

Review Committee of Rochford District Council



REVIEW OF THE OPERATION OF THE PLANNING ENFORCEMENT SERVICE

**FINAL REPORT OF THE PROJECT TEAM
AS APPROVED BY THE REVIEW COMMITTEE**



INVESTOR IN PEOPLE



**Rochford District
Council**

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2 Glossary

ECC	Essex County Council
LPA	Local Planning Authority
PCN	Planning Contravention Notice
PINS	Planning Inspectorate
RDC	Rochford District Council
RTPI	Royal Town Planning Institute

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3 Introduction

- 3.1 During the investigation the team came across a report from the Planning Officers Society. This contained the following paragraph which it is felt is worthy of repetition here, as it sums up the Members feeling with regard to Planning Enforcement:-

The Planning Officers Society believes strongly that the entire planning process of statutory plans and planning permission is seriously devalued without a credible and effective enforcement regime. For too long enforcement has been regarded or treated as the Cinderella of town planning, due in part to lack of resources coupled with its status as a discretionary function. The effect of the inadequacy of current powers and resources can be seen in the environment of all our towns and cities.

- 3.2 Public and Member perception has been poor through a lack of publicity and understanding of how the service operates and the issues that surround this very different aspect of planning. It has made the Planning Authority appear weak, because it seems that the determination to complete enforcement action to the final stage is missing.
- 3.3 This report seeks to address these issues and to make recommendations for the Local Authority and the Planning and Transportation Department as a whole.
- 3.4 Mention is given here of the cooperation and assistance provided by the members of the Planning and Transportation Department and in particular the enforcement team. This has enabled us to have the full information required to put together this report.

Cllr K J Gordon, Cllr Mrs S A Harper & Cllr P F A Webster

4 Background

- 4.1 The Review was prompted by concerns from Members who felt that the existing cases reported to Members was higher than they would like to see, and who had received complaints from their constituents who have had dealings with Planning Enforcement. The purpose of the Review was to establish whether or not the Enforcement side of Planning was operating in the manner expected by Members of the Council and our Residents. Part of the remit of the project team was to see if it could suggest ways in which the level of outstanding cases could be reduced.
- 4.2 The project team have undertaken the task of reviewing and examining the systems of the Enforcement Team to highlight areas where, in their view, improvements could be made and to make appropriate recommendations, including subsequent monitoring.
- 4.3 It would seem that some members of the Council, as well as the general public, are unaware of the functions of the Team, until, that is, a major item is either taken to court or receives significant publicity. We hope that our review will help to bring the Planning Enforcement Team to the notice of all, and to provide a clearer understanding of its purpose.
- 4.4 This project team has studied many and various reports and government documents as well as attending interviews with officers and liaison with other similar authorities.

5 Terms of reference

5.1 To review the operation of the Planning Enforcement service and in particular to consider:-

- How it operates on a day-to-day basis.
- Whether the perceived backlog of cases is correct.
- The Council's performance against other councils in the neighbouring areas.

6 Methodology

- 6.1 It was decided that for the purposes of carrying out this review that a project team of three Members would be the most appropriate form. The project leader was Cllr K J Gordon and Cllr Mrs S A Harper and Cllr P F A Webster supported him.
- 6.2 The team commenced their investigations by asking a number of questions of the Planning Enforcement Team in an attempt to gain some background knowledge of the subject. For example; the number of cases and the time taken for each case to be resolved and the number of cases being dealt with by each officer.
- 6.3 They obtained copies of the Council's statement on Enforcement Policy and "The complete guide to the Enforcement Service at Rochford District Council"; in addition to various Government studies of planning enforcement, to study.
- 6.4 A Meeting was arranged with the Enforcement Team to review a number of closed and existing cases to obtain a better understanding of the difficulties facing the Enforcement Officers in carrying out their duties. During the meeting 5 cases were picked at random for the Enforcement Team to prepare a high level report on detailing what actions they had taken and when they had occurred.
- 6.5 The Enforcement Team sent out questionnaires to the Councils in their family group asking them a number of questions relating to their Enforcement staffing levels, number of cases and numbers of enforcements. These were used to provide some comparison between the Rochford Team and those in other areas.
- 6.6 A question and answer session was finally arranged with the Head of Planning & Transportation and the Development Control Manager to consider some of the points that had been identified during the information gathering part of the exercise.

7 Findings

7.1 Overview of Planning Enforcement

- 7.1.1 The Planning and Transportation Division at Rochford District Council has set out its Enforcement policy in a document that is available to the general public via the Council's web site and through brochures available from the Council's reception areas, and this is discussed in more detail in another section of the report.
- 7.1.2 The Enforcement Team at Rochford is made up of a Team Leader, three Investigating officers and a team clerk. Prior to the commencement of the Review one of the Investigating Officers had retired and the replacement did not commence duties until the beginning of October 2006 on a short term employment contract.
- 7.1.3 The Enforcement Team will be contacted about a suspected breach of planning rules either by phone or in writing. No anonymous complaints are investigated unless they are of a serious nature. The vast majority of cases are received by phone but members of the public are asked to write to confirm in order that the nature of the complaint can be established. Where further information is required or confirmation is sought then a letter is sent by the Enforcement Team with a copy of the Enforcement Guide for reference.
- 7.1.4 Following registration of the complaint on the Council's database it is issued with a priority and allocated to an Investigating Officer's workload. All complaints that are received are given a priority of A-High, B-Medium or C-Low depending on the seriousness of the breach and its level of importance. This prioritising allows the officers to ensure that the more serious breaches are given the time and attention they deserve.

