

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 dwellinghouse
- The carrying out of any activity which is not 'operational development' or the deposit of refuse or waste materials, if that activity has been undertaken for more than 4 years prior to the date of the notice.

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

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

are likely to, prove unsuccessful in preventing a breach of planning control.

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 then 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 officer 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).