
BREACH OF PLANNING CONTROL AT THE KEBAB HUT, HIGH STREET, RAYLEIGH

1 SUMMARY

- 1.1 To consider the report of the Head of Planning Services regarding breach of conditions relating to opening hours attached to planning permission reference F/0029/98/ROC.

2 INTRODUCTION

- 2.1 A Breach of Condition Notice was served on the previous owner / occupier of the Kebab Hut on 14th October 1999. Breach of Condition Notices can be served under Section 187A of the Town and Country Planning Act 1990 (as amended), but such a Notice can only be served on a named individual (Section 187A (3)).
- 2.2 In this instance, the person on whom the Notice should be served has changed. Therefore the current Notice is not enforceable and a new Breach of Condition Notice is required.

3 PLANNING CASE

- 3.1 Following further observations and complaints relating to the times of opening of the Kebab Hut, investigations have taken place. It is evident that the Kebab Hut is open late into the evening and, on occasions, past 02.00hrs. The conditions attached to the current valid permission were amended by the approval of planning permission reference F/0029/98/ROC. These allowed the Kebab Hut to stay open as follows:
- Mondays to Saturdays: 09.00 to 23.30hrs.
 - Sundays: 17.00hrs to 22.30hrs.
- 3.2 Some Members may be aware that, following a public inquiry, the authority was successful on appeal in 1999 in resisting later closing times. Objections and complaints that the late night use of the premises created or prolonged noise disturbance and public disorder were upheld by the Inspector. Given that the revised opening times have been flouted it has become necessary to recommend further enforcement action. If Members are in agreement the following recommendation will allow the service of any appropriate Notices. The service of a Breach of Condition Notice may be considered more appropriate than serving an Enforcement Notice because:
- There is no right of appeal to the Secretary of State and the Notice cannot be suspended;

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- If the person specified on the Breach of Condition Notice fails to comply with the Notice, then this is a criminal offence and they may be prosecuted immediately in the Magistrates ' Court; and
 - The threat of being prosecuted for contravening a Breach of Condition Notice is often enough to persuade the recipient to comply with the condition.

3.4 However, an Enforcement Notice may be served which is binding on all subsequent owners, unlike a Breach of Condition Notice, and this may prove to be more effective in the longer term.

4 CRIME AND DISORDER IMPLICATIONS

4.1 As mentioned above, there are public disorder problems centred on this issue of later opening hours. The local Police have supported the authority at the previous appeal Inquiry where their evidence played a significant role in determining the dismissal of the appeal. They have been assisting Enforcement officers with their investigations and are monitoring the opening hours of the Kebab Hut. It is therefore considered that the recommended action is important for this aspect and is likely to minimise such disorder problems.

5 LEGAL IMPLICATIONS

5.1 Any action considered necessary through the Courts to remedy the breach.

6 RECOMMENDATION

6.1 It is proposed that the Committee **RESOLVES**

That the Corporate Director (Law, Planning and Administration) be authorised to take all necessary action including the issue of Notices and action in the Courts to secure the remedying of the breach of planning control now reported. (HPS)

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