Category	Type of Breach
A	Serious breach occurring (e.g. works to a Listed Building, tree removal, breaches with serious environmental harm)
B	Minor breaches, such as a development not being built to the approved plan, formation of a new access onto a highway
C	Other breaches such as domestic outbuildings

- 7.1.5 Once allocated to an officer an acknowledgement containing the contact details of the officer is sent to the complainant and a site visit is arranged. Once the officer has visited the site they prepare a report on the visit and then meet with the Team Leader to discuss the next course of action.

- 7.1.6 The activities of the Team will then be dependant on the nature and seriousness of the breach of planning rules that has been identified.
- 7.1.7 Evidence will need to be collected and the transgressors will need to be given a chance to regularise the situation where possible.
- 7.1.8 Where the breach of planning control is of a nature that it would have been agreed if a planning application had been submitted, then the transgressor is advised to submit a retrospective planning application to formalise the matter.
- 7.1.9 In other cases the Authority pursues enforcement action as detailed in the Council's guide that is attached as an appendix to this report.

7.2 Council's Enforcement Policy and Guide

- 7.2.1 The Council's Planning and Transportation Division issues two documents that explain Planning Enforcement, the first is its "Enforcement policy" and the second is "The Complete Guide to the Enforcement Service at Rochford District Council" copies of which are reproduced as appendices to this report.
- 7.2.2 Whilst it is acknowledged that these documents have been intentionally written with a view to being understood by the widest possible audience it is considered that there are still a few areas that could be rewritten to avoid any misunderstandings and this is dealt with in recommendation No 6 at the end of this report.

Enforcement Policy

- 7.2.3 This single page document attempts to state the Council's policy on Enforcement for the public. It states what the Council's planning enforcement service does and how it does it.

The Complete Guide to the Enforcement Service at Rochford District Council

- 7.2.4 This is a useful document, which provides the general public with information about the Planning Enforcement service. This document seeks to explain to the general public what actually constitutes a breach of planning rules and explains in detail the various stages of the enforcement process including contact details for the team. There are, however, a few areas which it is felt could benefit from further clarification.

7.3 Analysis of current cases

7.3.1 Reports are used by the Case Officer and the Team Leader in their weekly meeting to discuss cases and decide on the way forward. The reports are prepared from the “Uniform” software system used by the Planning and Transportation Division. They contain the case reference, address, details of last action and details of the reason for referral to the Enforcement Team. They do not include any details of the date of the last action by the Team.

7.3.2 At the time of the research the number of cases outstanding for each year was:-

1992	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
1	1	1	1	3	1	4	11	9	25	41	58	87	147

7.4 Analysis of numbers of outstanding cases

7.4.1 The table below shows the number of cases received, resolved and outstanding for each financial year since 1989/99. It is useful to note the knock on effect the appeals have to the workload. The planning inspectorate usually hears the cases the following year and it is in this next year that the pressure of this additional workload can be felt.

Financial Year	Enforcement – Caseload – Number of Cases			Appeals Lodged
	Received	Resolved	Total Case Load	
1998/99	118	26	545	0
1999/00	249	155	718	1
2000/01	298	342	663	8
2001/02	285	355	593	22
2002/03	297	446	449	8
2003/04	283	236	496	10
2004/05	255	484	313	2
2005/06	289	238	374	9
2006/07 ½ year	142	115	403	3

- 7.4.2 Please note that the figures in the table on this page and the figures set out in a table under paragraph 7.7.6 of this report (page 14) do not directly correlate as the first relates to financial years and the second calendar years.
- 7.4.3 Over 85% of cases came from complaints by members of the public, with the remainder coming from District Councillors, Parish Councillors and County Councillors.
- 7.4.4 An initial target of 250 outstanding cases has been identified by the enforcement team as a realistic goal to reduce the case load to by the end of the 2007/08 municipal year with further reductions year on year

7.5 Review of Existing and Closed Cases

- 7.5.1 With normal planning applications, the applicant is usually keen to assist the process and will work with the Planning and Transportation Division to achieve the end result. This does not happen in Enforcement Cases. Whilst the complainant will want a swift conclusion the owner of the site does not normally have the same desire to co-operate with Planning or see the matter come to a swift conclusion.
- 7.5.2 When the Enforcement Case is to do with structures then it is usually easier to deal with in that the subject can be seen and evidence gathered.
- 7.5.3 Change of use cases are more difficult in that evidence and proof has to be gathered and this can prove time consuming and difficult to achieve.
- 7.5.4 The Enforcement Team will provide information to other Council Divisions and other outside agencies when a breach of planning regulations has caused other problems such as noise nuisance and traffic congestion.
- 7.5.5 The Planning Enforcement Team use various notices etc. available to enable them to deal with the situations they encounter.
- Planning Contravention notices (PCN) are used to gather information from owners or occupiers of land, when or if a breach of planning control is suspected.
 - An Enforcement Notice is issued where it appears that there has been a breach of planning control. This has to be specific in detailing the breach that has occurred. Where there is uncertainty of what the actual breach is due to difficulties with gathering evidence etc. then several can be issued to ensure that the correct breach is covered.

