

**WARDS: ALL**

**AGENDA ITEM NO.**

**DUDLEY METROPOLITAN BOROUGH COUNCIL**

**DEVELOPMENT CONTROL COMMITTEE - 6<sup>TH</sup> JUNE 2005**

**REPORT OF THE DIRECTOR OF THE URBAN ENVIRONMENT**

**ENFORCEMENT SERVICE**

**1.0 PURPOSE**

- 1.1 To inform Committee of the work undertaken by the planning enforcement team over the period April 2004 – March 2005.

**2.0 BACKGROUND**

- 2.1 The role of the planning enforcement team is to regulate planning issues within the Borough of Dudley. This will involve an investigation into alleged breaches of the Town and Country Planning Act of 1990 and the Town and Country Planning (Control of Advertisement) Regulations of 1992. Wherever possible it is advised by Planning Policy Guidance Note.18 'Enforcing Planning Control' that any enforcement action undertaken shall be reasonable and proportionate to the breach.
- 2.2 Only as a last resort in circumstances and where it is deemed absolutely necessary should formal enforcement action be instigated. Formal enforcement action is considered to be the service of an enforcement notice and/or the instigation of prosecution proceedings.

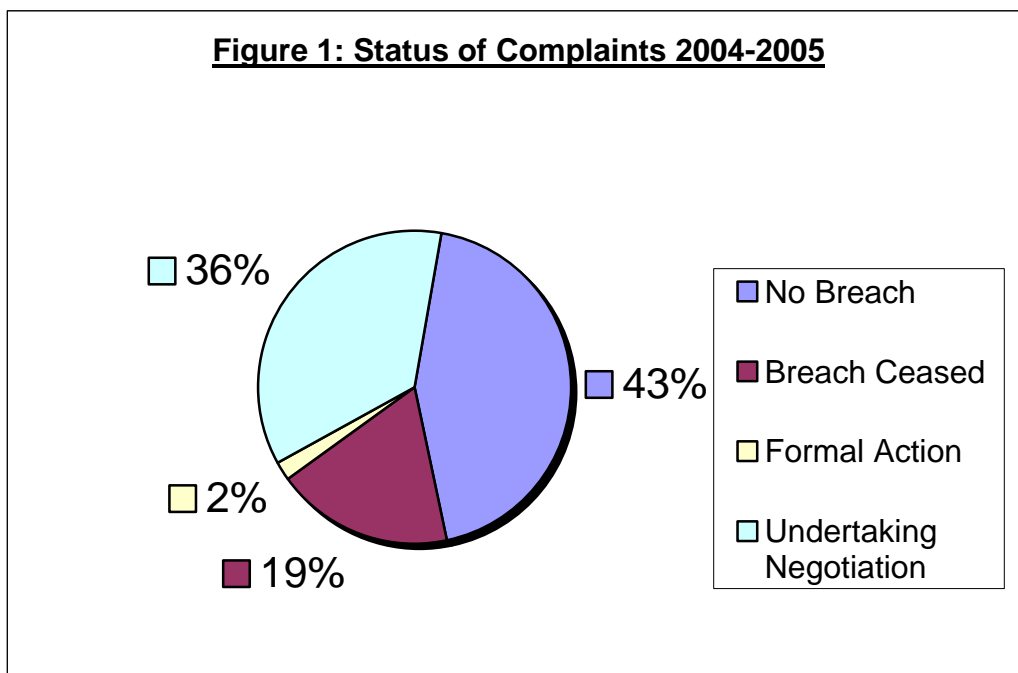
2.3 In the period between 1<sup>st</sup> April 2004 and 31<sup>st</sup> March 2005 the enforcement team received requests for services which resulted in 426 cases regarding planning issues being investigated. This number has increased from 305 in the period of 1<sup>st</sup> April 2003 to 31<sup>st</sup> March 2004. This is a total increase of 29%. The breakdown of these cases is as follows:

<b>STAGES</b> <i>MONTHS</i>	<b>YET TO BE INVESTIGATED</b>	<b>ONGOING INVESTIGATION / NEGOTIATION</b>	<b>FORMAL ACTION TAKEN</b>	<b>CASE CLOSED</b>	<b>TOTAL</b>
APRIL 2004	0	3	1	16	20
MAY 2004	0	3	0	22	25
JUNE 2004	0	6	2	21	29
JULY 2004	0	5	1	28	34
AUGUST 2004	1	11	0	21	33
SEPTEMBER 2004	0	7	0	28	35
OCTOBER 2004	1	11	1	27	40
NOVEMBER 2004	0	16	1	22	39
DECEMBER 2004	2	13	0	19	34
JANUARY 2005	0	13	0	23	37
FEBRUARY 2005	14	16	0	21	51
MARCH 2005	10	18	0	22	50
<b>TOTAL</b>	<b>28</b>	<b>122</b>	<b>6</b>	<b>270</b>	<b>426</b>
<b>398</b>					

*This is accurate as of 30<sup>th</sup> April 2005.*

2.4 Out of the 426 cases which have or are being investigated, 270 of these cases have been resolved and subsequently closed. Of the 270 cases which have been closed, 149 of these were found not to be breaches of planning control. This would still however have involved an investigation which would include a site visit, and check of planning history as a minimum. Therefore nearly 50% of cases are found to have no basis in terms of a breach.

2.5 The pie chart below shows how each of the 398 cases that have been investigated are progressing in percentage terms. It should be noted that 19% of cases have been resolved through negotiation, sometimes involving the instigation of formal action. 2% of cases received in the period are currently the subject of formal enforcement action. This means that an enforcement notice has been authorised, and may have been served and be awaiting compliance. In 36% of the cases, a breach is found to have occurred and officers are negotiating a resolution. This negotiation is carried out in line with the national guidance outlined in paragraphs 2.1-2.3 of this report. This often means that time is being given for the breach to be rectified without the necessity to formalise the action.



2.6 Circular 10/97 'Enforcing Planning Control' states that:

*'The power (in the amended section 172 of the Town and Country Planning Act 1990 ("the 1990 Act")) to issue an enforcement notice is discretionary. A notice requires remedial steps to be taken within a specified time-limit. It should only be used where the LPA are satisfied that there has been a breach of planning control and it is expedient to issue a notice, having regard to the provisions of the development plan and to any other material considerations.'*

2.7 11 enforcement notices have been served during the period in question. These are identified in the table below. One of these notices has resulted in a prosecution due to non-compliance. Upon the expiry of the compliance dates of these notices further prosecutions may be necessary to achieve compliance with the requirements of the notice.

SITE ADDRESS	TYPE OF NOTICE	BREACH	DATE SERVED	RESULT
55A, 56 & 57 MALT MILL LANE, HALESOWEN	ENFORCEMENT	CHANGE OF USE	30/04/04	COMPLIANCE RESULTING IN THE WITHDRAWAL OF THE NOTICE
71 CAMPBELL STREET, BRIERLEY HILL	ENFORCEMENT	STORAGE OF CONTAINER	30/04/04	PROSECUTION FOR NON-COMPLIANCE
FLOORS-2-GO, VINE LANE, HALESOWEN	ENFORCEMENT	CHANGE OF USE AND CLADDING	15/05/04	APPEAL LODGED AND DISMISSED, AWAITING COMPLIANCE
61 CROMWELL DRIVE, DUDLEY	ENFORCEMENT	RETAINING WALLS	19/05/04	AWAITING COMPLIANCE
HIGH OAK, PENNETT	ENFORCEMENT	CHANGE OF USE	24/05/04	PLANNING PERMISSION GRANTED AND NOTICE WITHDRAWN
7 BUCKINGHAM GROVE, KINGSWINFORD	ENFORCEMENT	FENCING	24/05/04	COMPLIANCE WITH NOTICE 20/07/04
13 ROBERT STREET, LOWER GORNAL	ENFORCEMENT	STORAGE OF LORRY	23/06/04	APPEAL SUBMITTED AND AWAITING COMPLIANCE
12 THE PADDOCK, COSELEY	ENFORCEMENT	UNAUTHORISED ROOF	12/11/04	APPEAL SUBMITTED AGAINST REFUSAL OF PLANNING PERMISSION
AJs, 180 HIGH STREET, LYE	BREACH OF CONDITION	UNAUTHORISED OPENING HOURS	07/02/05	DEVELOPMENT CONTROL COMMITTEE TO DETERMINE COURSE OF ACTION
87 BOWER LANE, QUARRY BANK	ENFORCEMENT	BUSINESS USE	10/03/05	COMPLIANCE ACHIEVED
7 BEDCOTE PLACE, STOURBRIDGE	ENFORCEMENT	ENGINEERING OPERATION	21/04/05	AWAITING COMPLIANCE

