

AGENDA ITEM NO. 7

DEVELOPMENT CONTROL COMMITTEE

JOINT REPORT OF THE DIRECTOR OF LAW AND PROPERTY AND THE DIRECTOR OF THE URBAN ENVIRONMENT

ENFORCEMENT ACTION

PURPOSE OF REPORT

1. To consider whether enforcement action should be authorised in respect of the case(s) referred to in the Appendix to this report.

BACKGROUND

2. Section 172(1) of the Town and Country Planning Act 1990, provides that, where it appears to a Local Planning Authority that there has been a breach of planning control then the Authority may issue an Enforcement Notice requiring the breach to be remedied. However, before making this decision, the Authority must consider that enforcement action is expedient having regard to the provisions of the development plan and to any other material consideration.
3. A breach of planning control is as follows:
 - (a) Where development has been carried out without the grant of planning permission or;
 - (b) If any condition or limitation subject to which planning permission was granted has not been complied with
 - (c) A material change of use of land has taken place.
4. For certain types of breach of planning control an Enforcement Notice only be issued within four years from the date of the breach. The four year rule relates to:
 - (a) The carrying out without planning permission of building, engineering, mining or other operations in, on over or under land.
 - (b) Change of use to use as a dwelling house.
5. In the case of any other breach of planning control no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.
6. Under Section 187A of the Town and Country Planning Act 1990, the Council may issue a breach of condition notice against which there is no right of appeal. Failure to comply with the notice results in a summary offence. This power should only be exercised where the planning condition is clear and precise. There are two statutory defences to a prosecution namely:
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- (a) The defendant took all reasonable steps to secure compliance with the condition.
 - (b) The defendant no longer has control of the land to which the enforcement notice relates.
7. The Enforcement Notice must be served on the owner and occupiers of the land and any person having an interest in the land which, in the opinion of the Authority, will be materially affected by the Notice. In addition, the notice must be served at least 28 days before the date on which it comes into effect.

The notice must:

- (a) Specify the breach of planning control
 - (b) The steps required to remedy the breach or any steps which are to be taken either to make the development comply with the planning permission previously granted or remove or alleviate any injury to amenity caused by the development.
 - (c) Specify the period for compliance.
 - (d) The reasons why the Authority consider it expedient to issue an Enforcement Notice.
8. Any person served with an Enforcement Notice other than a breach of condition notice may appeal against it to the Secretary of State for the Environment at any time before the Notice comes into effect. Pending the outcome of any such appeal the Enforcement Notice will be of no effect.
9. Circular 10197, Planning Policy Guidance 18 from the Department of the Environment, Transport and the Regions makes it clear that enforcement action should only be taken when it is clearly justified on planning grounds and there is no suitable alternative means of remedying a clear breach of planning control. In other words, an Enforce Notice should only be issued as a last resort. If the Authority consider it unlikely that they would grant planning permission for a development they should warn the developer or his agent that they may be compelled to issue an Enforcement Notice unless the breach of planning control is remedied.

FINANCE

10. There are no direct financial consequences arising from this report although the Committee may wish to bear in mind that, on any subsequent appeal to the Secretary of State for the Environment, an award of costs may be made against the Council if it is found that Enforcement Action was unreasonable, vexatious or frivolous.

LAW

11. The relevant statutory provisions and Planning Policy Guidance from the Department of the Environment, Transport and Regions have been referred to in paragraph 2,6 and 9 of this report.

EQUALITY IMPACT

12. The proposals take into account the Council's Equality and Diversity Policy.

RECOMMENDATION

13. It is recommended that enforcement action should be authorised in respect of the case(s) referred to in the Appendix to this report.

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DIRECTOR OF LAW AND PROPERTY

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DIRECTOR OF THE URBAN ENVIRONMENT

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