- 7.5.6 It can typically take between 6 and 7 months to put together appropriate documentation and plans to regularise a breach of planning control even with the cooperation of all parties.
- 7.5.7 Over 90% of Enforcement Notices go to appeal, this can take one of three different forms:-
- Public Enquiry
 - Written Representations i.e. Exchange of written correspondence and site visit
 - Hearing – Where statements are exchanged followed by a round the table discussion.
- 7.5.8 The Planning Inspectorate (PINS) is the body that deal with appeals and also makes the decision on which form the appeal will take.

7.6 The Issues of Enforcement

- 7.6.1 It can take weeks to prepare the evidence for a planning inquiry and, if there is insufficient evidence, then the Planning Inspector can throw out the Council's Case. This means that the enforcement team do not issue an Enforcement Notice without having gained sufficient evidence beforehand. If a case is lost then costs can be awarded against the Council.
- 7.6.2 Depending on the representation from the appellant the enforcement team might use an external barrister to represent them and this and the teams other costs are not refundable from the appellant.
- 7.6.3 Change of use cases can need monitoring over a long period to obtain sufficient evidence to prove a case and this can eat into staff time, although the use of covert CCTV can be used as long as the legal technicalities have been complied with.
- 7.6.4 It has been known for the Planning Authority to take direct action to resolve an enforcement issue and the costs entered as a charge against the defendant's property. This has been the case with an untidy site where action was taken when it was clear that further Court action would not result in the owner complying with the notices.
- 7.6.5 In cases where a person does not wish to comply with Enforcement Team requests, then the time to deal with the case can be influenced by factors such as obtaining evidence, issuing Enforcement Notices, the appeal process and the Court process, when a person has still failed to comply with a Notice. Even then, legal loopholes can be raised which prevent successful prosecution and the legal process has to re-start.
- 7.6.6 Complainants do not appreciate the difficulty and complexity in some cases and, if they continue to demand action and updates on a regular

basis, this can lead to the Enforcement Team having to divert its time away from outstanding cases to deal with the complainant's enquiries.

7.7 Analysis of Enforcement questionnaires

7.7.1 The questionnaire was sent to 14 authorities in the Audit Commission family group and completed responses were received from 9 Councils.

7.7.2 The following table compares the number of staff used in Planning Enforcement for each of the Authorities that responded to the questionnaire.

Council	Team Leader	Investigating Officer	Team Clerk	Other
Bromsgrove DC		3 Full Time	1 Full Time	
Congleton BC	1 Full Time, RTPI Qualified	2 Full Time		1 Full Time
East - Northamptonshire Council	0	2 Full Time		1 Part time
Eastleigh BC	1 Full time	3 Full Time	1 Team Clerk	1 Full Time, 1 Part Time
Fareham BC	1 Full Time	1 Full Time	1 Full Time	1 Full Time
Lichfield DC	1 Full time, RTPI Qualified	1 Full Time	1 Part Time	1 Casual
Maldon DC	1 Full Time, Technical Member RTPI	1 Full Time		
Rochford DC	1 Full Time, RTPI Qualified	3 Full Time (2 of which are 4 days PW)	1 Full Time	
Rushcliffe BC		1 Full Time	1 Part Time	
West Oxfordshire DC	1 Full time, RTPI Qualified	1 Full Time	1 Part Time	1 Full Time

7.7.3 Most authorities have a senior officer in charge of the enforcement service, but only about half the authorities have qualified RTPI staff, Rochford being one.

7.7.4 About half the authorities have 2 or 3 investigating officers though most are not RTPI qualified. Rochford has 3 investigating officers as well as the Team Leader, 2 of which are studying at university one day per week.

7.7.5 The results show that Rochford generally compares favourably with other authorities on staffing levels for the enforcement service. Eastleigh has the highest number of staff working on enforcement (7), but has the third highest number of outstanding cases. Unlike Rochford, most Council's do not use enforcement officers to provide duty cover. Duty cover is an essential service as it requires officers in

the development control and enforcement teams to spend 1 or 2 half days per week dealing with enquiries and providing planning advice. Given that two investigating officers in enforcement already spend 1 day per week on their university studies, this reduces the time available for enforcement work.

7.7.6 The following table compares the number of complaints each Authority received for the last three years, how many cases they currently have out standing and how many have been resolved over the last three years.

Council	Complaints 2003	Complaints 2004	Complaints 2005	Live cases at present	Resolved 2003	Resolved 2004	Resolved 2005
Bromsgrove DC	945	781	470	150	913	719	587
Congleton BC	220	206	224	190	96	104	128
East - Northamptonshire Council	150	150	170	70	120	120	150
Eastleigh BC	438	498	458	279	461	498	443
Fareham BC	394	469	363	279	377	405	413
Lichfield DC	360	384	372	253	324	356	342
Maldon DC	393	332	376	146	393	325	328
Rochford DC	296	274	269	393	243	382	280
Rushcliffe BC	268	378	376	174	227	336	393
West Oxfordshire DC	374	384	382	400	0	0	0

7.7.7 In 2005, Rochford received 269 new cases; this number is generally less than other authorities who received on average more than 300 complaints.

7.7.8 Rochford has a high number of cases. It should be noted that one other Council has no enforcement team and could not submit figures, two councils admitted their figures were not reliable and two could only supply information about new cases, not those outstanding.

