

PLANNING ENFORCEMENT**1 SUMMARY**

- 1.1.** The Association of Essex Councils has requested District Councils to support a motion to the Local Government Association Conference that will strengthen local authorities' powers in respect of Planning Enforcement Action.

2 INTRODUCTION

- 2.1.** Castle Point Borough Council has been experiencing a number of problems with developers breaching local planning conditions. The Council is of the view that the current enforcement regulations are too much in favour of the developer. In order to remedy this, a proposal has been put forward for a change in regulations.
- 2.2.** The issue was raised at a meeting of the Association of Essex Councils on 13 April. The proposal put forward by Castle Point is attached as Appendix 1 of this report.

3 THE WAY FORWARD

- 3.1.** The Association of Essex Councils supported the views of Castle Point Borough Council with one small amendment at paragraph 3.2.2. of the proposal

- 3.2.** The final sentence of paragraph 3.2.2. is amended to read:-

“A fine levied on the basis of a daily rate, the starting date being the date of failure to comply with the enforcement notice could dissuade continuing breaches of control.”

- 3.3.** It was agreed that the Local Government Association be asked to take the proposal forward. It was also considered appropriate to try to have the issue debated at this year's conference. It is therefore to be submitted as a motion.
- 3.4.** In order to emphasise the importance of the matter, all Essex Districts are requested to pass a motion of support for the item.

4 ENVIRONMENTAL IMPLICATIONS

It is sometimes harmful to the environment when certain activities take place without the benefit of planning permission

Improving the Speed and Efficiency of the Enforcement Process**Issues Report****1.0 Introduction**

- 1.1 At a recent meeting of the Town Planning Committee, Members of Castle Point Borough Council expressed their concern at the length of time which enforcement action takes. The slow speed of the process was considered to be a particular problem where on-going breaches of planning control affected the amenity of adjoining residents or businesses.
- 1.2 Members considered that the AEC should be requested to consider asking the Local Government Association to support a review of Enforcement powers to improve it's speed and effectiveness.
- 1.3 This report suggests a number of measures to secure such improvements. The proposals in this paper are intended to improve the enforcement service by increasing efficiency and *reducing the cost and time taken to conclude enforcement procedures.*
- 1.4 In proposing these measures it is recognised that it is vital to maintain a system which is fair and open and that all parties have the opportunity to put their case, resulting in quality decisions which are legally sound.

2.0 The Speed and Efficiency of the Enforcement Process

- 2.1 Examination of the Enforcement Policy and practice of Castle Point Borough Council has revealed that the majority of complaints and breaches of control are dealt with very quickly following an initial visit by the Enforcement Officer. Very few complaints generate a need for extensive or protracted investigation and the service of formal Enforcement Notices. The threat of service is usually sufficient to persuade individuals to remedy any breach of control.
- 2.2 However in a limited number of cases, and particularly in those cases where 'offenders' appeal against Enforcement Notices, unauthorised uses may continue on site for extended periods to the detriment of the character and amenity of the area and adjoining residents or businesses. It is in these cases where it is considered that action is required to improve the efficiency of the service to enable speedier resolution.

3.0 Proposed Improvements to the Service**Revisions to the Stop Notice Procedure**

- 3.1.1 The enforcement procedure is characterised by a wealth of opportunity for delay, and for those adversely affected by unauthorised development or activity, appears to be biased towards those persons engaged in unauthorised activity. The inability of the Planning Authority to take immediate and effective action against obvious breaches of planning control damages the credibility of the system as perceived by those adversely affected and can be a source of great frustration to the public and Planning Authorities alike.
- 3.1.2 In order to redress the apparent imbalance it is considered that stronger and simpler measures than those which currently exist should be introduced which would enable the Planning Authority to achieve immediate results.
- 3.1.3 It is considered that the current Stop Notice procedures are too complex and time consuming. Stop Notices cannot be served until an Enforcement Notice is served, thus providing the opportunity for unauthorised activity to continue until the appropriate authority and service of Notice, can be achieved. It is suggested that a simpler system which would allow the Authority to require the immediate cessation of the unauthorised activity or development could be introduced.

3.2 The Appeals Process

- 3.2.1 An area where it is believed that significant improvements to the speed of the system can be achieved is the appeals procedure. That improvements are required is recognised by the Government in its recent paper on Improving Enforcement Appeal Procedures. The Council considers that adherence to the procedures set out in the November 1999 paper will reduce delay and thus lead to speedier conclusions. The Council would therefore support these provisions in principle.
- 3.2.2 It has been noted that following appeals where the Notice has been upheld. Inspectors often extend the periods for compliance requested by the Planning Authority. It is considered that the practice of extending periods for compliance should be reviewed, and that the Inspectorate should be encouraged to limit the periods for compliance as far as possible in order to ensure the removal/cessation of unauthorised activity as soon as possible.

