
REVIEW OF THE PLANNING ENFORCEMENT SYSTEM - CONSULTATION PAPER

1 SUMMARY

- 1.1 This report seeks Members' views on a Government consultation paper, which outlines options for alterations to the Planning Enforcement system. A response to the consultation is required by 31st December 2002.

2 INTRODUCTION

- 2.1 The Planning Green Paper published in December 2001 announced the Government's intention to carry out a review of current enforcement arrangements. The Green Paper recognised that effective enforcement is central to ensuring that public confidence in the planning system is not undermined.
- 2.2 The Government is concerned that the current system is too complex and cumbersome and that it is difficult and expensive for a Local Planning Authority to operate. The intention of the review is to make the system simpler. A copy of the consultation document has been placed in the Members Room.

3 ISSUES

- 3.1 At the outset, the Government takes the view that the current system is basically sound and does not need to be re-invented. However, there are several basic questions to be considered:
- Can the process of enforcing planning control be simplified?
 - How might Local Planning Authorities be encouraged to make greater use of the powers already available to them?
 - Can the system be speeded up to prevent abuses continuing?
 - Is there a need for a more consistent approach amongst Local Planning Authorities?
 - Is there a case for raising the level of fines, which Courts may impose?
- 3.2 In addition to these basic questions about the system, the consultation paper raises a series of more detailed questions: these are attached in Appendix 1 to this report.
- 3.3 At present, Local Planning Authorities have a duty of **considering** taking enforcement action, but the power to take action is discretionary. The Government takes the view that a duty to take action regardless of the breach would place an intolerable burden on Authorities and,

ultimately, the Courts. Far better to continue with the current arrangement where Local Planning Authorities are able to exercise judgement as to the best way to tackle a breach of control.

- 3.4 The Government has the impression that Enforcement is rarely, if ever, a priority function for Planning Authorities. There are no fees attached to the Enforcement function, but the Government will consider the possibility of targeting some of planning delivery grant (£350 millions over 3 years) to Authorities that can demonstrate improvements in performance.
- 3.5 The consultation paper suggests that where Local Planning Authorities are pro-active, enforcement works better. This is though dependent on having adequate resources available and suitably trained staff.
- 3.6 On the matter of making breaches of planning control, a criminal offence, the Government is not convinced this would be a sensible approach. Establishing whether there is indeed a breach can be difficult in the first instance, trivial breaches would be criminalised and the Magistrates Court is not the best forum to argue the finer technicalities of planning legislation.
- 3.7 Retrospective applications can sometimes be seen as unfair. However, these usually relate to smaller scale developments and uses and the Government believes they should continue to have a role in legitimising development where enforcement action would be inappropriate.
- 3.8 On a related point, where a development is not so damaging as to warrant enforcement action and an application is invited, then a fee would, of course, be payable. However, some developers refuse to submit an application and the Government suggests that the Local Planning Authority could be empowered to serve a Certificate on the developer, requiring them to pay an equivalent fee.
- 3.9 The level of fees for retrospective applications might be increased, but the Government is not convinced such a change would be justified.

Powers and Procedures

- 3.10 The consultation paper examines the use made by Local Planning Authorities of current enforcement powers and concludes that not only is there all extensive range of tools available, but that Local Planning Authorities are not reluctant to use them because of the risk of failure. However, there is some concern about a recent drop in the number of Enforcement Notices served.

- 3.11 New procedures are proposed to bring Enforcement Appeals into line with Planning Appeals, including tighter timescales for submission of evidence, etc.
- 3.12 Stop Notices can be used to immediately stop a development. However, developers can claim compensation from Local Planning Authorities and the Government is concerned this might be a deterrent to Local Planning Authorities using the procedure. Stop Notices are usually served concurrently with Enforcement Notices. The consultation paper suggests that it might be helpful for Local Planning Authorities to be able to serve a Stop Notice as soon as a breach of control is identified in advance of an Enforcement Notice.
- 3.13 Monitoring of compliance with conditions can be very difficult, particularly in relation to conditions dealing, for example, with operating hours. The Government suggests two options: use of site notices and self-certificates. A site notice could be displayed in advance and during a development, giving details of the consent granted and the conditions. As an alternative, developers could be asked to certify that their development accords with the planning permission.
- 3.14 Planning Contravention Notices (PCN) are used to gather information about a possible breach. It is suggested that their use might be extended to require the submission of a planning application, where a development is likely to be considered acceptable in planning terms
- 3.15 The time limits for the issue of a Lawful Development Certificate on the use of land is 10 years. The Government suggests this time limit should be scrapped. However, the 4 year rule should be retained for dwelling houses, although to avoid concealment, there would be a need to prove that Council Tax had been met for the full 4 year period.