7.7.9 It is very unusual for enforcement appeals to be dealt with by written representation.

7.7.10 Rochford is one of the leading authorities for serving notices and for taking direct action to resolve cases.

7.8 Issuing of Planning Contravention Notices

7.8.1 Rochford serves many more PCNs than other authorities and these have been successfully used as evidence in a number of appeals.

- The figures suggest that authorities with lower levels of outstanding cases have also issued the least number of notices. Rochford, with a team leader and 3 investigating officers (on day release) served many more PCNs than other authorities and was one of the top three Council's for serving enforcement notices, though the effect of this is that Rochford is involved in more enforcement appeals, which take much time and effort to prepare.
- Some authorities were not able to provide comprehensive data about their caseloads and supporting commentaries indicated an enthusiasm for any help and suggestions for improvements that might be made.

7.8.2 There appears to be no link between the number of closed cases and the number of notices issued.

7.8.3 The following tables record the Enforcement actions taken by each Authority for the years 2003-2005.

Figures for 2003

Council	PCN	Section 215	Breach of Conditions Notices	Enforcement Notice	Temporary Stop	Injunction	Direct Action	Written Reps	Hearings	Public Inquiries
Bromsgrove DC	4	0	0	23	0	1	2	1	3	0
Congleton BC	16	2	1	3	0	0	0	1	2	0
East - Northamptonshire Council	1	0	1	0	0	0	0	0	0	0
Eastleigh BC	16	0	1	5	0	0	0	0	0	1
Fareham BC	4	1	6	4	0	0	0	0	0	1
Lichfield DC	7	0	2	4	0	0	0	0	3	0
Maldon DC	0	0	7	7	0	1	1	0	2	4
Rochford DC	58	2	7	15	0	0	0	1	6	4
Rushcliffe BC	2	0	0	3	0	0	0	0	0	0
West Oxfordshire DC	2	0	2	29	0	0	0	0	0	0

Figures for 2004

APPENDIX B

Council	PCN	Section 215	Breach of Condition Notices	Enforcement Notice	Temporary Stop	Injunctions	Direct Action	Written Reps	Hearings	Public Inquiries
Bromsgrove DC	1	0	0	10	0	0	0	0	2	0
Congleton BC	20	3	4	3	0	0	0	2	0	0
East - Northamptonshire Council	0	0	2	0	0	0	0	2	0	0
Eastleigh BC	14	0	1	1	0	0	0	0	0	0
Fareham BC	5	0	3	5	0	1	0	4	2	0
Lichfield DC	7	1	5	4	0	0	0	0	1	2
Maldon DC	0	0	2	8	0	0	0	2	1	0
Rochford DC	38	1	1	8	0	0	3	0	0	2
Rushcliffe BC	4	0	1	9	0	0	0	0	1	0
West Oxfordshire DC	0	0	0	8	0	1	0	0	0	0

Figures for 2005

Council	PCN	Section 215	Breach of Condition Notices	Enforcement Notice	Temporary Stop	Injunctions	Direct Action	Written Reps	Hearings	Public Inquiries
Bromsgrove DC	0	0	0	12	0	0	0	3	3	1
Congleton BC	21	0	3	4	0	0	1	1	0	0
East - Northamptonshire Council	0	0	2	5	0	0	0	2	0	0
Eastleigh BC	24	0	2	4	1	0	1	0	0	1
Fareham BC	2	3	4	3	0	0	0	0	0	0
Lichfield DC	8	0	0	9	0	0	0	1	1	1
Maldon DC	0	0	6	26	0	0	0	4	1	0
Rochford DC	37	2	1	12	4	0	0	0	0	4
Rushcliffe BC	4	0	0	8	0	0	0	0	0	0
West Oxfordshire DC	2	0	2	8	0	0	0	0	0	0

8 Recommendations

- 8.1 Whilst the Leader meets with the rest of the Team on a weekly basis to discuss outstanding cases it is felt that a further internal review could be useful. This is to look at the cases to assess if Enforcement action is still relevant and to provide an objective view as to the value of continuing with the course of action.

Recommendation No 1

It is recommended to the Planning Policy & Transportation Committee that the Head of Planning & Transportation conduct an annual review of outstanding Enforcement cases with the Development Control Committee to confirm those cases to be closed.

- 8.2 Whilst members of the Team are studying for the Planning qualification they have day release. The additional time lost in respect of the Duty Rota means that those members of the team have 3 days each week to spend on their Enforcement Team duties. The necessity to study to become a qualified planner is recognised and should be supported. It is also noted that membership of the Duty Rota is part of their training and provides them with the necessary experience of dealing with the public. But we are concerned that the combination of Duty Rota and day release inhibits their ability to carry out their enforcement duties in the most effective manner.

Recommendation No 2

It is recommended to the Planning Policy & Transportation Committee that the Head of Planning & Transportation review the provision of duty cover in order that those members of the Enforcement Team that have study leave do not spend a material part of their week as part of the Duty Rota and for him to give further consideration to his staffing levels as a result.

- 8.3 The copies of the current cases lists which were prepared by extracting the information from the “Uniform “ software programme, by running a report, did not provide dates for when the case was last updated so it was difficult to assess whether the case was ongoing or had been missed. Without a date for the last action being displayed on the report it is impossible to know without cross referencing the file when the last action by the Enforcement Team was made and therefore it would be possible for the resolution of a case to be delayed. To help both the officers and the Leader of the Team in their review of cases it is recommended that the inclusion of this information in the report be looked into with the relevant software company.

