

CARLISLE CITY COUNCIL

Report to:- **Development Control Committee**

Date of Meeting:- 20th December 2002

Agenda Item No:-

A2

Public	Information	Delegated: Yes
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Accompanying Comments and Statements	Required	Included
Environmental Impact Statement:	No	No
Corporate Management Team Comments:	No	No
City Treasurers Comments:	No	No
City Solicitor & Secretary Comments:	Yes	Yes
Head of Personnel Services Comments:	No	No

Title:- **REVIEW OF THE PLANNING ENFORCEMENT SYSTEM
IN ENGLAND**

Report of:- **Head of Planning Services**

Report reference:- **P.03/02**

Summary:-

This report is for information and outlines the response to the Government's consultation paper on The Review of the Planning Enforcement System in England.

Recommendation:-

That the contents of this report be noted.

A Eales
Head of Planning Services

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Note: in compliance with section 100d of the Local Government (Access to Information) Act 1985 the report has been prepared in part from the following papers: None

**REVIEW OF THE PLANNING ENFORCEMENT SYSTEM IN ENGLAND:
CONSULTATION PAPER**

1.0 Introduction

- 1.1 A consultation paper on a proposed review of the Planning Enforcement System in England has been issued to all relevant Local Planning Authorities. Views and comments are requested and are to be forwarded to the Office of the Deputy Prime Minister by 31st December 2002.
- 1.2 Government recognises that effective enforcement is central to ensuring that public confidence in the planning system is not undermined and considers that the current system is complex, cumbersome and expensive for Local Authorities to operate.
- 1.3 Through this consultation process Government hopes to be able to gain a better understanding of what Authorities think about the way planning enforcement is managed.
- 1.4 Five fundamental questions related to the theme '*Is Enforcement Working?*' are asked, along with 29 further questions on specific issues. Responses to these are detailed below.

IS ENFORCEMENT WORKING?

▪ **Can the process of enforcing planning control be simplified?**

The authority believes that the existing Planning Enforcement System is fundamentally sound and that wholesale changes are not necessary. The Planning and Compensation Act 1991 introduced additional measures which provide appropriate mechanisms for addressing Breaches of Planning Control.

- **How might Local Planning Authorities be encouraged to make greater use of powers already available to them?**

Local Planning Authorities will only be able to make greater use of the current powers if their enforcement function is well respected and has adequate resources.

- **Can the system be speeded up to prevent abuses continuing?**

The Authority considers that the current system provides the tools for Officers to act quickly where necessary.

- **Is there a need for a more consistent approach amongst local planning authorities?**

The authority expresses the view that enforcement decisions should remain at the discretion of the Local Planning Authority and each authority must remain able to establish its own enforcement priorities dependant on local circumstances.

- **Is there a case for raising the level of fines that Courts may impose?**

See response to Questions 23 to 27.

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 arguments for and against.**

The Authority agrees that the power to take enforcement action should remain at the discretion of each Authority. This approach enables many minor breaches to be resolved informally through negotiation and allows flexibility within the system.

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?

Planning enforcement does need to be adequately resourced in order to be effective. Enforcement does not benefit from a direct source of income and must be 'subsidised' from planning application fees. It does, however, generate income via retrospective applications and certificates of lawful use which could be retained to support the enforcement function.

For more proactive monitoring to take place, there may be a case for charging developers for monitoring of their developments.

Recruiting and retaining enforcement staff has not been a problem within this Authority, although within Cumbrian Authorities recruitment of Enforcement Officers has been difficult with few suitable applicants. The reasons identified are largely related to lower salaries in respect of similar posts in the private sector.

This Authority considers that at both Officer and Member level that enforcement is regarded as fundamental to the success of the planning system and enforcement will continue to be given a high 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.**

The Authority agrees that the criminalisation of general Breaches of Planning Control is inappropriate, given that many breaches are carried out unintentionally.

Minor breaches would give people criminal records and Magistrates would not be equipped to deal with this specialised area of work.

Consideration should be given to the unauthorised display of advertisements and the introduction of an Advertisement Consent Enforcement Notice and the associated rights of appeal.

4. **We believe that retrospective applications continue to have a role to play in legitimising unauthorised development, against which enforcement action is inappropriate.**

The Authority believes that retrospective applications provide an appropriate mechanism for regularising development that is acceptable.

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?**

The Authority agrees that should a retrospective application not be submitted and the Local Authority considers that enforcement action is not expedient, a fee (possibly double the standard application fee) ought to be paid. Non-payment should constitute a criminal offence. This would help to fund the costs incurred by the LPA in investigating the unauthorised development.