4 DISCUSSION

- 4.1 The discussion on the proposals and suggestions in the consultation paper has been related to the questions listed in Appendix 1.
 - 1. Yes, it is agreed that flexibility would be lost if enforcement became a duty. Local Planning Authorities will still have a duty to consider whether to take action.
 - 2. There is no doubt that resources do play a part in dealing with Planning Enforcement. From the Rochford perspective though, it is considered that adequate resources are available and, despite a historical backlog of cases, significant progress is being made. New initiatives for dealing with enforcement will emerge from the Best Value Review. Recruiting Staff is a

difficult problem across all planning functions, but Rochford does accord Enforcement as a high profile service.

3. Agreed - there are many cases when residents are just simply unaware that planning permission was required for their development. Criminalisation is not considered to be an appropriate response.
4. Agreed.
5. When a developer refuses to submit an application, the end result is unsatisfactory, with an outstanding breach that would probably be granted a consent, but no resolution. Requiring a fee to be paid and then making non-payment an offence would help to resolve this problem.
6. Agreed.
7. A broad range of tools are certainly available. The key difficulty though is uncertainty, both in terms of timescales and in relation to a final resolution. In some cases where a Local Authority is successful on appeal, the person committing the breach will not accept the decision. The Local Planning Authority must then resort to the Courts. However, the level of fines imposed are rarely a disincentive. In the case of the use of land, for example, the simple fact of the matter is that it is difficult, if not impossible in some cases, for the Local Planning Authority to successfully stop the use. Therefore, a greater level of certainty that this can be achieved needs to be introduced and this may require additional mechanisms to be considered.
8. Agreed.
9. The use of enforcement powers in Rochford is not declining. However, there is no doubt that public confidence is at a low ebb. This is hardly surprising, given the length of time it takes to resolve enforcement cases. The system needs to be able to work on much shorter, sharper timescales so that the public will have some greater confidence. This is one of the key messages for Government in any revisions to the system.
10. The guidance is useful, but should be reviewed at regular intervals and in the light of the outcomes of this consultation exercise.
11. Yes, to an extent.

12. This would make some sense and send a very clear message to the developer.
13. Agreed, since there is a right of appeal against the imposition of a condition when planning permission is granted.
14. It would certainly not be an onerous task for a developer to be required to post a notice on the site indicating when work commenced and, whilst such a notice may have limited value, there is no doubt that it would at least help keep the local community informed. It is likely that without a sanction though, most developers would not bother to display the notice

Far better would be an arrangement that both required the developer to display a notice and to send a copy to the Planning Department.

15. No - it is considered that such an arrangement would not function effectively.
16. There would be value in this change.
17. Welcome the abolition of the 10-year rule, but see no real justification for any transition period.
18. This should be adopted as best practice.
19. Yes, then the route to a resolution of the matter is clear and simple - an enforcement appeal.
20. Agreed.
21. Agreed, subject to the amendment in respect of the 10-year rule.
22. It would be very welcome if the double deemed fee was to go to the Local Planning Authority.
23. Not a practical suggestion - unlikely cases in different Authorities would run in parallel.
24. There is a high level of exchange of information about enforcement issues between Essex Authorities. This is an invaluable help to ensure that best practice is achieved in dealing with enforcement cases. However, it is not likely to be practical to go further than this in terms of sharing staff resources, etc.

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- 25. Yes, given the complex nature of enforcement cases.
 - 26. No, there would only occasionally be a need for Magistrates to decline jurisdiction: what is required are larger fines using the full scale available to £20,000.
 - 27. In the past, it has certainly been the case that the Courts have been all too ready to agree to defer a case. However, more recent experience is that deferment is not being accepted so readily and this is now not an issue of great concern.
 - 28. This might be helpful in order to bring home the full impact of some enforcement cases.
 - 29. Mediation can be useful, but it is considered that, in most instances, it will not bring about a quicker, more effective resolution of breaches.

5 ENVIRONMENTAL IMPLICATIONS

- 5.1 Unauthorised breaches of planning control can have very significant environmental impacts on the District, in visual and amenity terms.