Recommendation No 3

It is recommended to the Planning Policy & Transportation Committee that the Head of Planning & Transportation record the date of the last action on the “Live Case” list report.

- 8.4 The provision of a quarterly update on the activities of the Enforcement Team via the Members’ Bulletin is welcomed as it keeps Members informed of the cases in their wards and demonstrates openness to the process. The possibility of providing additional information including the number of outstanding cases in a quarterly report would be encouraged, as it would allow Members to support the decisions of the Section.

Recommendation No 4

It is recommended to the Planning Policy & Transportation Committee that the Head of Planning & Transportation submit the number of outstanding cases together with details of Enforcement Notices issued and Appeals lodged to the Development Control Committee as a regular addition to its agenda.

- 8.5 It is generally felt that the documentation available to the public to explain the process is informative, but minor alterations as detailed below are required to improve clarity.

Recommendation No 5

It is recommended to the Planning Policy & Transportation Committee that the Head of Planning & Transportation implement the following changes to the Public documentation relating to Planning Enforcement to improve clarity.

Enforcement Policy:-

- **“Pursuing any breach of planning control to its resolution so far as it is reasonable and expedient to do so”. This should be changed to “pursuing any breach of planning control to a satisfactory conclusion”.**

Complete guide to the Enforcement Service:-

- **On page 2 of the Guide reference should be made at to how people should register complaints and in what form.**
- **On page 10 it should include details of how to access the website or other ways of contacting Rochford District Council.**
- **On page 17 should include details of where the offices are actually located and provision for writing in.**

- 8.6 It is felt that, as Planning Documentation can be prone to jargon and acronyms, it could be a worthwhile exercise to obtain the Crystal Mark to confirm that they provide the necessary details for the general public in a clear and unambiguous way.

Recommendation No 6

It is recommended to the Planning Policy & Transportation Committee that the Head of Planning & Transportation investigates the possibility of submitting the Public documentation relating to Planning Enforcement for the “Crystal mark.”

- 8.7 From the different sources of information supplied to the project team during the time of its investigation it is clear that the Enforcement Team look to a number of sources to ensure that new ideas are evaluated and trends monitored. This outward looking approach can only be beneficial.

Recommendation No 7

It is recommended to the Planning Policy & Transportation Committee that the Head of Planning & Transportation continues the dialogue with other Authorities regarding best practice relating to Enforcement and regularly reports back to Members.

- 8.8 If the terms of an Enforcement notice have not been complied with the Planning Authority can resort to court action. If this should subsequently prove to be unsuccessful then direct action may be taken.

Recommendation No 8

It is recommended to the Planning Policy & Transportation Committee that, in those cases where an impasse has been reached and Court action has failed to resolve the breach of Planning Rules, the Head of Planning and Transportation report the case to the Development Control Committee for direct action to be considered to remedy the breach.

- 8.9 During the Review it was clear that Members knowledge of planning law needed to be kept current if they were to be asked to deliberate on certain cases.

Recommendation No 9

It is recommended to the Standards Committee that arrangements are made for additional Member training in Planning Law and specifically enforcement to be provided.

- 8.10 It is clear that the enforcement of planning regulations is fundamental to the continued well being of our Residents in order to protect their rights and underpin the protection of our environment the Planning Authority is charged with applying and enforcing the regulations we apply to ourselves. To this end we cannot over emphasise the importance of publicity to encourage appropriate use of our land and to discourage its abuse.

Recommendation No 10

It is recommended to the Planning Policy & Transportation Committee that the Head of Planning & Transportation publish a quarterly report in our own publication “Rochford District Matters” as to planning enforcement, stating the number of new cases and cases closed in the quarter.

- 8.11 The review team are aware that the Planning Enforcement Service commissions an aerial survey of our District from time to time, in order to obtain an up to date photographic record of construction activities. This is a very useful and worthwhile tool. It has also been noticed that the frequency of this action is random and therefore the overall benefit may be lost if too much time is allowed to elapse between surveys. The benefit of publicising this service cannot be over emphasised.

Recommendation No 11

It is recommended to the Planning Policy & Transportation Committee that the Head of Planning & Transportation commissions an aerial survey of the District bi-annually, with a link created on the Council’s web site to enable our Residents to acquire aerial photographs of their homes and neighbourhood.

9 Appendix

9.1 Enforcement Policy and Complete Guide to the Enforcement Service at Rochford District Council

Enforcement Policy



**Rochford District
Council**

1. The Planning Enforcement Service will:

- Investigate alleged breaches of planning control which are brought to light by Members, other departments within the Authority, other organisations or members of the public in writing. Any anonymous complaints will only be registered where the breach is extremely serious and/or can be readily detected.
- Promptly register such cases and acknowledge their receipt as well as regularly updating complainants of the progress of the case.
- Seek to control breaches of planning control which cause demonstrable harm to amenity.
- Advise other departments/organisations (e.g. Environmental Health, Building Control and County Highways) when appropriate.