6. **We believe that higher fees for retrospective applications would be counter productive, acting as a further disincentive to applying. The ability to apply retrospectively does not in itself encourage unauthorised development.**

The Authority agrees that retrospective applications should not attract a higher fee. The majority of breaches are unintentional and higher fees would act as a disincentive to submitting an application.

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.**

The Authority believes that the current powers available are an effective means of controlling Breaches of Planning Control, with the suggested introduction of powers to serve, where justified, an Advertisement Enforcement Notice.

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.**

This Authority will always take the appropriate enforcement action where necessary and is not reluctant to do so.

9. **Why is the use of formal enforcement powers declining and do steps need to be taken to regain public confidence in the system?**

The appointment of a second Enforcement Officer has proved effective in monitoring planning conditions and the reduction in the number of notices served reflects the success of Officers in resolving Breaches of Planning Control, without formal action being taken (approximately 97% of cases are resolved in this manner).

10. **We would welcome views on the usefulness of the existing Good Practice Guide and any suggestions for amendments or additions.**

The existing Good Practice Guide is sufficient, together with any additions proposed in this review.

11. **Does the risk of compensation liability act as a deterrent to the use of stop notices?**

Yes. Stop Notices are only used in exceptional circumstances and the risk of compensation does act as a deterrent.

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?**

Yes, at the moment a stop notice can only be served either at the same time, or after the service of an Enforcement Notice.

13. **We do not see any need to introduce a Right of Appeal against a Breach of Condition Notice.**

The Authority agrees, otherwise the advantages of serving a Breach of Condition would be removed.

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.

At present commencement and completion of building works are managed by the Council's Building Control Surveyors. Insofar as monitoring Planning Conditions, notification of commencement and completion to the Planning Department would enable the Council's Enforcement Officers to monitor more effectively.

15. **Would a self-certification process to confirm that a development accords with the planning permission be workable?**

The Authority believes that decisions as to whether development accords with planning consents should remain the responsibility of the Local Authority. Consideration should be given to the introduction of a monitoring fee for developers when development is about to commence.

16. **Should the provisions of the Planning Contravention Notice be extended to provide for a power to require the submission of a planning application?**

The Planning Contravention Notice is designed to ascertain information as to whether a Breach of Planning Control has occurred and if so a retrospective application can be sought.

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 10 year limit to give time for obtaining lawful development certificates for all existing development which did not have planning permission.**

The Authority does not agree that the 10 year rule should be abolished. If a use has existed for such a significant time without complaint, then the level of harm must be minimal.

18. **We invite views on the practicalities of serving Enforcement Notices soon after retrospective planning permission is refused.**

Best Practice should be that enforcement action is authorised and action taken as soon as possible after refusal of a retrospective application. Any Enforcement Notice appeal could then run in tandem with any appeal against the refusal of planning permission.

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.**

Yes. The submission of an application in this way might be regarded as a delaying tactic and Authorities should have the power to decline or entertain applications once an Enforcement Notice has been served. The applicants would be able to appeal under ground (a) (that planning permission ought to be granted).

20. **We consider that the right to appeal against an Enforcement Notice should remain in its current form.**

The Authority agrees with this statement.

21. **We believe that all the grounds of appeal should remain in their current form. (If the 10 year rule was to be abolished (Question 17 above) an amendment to ground (d) would be required).**

The Authority agrees that all the existing grounds of appeal should remain in their current form.

22. Should the whole of the 'double deemed fee' go to the Local Planning Authority to help 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.

Yes, this would represent a welcome extra source of income to Local Planning Authorities.

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.

(see response to question 24 below).

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.

Joint working should be encouraged at Enforcement Officer level as the sharing of information can only be of benefit. The sharing of legal representation is more problematic given that each Local Planning Authority has its own agenda and priorities.

25. Is there a need for more or better guidance for Magistrates?

Yes, the level of technical expertise in planning matters often hampers the prosecution process.

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?**

Individuals are rarely punished with high fines, these are normally saved for commercial ventures. Magistrates see a constant stream of burglary/theft, etc cases and sometimes view planning matters as relatively trivial.

27. **Is deferment a real problem and might bundling cases together for hearing reduce the scope for deferment?**

No, planning prosecutions are technical in nature and bundling them together may overwhelm Magistrates.

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.**

The Authority believes this to be a good suggestion for the Judge to visit the site to establish harm.

29. **Would a formal mediation process for enforcement result in quicker and more effective resolution of Breaches of Planning Control?**

The Authority regards informal mediation as the best method for attempting to resolve Breaches of Planning Control and the service of Enforcement Notices should normally be considered as a last resort.

2.0 Recommendation

2.1 That the contents of this report be noted.

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