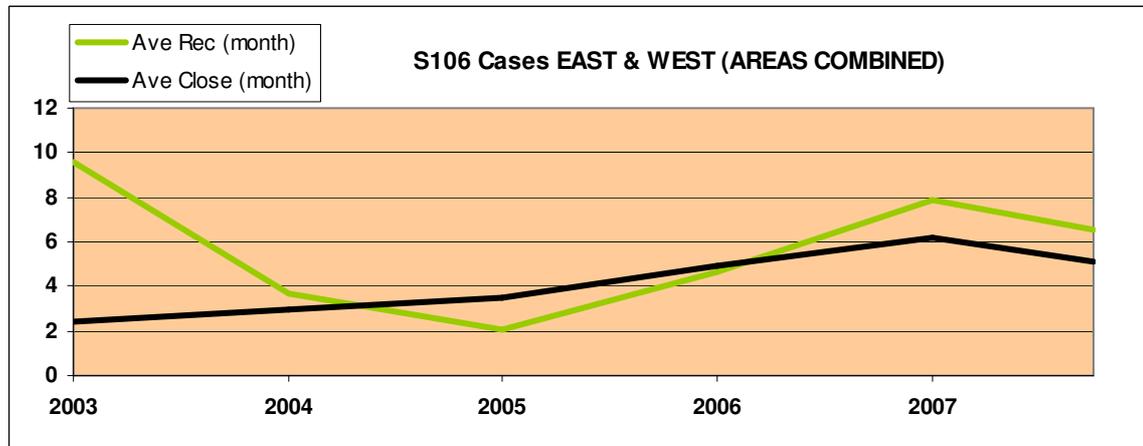
Once the ATL has confirmed that the investigation can be closed, advise complainants and owners (if relevant) placing copies of letters or notes of telephone call if applicable on the file.

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**

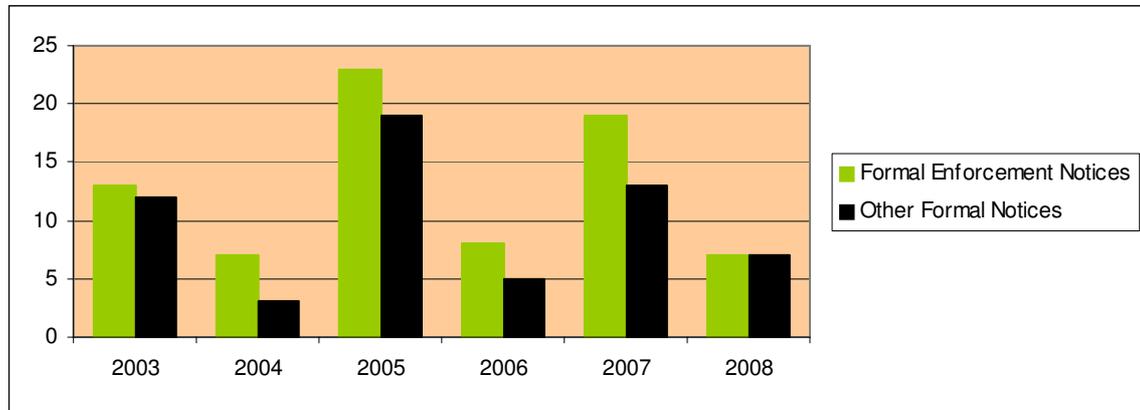
	EAST & WEST (AREAS COMBINED)				
	Ave Rec (month)	Ave Close (month)	Rec (year)	Closed (year)	
2003	62.5	52.4	750	629	
2004	55.4	59.3	665	711	
2005	58.1	54.4	697	653	
2006	58.0	55.0	696	660	
2007	60.0	51.2	720	614	
2008	68.7	56.2	618	506	Up to 30 Sep

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**

	Formal Enforcement Notices	Other Formal Notices
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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