2. This service will be undertaken by:

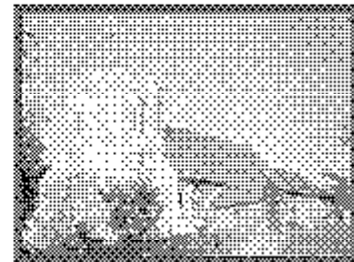
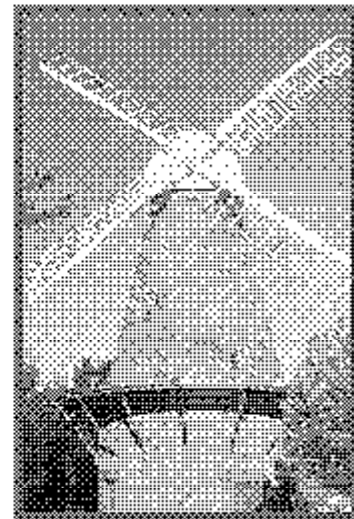
- Prioritising cases in accordance with published criteria.
- Being helpful, courteous and open in our service and advising transgressors, particularly small businesses and individuals, of methods of remedying the breach prior to any formal action being taken; by allocating a named case officer as a contact point; and responding promptly to all contacts in "Plain English".
- Pursuing any breach of planning control to its resolution so far as it is reasonable and expedient to do so.
- Taking immediate action to resolve simple breaches of control such as flyposting.
- Taking "Direct action" where breaches of control have not been resolved by action in the Courts, i.e. clearance of untidy sites.
- Retaining the confidentiality of complainants where possible.

3. Rochford District Council has formulated this policy to guide the provision of its Planning Enforcement Service. It has been devised by taking into account:

- National Policy in Planning Policy Guidance Note (PPG) 18, "Enforcing Planning Control".
- Various provisions of the Rochford District Local Plan and the Essex & Southend-on-Sea Replacement Structure Plan.
- The need to protect and maintain the Metropolitan Green Belt, Sites of Special Scientific Interest and Conservation areas.
- The need to achieve a balance between protecting amenity and other interests of acknowledged importance throughout the district, enabling acceptable development to take place.

Further information can be found on the Planning Service pages of the Council's website at www.rochford.gov.uk, by telephoning 01702-318191, or by visiting the Planning Office from 8.30 a.m. - 5.00 p.m. daily (4.30 p.m. on Fridays).

Revised June 2005



The Complete Guide to the Enforcement Service at Rochford District Council

A Planning Services
Information Leaflet

November 2005



**Rochford District
Council**



INVESTOR IN PEOPLE

The Complete Guide to the Enforcement Service at Rochford District Council

Introduction

The aim of this document is to:

- clarify how the enforcement service works;
- explain how to report suspected breaches of planning control;
- provide advice if you are in breach of the rules.

Planning decisions on new works and the use of land and buildings (called **development** in the laws) are made by the Local Planning Authority (LPA) in the **public** interest. The Planning Enforcement Service can only take into account issues that relate to these **public** interests; private matters cannot be considered. To help you we have in this leaflet listed examples of matters which are covered by this service and those that are not.

The Planning Enforcement Policy (available from Council offices or website) explains the LPAs commitment to fully investigate all reported complaints and the level of customer service that can be expected. In dealing with enforcement matters, the key aims of the service are:

- To respond to customer complaints about breaches of planning control in a timely way in accordance with local performance targets and to manage the prioritisation of cases.
- To seek to control breaches of planning control which cause demonstrable harm to the amenity of the District.

The number of complaints received regarding planning issues is growing and people look to the Local Planning Authority to protect their environment from inappropriate uses and operations. Complaints can be received from members of the public, Ward and Parish Councillors, local authority departments and teams and other public and private bodies.

Duty to Investigate

The LPA has a duty to investigate any alleged breach of planning control as long as the allegation is ***submitted in writing*** (as a letter or e mail, but not anonymously) – In line with our Planning Enforcement Policy. Whilst we endeavour to deal with complaints swiftly there is a need to prioritise cases and so some complaints may take longer to resolve than others.

Not all development on land is necessarily a breach of planning control. Guidance leaflets are available to explain what constitutes ***permitted development*** – that is development that does not require the LPA's consent.

Enforcement Action is Discretionary

This is one of the most important aspects of planning enforcement but perhaps one of the least understood. Because something is a breach of planning control this is not, in itself, a reason to take enforcement action. The first point to make is that most breaches are not criminal offences. Secondly, the Council has to be sure that there are sound ***planning reasons*** to take action when a breach has been identified.

The majority of breaches of planning control cannot be stopped at once and, if they involve a planning application or enforcement appeal to the Planning Inspectorate, may take some time to resolve.

Nonetheless we want to ensure the planning system is upheld in our district, and seek to guide development in accordance with the LPA's decisions and policies as well as those of national government. That means taking great care to ensure that the right development occurs in the right place and that appropriate steps are taken to alleviate the detrimental effects of any unauthorised development.

Breaches of Planning Control

The table below highlights *some* examples of matters which can and cannot be dealt with by the Planning Enforcement Team under the planning legislation.

Breaches of Planning Control	NOT Breaches of Planning Control
<ul style="list-style-type: none"> ✓ New buildings ✓ Significant changes of use ✓ Variation of an approved plan ✓ Non-compliance with a planning condition ✓ Fixed sign boards, placards, signs, flags, etc (all called Advertisements) ✓ Untidy sites ✓ Unauthorised works to Listed Buildings ✓ Dropped Kerbs on classified roads 	<ul style="list-style-type: none"> x Land ownership or boundary disputes x Permitted Development e.g. dropped kerbs on non-classified roads (see our advice leaflets and website) x Obstruction of any road, or right of way x On street parking problems x Building Regulations e.g. internal works x Party Wall Act disputes x Piping of ditches x Trespass or theft of land x Pollution, fly tipping, noise nuisances x Health and Safety Laws

This is not intended to be a definitive list and it is usually advisable to make contact with the Enforcement Team for advice and guidance.