2.8 Enforcement notices are subject to appeal. Of those mentioned above four appeals were submitted. Two of these were subsequently withdrawn, one was dealt with by written representations and dismissed and the other was the subject of a public inquiry. This appeal was also dismissed.

- 2.9 In addition to the requests for service received regarding complaints during the period between April 2004 and March 2005, a number of outstanding issues from before this period continue to be worked upon. During the past 12 months three prosecutions were undertaken. Each of these was successful, the results are shown below:

SITE ADDRESS	BREACH	DATE	RESULT	PENALTY
BROMSGROVE ROAD, HALESOWEN	ADVERTISEMENT HOARDINGS	21/12/04	GUILTY	£2000 FINE AND £150 COSTS
87 BOWER LANE, QUARRY BANK	EXTENSIONS AND ROLLER SHUTTER DOOR	10/03/05	GUILTY	£320 FINE AND £240 COSTS
71 CAMPBELL STREET, BRIERLEY HILL	STORAGE OF CONTAINER	28/04/05	GUILTY	£1000 FINE AND £240 COSTS

- 2.10 Over this period there has been a lack of resources with one of the posts being vacant for a significant period of time due to recruitment difficulties. This situation has now been rectified and it is anticipated that an improved performance will be achieved which will include a number of pro-active projects.

### New Work Areas

- 2.11 From the 1<sup>st</sup> June 2005 Part 8 of the Anti-social Behaviour Act 2003 comes into affect. This legislation deals with the issues of high hedges. The provision of this function will have implications for service provision. Government guidance on the implementation of the relevant regulations was only available mid May 2005, as a consequence detailed monitoring of this new work area and its implications on the service will need to be carried out on an ongoing basis.

## **3.0 PROPOSAL**

- 3.1 It is proposed that Committee considers the statistics, the implications for the future of the planning enforcement service, and notes the report.

## **4.0 FINANCE**

- 4.1 There are no direct financial consequences arising from this report, however the increase in demands on the service will be considered as part of the annual budget process. All existing processes will be reviewed to identify any potential for improving efficiencies within the service. In addition the new work arising from the introduction on 1<sup>st</sup> June 2005 of Part 8 of the Anti-social Behaviour Act 2003 will be monitored to assess the level of resources required to fulfill this new area of work.

4.2 Costs may be awarded against Local Planning Authorities in public inquiry and hearing cases if in the opinion of an Inspector an authority has acted unreasonably in the service of an enforcement notice. During the past year this situation has not occurred.

## 5.0 LAW

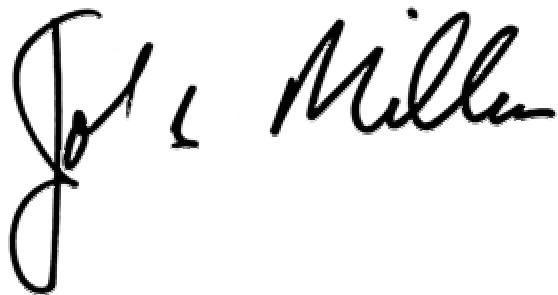
5.1 Sections 174, 175, 176 and 177 of the Town and Country Planning Act 1990 contain provisions relating to appeals to the Secretary of State against Enforcement Notices.

## 6.0 EQUAL OPPORTUNITIES

6.1 The proposals take into account the Council's Equal Opportunities Policy.

## 7.0 RECOMMENDATION

7.1 That the proposals set out in paragraphs 3.1 of this report be approved.

A handwritten signature in black ink, appearing to read 'John B. Millar'. The signature is written in a cursive, flowing style with a large initial 'J'.

**Director - Directorate of the Urban Environment - John B. Millar**

**Contact Officer:** Mr. C. Mellor – Ext. 4015