3.3 Imposition of Financial Penalties

- 3.2.1 At the present time the ability to impose fines on individuals found guilty of a contravention of planning control is limited to the Courts. Such fines are unlimited and must have regard to any financial benefit accrued or likely to be accrued as a result of the unauthorised activity but they can only be imposed by way of a prosecution through the Courts in respect of non-compliance with an Enforcement Notice. They cannot therefore have an impact on the unauthorised activity for some considerable period after the breach has occurred.
- 3.2.2 It is suggested that greater prominence should be given to these fines and that any fines imposed fully and fairly reflect the profitability of the offending activity. Experience has shown that in the past the Courts have tended to limit fines to relatively low levels, thus failing to provide the appropriate disincentive for unauthorised activity. A fine levied on the basis of a daily rate, with a start date of the date of the service of the upheld enforcement notice could dissuade continuing breaches of control.
- 3.2.3 In levying any fine, the Court is currently placed under the obligation of having to consider the financial circumstances of the defendant. In cases where the continuing unauthorised activities have a significant adverse impact on the amenity of the area, or adjoining residents or businesses, it is not considered that the financial circumstances of the defendant should be considered a significant or overriding factor.
- 3.2.4 The possibility of heavy fines could then provide a significant deterrent.
- 3.2.5 The fact that fines could be imposed merely for the establishment of a breach of control, which under the present system is free from any such penalty, may discourage some individuals from undertaking work or actions without consent.

3.3 The Use of Applications for Lawful Development Use Certificates

- 3.3.1 It is suggested that as an alternative to the service of Enforcement Notices, primary legislation be introduced to require the offender, on the discovery of an identified breach of planning control, to submit an application for a Lawful Development or Lawful Use Certificate. The requirement to make such an application could be served in the same manner as a PCN, within strictly prescribed time scales. Failure to submit such an application within the specified period would then allow the Local Planning Authority to prosecute the offender for non-compliance with the requirement.
- 3.3.2 On submission of the required Lawful Use/Development application the Local Planning Authority could deal with it in the normal manner. In the event of the Certificate being refused the applicant would retain the right of appeal to the Secretary of State.
- 3.3.3 It is considered that reliance on a system dependant on the submission of a lawful development/use certificate application would serve to remove some of the confusion and delay which can exist in the determination of the existence of a breach of control at an early stage, and would place the Planning Authority in a strong position to resolve matters quickly.

Recommendation

1. That the AEC be requested to seek the support of the Local Government Association to review enforcement powers through the introduction of the following measures:-
 - (i) A review of the practice of the Inspectorate to extend periods for compliance with enforcement notices and the encouragement of the Planning Inspectorate to limit the periods of compliance as far as possible.
 - (ii) The introduction of fines based on a daily rate for each day of the continuing offence, starting on the date of the service of notice.
 - (iii) That in levying fines, consideration of the financial circumstances of the offender not be considered an overriding or significant consideration.
 - (iv) That a new scale of fines be introduced, imposed by the Inspectorate, linked to the presence of a breach of control, in addition to the current system of fines imposed for non-compliance with an Enforcement Notice.
 - (v) That primary legislation be introduced which creates a requirement for offenders to submit an application for a Lawful Use/Development Certificate in respect of all identified breaches of control.

Footnote 1: This report has not been presented to the Town Planning Committee of Castle Point Borough Council.

Footnote 2: Legislation on Human Rights may have some implications for some of the recommendations made in this report.

5 LEGAL IMPLICATIONS

This would strengthen the Council's position in respect of enforcement.

6 RECOMMENDATION

It is proposed that the Extraordinary Council **RESOLVES**

To support the Association of Essex Councils in seeking to place a motion at the Local Government Association Conference in order to achieve :-

- (1) A review of the practice of the Inspectorate to extend periods for compliance with enforcement notices and the encouragement of the Planning Inspectorate to limit the periods of compliance as far as possible.
- (2) The introduction of fines based on a daily rate for each day of the continuing offence, starting on the date of the service of notice.
- (3) That in levying fines, consideration of the financial circumstances of the offender not be considered an overriding or significant consideration.
- (4) That a new scale of fines be introduced, imposed by the Inspectorate, linked to the presence of a breach of control. These are in addition to the current system of fines imposed for non-compliance with an Enforcement Notice.
- (5) That primary legislation be introduced which creates a requirement for offenders to submit an application for a Lawful Use/Development Certificate in respect of identified breaches of control. CD(LP&A)

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Background Papers:

None.

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