Confidentiality

If you ask us to investigate an alleged breach of planning control we will treat your complaint in confidence so far as we are able. In line with the Freedom of Information Act the information regarding your identity is classed as “Exempt Information” and so cannot be released in response to formal written requests from members of public.

Nonetheless, if the matter proceeds to formal enforcement action then we may have to defend our position at a public inquiry or a case in court and so it may not always be possible to maintain confidentiality. It may also assist our case if you are able to participate as the day-to-day information and evidence you provide may be vitally useful for our case.

If investigation of the matter results in the submission of a planning application you will have the opportunity to comment, but these comments will be made available to the public.

How Can You Help?

When you report a possible breach of planning control it is of considerable help if you can:

- Provide details of the exact **location** of the site – we can send you a plan if this will assist.
- Describe what has **happened** on the land.
- Provide dates **when** this took place.
- Identify who you believe to be **responsible** and provide us with the names.
- Provide, if possible, dated **photographs** of the activities.

Anonymous complaints will not usually be investigated unless relating to a matter of public safety or potentially serious environmental damage. Please see our Planning Enforcement Policy - on our web site or leaflet available from our offices - for further details.

Investigations

Allocation of Cases

New planning enforcement case will be allocated to a case officer and an acknowledgement will be sent to the complainant informing them of the name and contact details of that officer.

Initial Site Visit

Once a case has been allocated the case officer will visit the site within the target times stated below:

Category	Type of Breach	Target Response
A	Serious breach occurring (e.g. works to a Listed Buildings, tree removal, breaches with serious environmental harm)	24 hours
B	Minor breaches, such as a development not being built to the approved plan, formation of a new access onto a highway	7 working days
C	Other breaches such as domestic outbuildings	10 working days

Enforcement Action/Inaction Explained

Action will not be taken in every case and is at the discretion of the LPA for the reasons explained below.

No actionable breach

It may be the case that there is no breach of planning control. For example it may be that the building is permitted development. Alternatively, there may be no evidence to indicate that a change of use was *material* i.e. significant enough to involve development. Likewise changes to already approved plans may not be serious enough to be a breach of planning control. Or, it may be that it comes into one of the categories listed above (see section entitled Breaches of Planning Control).

The breach is not "expedient" to pursue

A technical breach of planning control is not in itself a sufficient reason to take enforcement action.

Government guidelines advise that enforcement action should only be taken when a breach of planning control is unacceptable on planning grounds. For example, taking lengthy and expensive enforcement action on a conservatory which is only marginally above the permitted development allowance may be pointless if an application to retain such a building is likely to be granted planning permission.

The Development is "Lawful"

Alternatively, development may be lawful in planning terms due to the length of time it has been substantially completed or, if relating to a use, operated continuously. The table below explains lawful uses.

Activity or development	Time after which the development has become lawful
"Operational Development" e.g. building works	Substantially completed for more than 4 years
Construction and use of a building as a single dwelling house	Substantially completed and used continually for more than 4 years

Activity or development	Time after which the development has become lawful
Material change of use, such as the business use of a dwelling	Continual operation at the same level of intensity for more than 10 years
Use or operation in breach of a condition	Continual non compliance for more than 10 years ago

Negotiation of a Resolution

Many breaches can be resolved or the effects of the breach alleviated by negotiating with the owner/operator. Remembering that breaches of planning control are usually **not** criminal offences, in most cases the LPA will only take enforcement action if the informal approach has been unsuccessful.

Transgressors (the individual or company undertaking the works) will be allowed a certain length of time to regularise the breach of planning control. This may involve the submission of an application to retain the development or use or submitting plans for a minor amendment to a previously approved plan. Enforcement action is taken only as a last resort if there is no other option available to resolve the breach. The authority is required to be particularly sensitive to the needs of small businesses.

Retrospective application

This is the name for a planning application to retain an *existing* development. This is handled in the same

way as any other planning application and neighbours will be formally consulted and given a chance to comment. There is also a right of appeal against any refusal by the Authority. Further information can be found on our website.

Formal Action

This will be in the form of a legal notice that may be logged against the land rather than the transgressor. The notice will state the steps required to be taken to resolve the breach of planning control and a timescale for the steps to be carried out. Again, the Authority will allow a reasonable period for compliance with any provisions of the notice. There is also a right of appeal against the majority of notices and as a result this process can be lengthy.

Priorities

The Council receives a lot of complaints about possible breaches of planning control and some of these may require extensive investigations and research. Therefore, we have devised a scheme of prioritisation in order to deal with cases in order of importance. However, this still may mean that cases may take a great deal of time to resolve completely. The scheme of priorities is listed below:

Priority	Type of Breach or stage in investigation
High	<ul style="list-style-type: none"> • Initial Site visit • Breaches affecting public safety • After a planning appeal has been dismissed or refused applications are out of time for appeal • Cases where authorisation has given for a Notice to be served • Where compliance with a notice has not been achieved, preparation of evidence for presentation in court • Enforcement appeal preparation work
Medium	<ul style="list-style-type: none"> • Investigation of breaches undermining Policy aims and objectives • Investigations/site visit in order to establish level of compliance with a notice
Low	<ul style="list-style-type: none"> • Technical breaches not coming into the above categories • Cases awaiting determination of a planning application • Matters not included above

Formal Enforcement Action

This section provides information about the enforcement process in cases where the LPA is contemplating or has decided to take formal enforcement action.