6 RECOMMENDATION

It is proposed that the Committee **RESOLVES**

That, subject to views from Members, this report form the basis of the Council's response to the consultation paper on the Review of the Planning Enforcement System. (HPS).

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Background Papers: None.

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Appendix One

Is Enforcement Working – Consultation Questions

1. We feel that it is important that the decision whether or not to take enforcement action remains at the discretion of the local planning authority. But there are arguments for and against.
2. We would be grateful for views, from local authorities in particular, on resourcing planning enforcement and whether this presents a barrier to its effectiveness. Is identifying and retaining suitable staff to undertake enforcement work a problem? Is there a need to raise the profile of planning enforcement and for local authorities to accord it a higher priority?
3. The Government believes that criminalisation would be an inappropriate and disproportionate response. Criminalisation seems too draconian a penalty given the minor and often unwitting nature of the vast majority of breaches of planning control.
4. We believe that retrospective applications continue to have a role to play in legitimising unauthorised development against which enforcement action is inappropriate.
5. Where a retrospective application is not submitted, should the local planning authority be able to require a fee to be paid with non-payment being an offence?
6. We believe that higher fees for retrospective planning applications would be counterproductive, acting as a further disincentive to applying. The ability to apply retrospectively does not in itself encourage unauthorised development.
7. We believe that the range of enforcement powers currently available gives local authorities the right tools to be able to effectively enforce planning control. However we would welcome views on whether all the powers available are necessary, or indeed whether more are needed.
8. We do not believe that local planning authorities are reluctant to take enforcement action because of the risks of failure, but we would welcome authorities' views on this.
9. Why is the use of formal enforcement powers declining and do steps need to be taken to regain public confidence in the system?
10. We would welcome views on the usefulness of the existing Good Practice Guide and any suggestions for amendments or additions.
11. Does the risk of compensation liability acts as a deterrent to the use of stop notices?
12. Should provision be made in legislation to enable a stop notice to be issued at the start of unauthorised development and before an enforcement notice is served?
13. We do not see any need to introduce a right of appeal against a breach of condition notice.
14. Views are sought on the practicalities of introducing and operating a requirement to have a notice on the site indicating when the work

- commenced. Should there be a sanction for failing to display such a notice? A possible alternative would be a requirement for the developer to notify the planning department when works are about to commence.
15. Would a self-certification process to confirm that a development accords with the planning permission be workable?
 16. Should the provisions of the planning contravention notice be extended to provide for a power to require the submission of a planning application?
 17. We invite views on the abolition of the 10 year rule and on whether there should be a transitional period, of say 3 years, before abolition of the ten year limit to give time for obtaining lawful development certificates for all existing development which did not have planning permission.
 18. We invite views on the practicalities of serving enforcement notices soon after retrospective planning permission is refused.
 19. Should local authorities have the right to decline to determine applications for lawful development certificates or planning permission once an enforcement notice has been served which relates to that development?
 20. We consider that the right to appeal against an enforcement notice should remain in its current form.
 21. We believe that all the grounds of appeal should remain in their current form. (If the ten-year rule was to be abolished (para. 17 above) an amendment to ground (d) would be required).
 22. Should the whole of the 'double deemed fee' go to the local planning authority to help to pay towards the cost of enforcement? Local authorities would be expected to take on the responsibility for administering the administrative fee system, including initial calculation of the deemed application fee.
 23. We invite views on the practicalities of authorities joining forces to identify cases which have reached a similar stage and which can be brought to Court together.
 24. We invite views on the merits and practicalities of skills sharing and joint working between local authorities on enforcement cases, and on sharing legal representation.
 25. Is there a need for more or better guidance for Magistrates?
 26. Is the level of fines which Magistrates are able to impose adequate? Should local authorities more frequently invite Magistrates to decline jurisdiction in cases where the fine is likely to be more than £20,000 so that these cases would instead be heard in the Crown Courts where a higher fine can be imposed?
 27. Is deferment a real problem and might bundling cases together for hearing reduce the scope for deferment?
 28. Views are invited on the suggestion that when local planning authorities are seeking an injunction in order to establish "harm" the judge should be invited to visit the appeal site to see first hand the exact nature and effects of the breach of planning control.

29. Would a formal mediation process for enforcement result in quicker and more effective resolution of breaches of planning control?