What does the Council need to know before taking enforcement action?

Before the planning authority can decide what action must be taken in respect of a reported breach of planning control, the site history must be fully researched and enquiries made into the alleged breach. This would include pointing out the detail of the breach to the person responsible and noting their comments. In particular, the Local Planning Authority needs to know:

- Whether a breach of planning control is taking, or has taken place?
- Whether any time limits apply to this breach?
- Who is involved on the land?
- Is there sufficient evidence to support enforcement proceedings?

Who authorises enforcement action?

Whilst some contentious enforcement cases may be reported to the Planning Services Committee, the majority of enforcement cases are dealt with under officer delegations. This is important since it means that prompt action can be taken to deal with breaches of planning control.

What is a Planning Contravention Notice (PCN)?

A notice served by a Local Planning Authority requesting certain information from an owner or

occupier of land, where it suspects a breach of planning control. The owner is allowed 21 days to respond. It is an offence not to respond to this request for information.

What is an Enforcement Notice?

A notice issued by a Local Planning Authority where it appears that there has been a breach of planning control. There is a right of appeal against the Notice; the appeal will be considered by the Planning Inspectorate, also known as PINS. Failure to comply after the notice has been confirmed will almost inevitably lead to criminal sanctions.

What is a Stop Notice?

A Stop Notice imposes an immediate ban on specified activities, once an Enforcement Notice has been issued.

What is a Temporary Stop Notice?

A notice that can be used to halt works on a site, but only for a temporary period of time. A Temporary Stop Notice can be served without the need for the LPA to have first served an Enforcement Notice.

What is a Breach of Condition Notice?

A notice, served by a Local Planning Authority on the owner and/or occupier of land, requiring compliance with a condition imposed on a planning consent. If the

notice is not complied with it is enforceable in the Magistrate's Court.

What is Injunctive Action?

In addition to its enforcement powers, a Local Planning Authority is entitled to apply to the courts for an injunction to control an activity. The application may relate to an actual or anticipated breach of planning law.

What does "Compliance" mean?

An enforcement notice must be served within 28 days after it has been issued and allow at least 28 days before it takes effect. The failure to comply with the requirements of a notice, in whole or in part, once the notice has come into effect, imposes a criminal liability on the person or persons responsible. The actions required to achieve compliance will be listed in the notice. These can be requirements such as demolishing a building, ceasing a use, removing certain items from the site, etc. Careful and meticulous attention has to be given to the wording in the notice to avoid difficulties or evasion from action on a technicality if the matter comes to Court.

If the notice is not complied with, two separate offences may be created. One committed by the owners, the other committed by persons having control of or an "interest" in the land e.g. a tenant.

Why does the authority not take action in every case?

To decide if it is expedient to take any action the authority will consider the following points:

- Does the development accord with the local development plan?
- Would the breach unacceptably affect public amenity or the existing use of the land and buildings meriting protection in the public interest?
- Whether the breach is trivial or purely technical?
- The practical outcome of the enforcement notice must be considered. For example - could it lead to a more intrusive building being constructed as permitted development?
- Judicial authority - government guidance and appeal decisions may mean that further action is not justified.
- Previous local planning authority and appeal decisions on the site may mean that the development has been accepted as appropriate.

It is generally unreasonable to issue an enforcement notice solely to remedy the absence of a valid planning permission if there is no significant planning objection to the breach of control.

Why does the process take so long?

There often appears to be a delay before any action is taken in respect of a reported breach of planning control. In fact, before any enquiries do commence, officers need to ensure that:

- The information received is genuine; and
- The complaint is properly registered, recorded and researched.

The following factors can delay the resolution of a complaint:

- Difficulty in gaining access to the site;
- The need for further information e.g. Land Registry check or a Vehicle Check with the DVLA;
- The service of a Planning Contravention Notice – the notice must first be prepared and persons required to complete a PCN are given 21 days to do so;
- The response to a PCN must be carefully considered;
- The submission of a planning application that then fails; and
- Appeal proceedings.

Once a breach of control has been identified, officers must discuss the situation with the person or persons in control of the land and they must list the actions

required to resolve the breach. This is often followed by a period of negotiation, which could lead to the cessation of the breach or a planning application being submitted seeking the required planning consent. The LPA is required to allow a reasonable time for the resolution of an alleged breach of control.

Contact Information

Planning and Building Control Officers are available by phone from 8 a.m. to 5.30 p.m. Monday to Thursday and 5.00 p.m. on Friday or you can visit the offices between 8.30 a.m. to 5.00 p.m. Monday to Thursday (4.30 p.m. on Friday) and speak to a Duty Officer.

Call the appropriate number:

Planning:	01702-318191
Building Control:	01702-318081
Enforcement:	01702-318022

Or you can Email:

planning.applications@rochford.gov.uk
building.control@rochford.gov.uk
planning.enforcement@rochford.gov.uk