

Wolverhampton City Council

OPEN INFORMATION ITEM

Planning Committee

Date **8th November 2011**

Originating Service Group(s) **REGENERATION & ENVIRONMENT**

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Title **ENFORCEMENT UPDATE – MAY 2010**

RECOMMENDATION

Committee is recommended to note the contents of the report.

1. Purpose of Report

- 1.1. To update members about Planning Enforcement matters and to provide specific information in relation to cases which have involvement from Planning Committee or which are otherwise controversial.
- 1.2. This report is to update members on activity within the Planning Enforcement Team.
- 1.3. It is proposed to present a report in a similar format to committee every six months. The report will contain a general account of complaints and notices over the previous period. It is also proposed to provide members within individual case updates where it is considered that matters are particularly controversial or where committee have requested updates.

2. Context

- 2.1. Most Enforcement Cases are resolved through negotiation, either before notices are served, during the compliance period or after a summons has been served. We aim to strike the right balance between negotiation and action in that we focus on achieving improvements to the built environment but take action where necessary to secure such improvements through formal action.
- 2.2. Enforcement action can only be taken in cases where planning permission is required and where it would not be granted, the Local Planning Authority has to make a clear case that action is expedient. The fact that development has been carried out without permission or the absence of a formal application for planning permission are not, in themselves, offences and the lack of a valid planning permission should not prejudice the determination of how to resolve matters
- 2.3. The number of enforcement complaints has remained fairly consistent for the past four years being 545 in 2006, 560 in 2007, 562 in 2008, 539 in 2009, 575 in 2010. We have received 481 enforcement complaints in 2011, up to the 19th October.
- 2.4. The Planning Enforcement Team currently has 373 live cases under investigation at varying stages: from initial investigation, through to post prosecution and post direct action.

3. Investigations and Complaints

- 3.1. The number of complaints received by the enforcement team has remained fairly consistent between five and six hundred a year.
- 3.2. Since April the enforcement team has received a total of 366 complaints;
 - April - 58
 - May - 64
 - June - 68
 - July - 56
 - August - 54
 - September - 43

- 3.3. In April complaints were received as follows (some complaints fall into more than one category);
- Householder complaints – including unauthorised outbuildings and extensions – April **14** May **20**
 - Change of use to residential – April **5** May **4**
 - Complaints about untidy land and buildings – Derelict building sites, public houses, and domestic dwellings – April **10** May **6**
 - Complaints relating to fences and walls – April **7** May **7**
 - Breaches of Condition – Operating outside permitted hours, highway works, April **1** May **3**
 - Change of Use (to non-residential uses) – includes car washes, a hostel, hot food takeaway, car repairs / sales – April **5** May **7**
 - Businesses being run from domestic properties – April **8** May **10**
 - Development not being carried out in accordance with the approved plans – April **3** May **4**
 - Advertisements – April **4** May **1**
 - Satellite Dishes – April **2** May **2**
 - Gypsy and traveller sites – April **1** May **0**
 - Complaints affecting the historic environment – April **3** May **3**
 - Miscellaneous – Siting of portacabins, commercial development, unauthorised shop fronts April **3** May **2**

4. An Overview

- 4.1. There are a number of reasons why cases are closed without resorting to formal action. There are those which are non planning complaints or development which is permitted by the General Permitted Development Order. The cases where the Enforcement Team is most successful are those which are closed because works have been completed to a satisfactory standard, without the need for formal action - resulting in improvements to amenity and the built environment. However this type of case does not 'count' for accounting purposes to the Government.
- 4.2. The Enforcement Team generates a number of planning applications: for instance, in cases where development could be acceptable (subject to the imposition of conditions), or where only minor changes are required, the team would advise that an application should be submitted. 64 Retrospective planning applications were generated by the Enforcement Team in 2010 and 46 have been generated so far this year. In addition, it is likely that there will be a number of applications for alternative developments, which would not be recorded as being retrospective.
- 4.3. Failure to make an application is not a reason for taking formal action: therefore planning decisions must be made according to the same principles, as would apply, were an application to be submitted. In these cases no formal action would be taken, however the owner would be advised that sale of the property could be difficult should permission not be obtained.
- 4.4. Where it is necessary to undertake formal action the Enforcement Team can issue a variety of notices (see explanations below). Planning Contravention Notices, requisitions for information and 'tidy up' notices are issued by the team, in consultation with Legal Services, where necessary. In the case of all types of notice and where matters progress to appeal and an inquiry is held, or matters are referred to prosecution, the

Enforcement Team work with Legal Services, in order to achieve a quick and satisfactory outcome.

5. Notices served

- 5.1. There are a number of notices which can be issued in order to further investigatory work or in order to formally require works to be done.

Planning Contravention Notices

- 5.2. Planning Contravention notices are issued where it appears to the Local Planning Authority that there may have been a breach of planning control and more information is required to determine whether formal action should be taken. The notices need to specify the breach of control and can ask questions about operations being carried out on the land or any use of land. These notices are useful for determining ownership details and can also provide details for consultees to assist in deciding whether it is expedient to take action. This type of notice is the first sort of formal notice served and often persuades the recipient to enter into negotiations to avoid formal action.

Number of Notices Served 1st April 2011 – 30th September 2011 - 17

Requisitions for information – “Section 330 Notices”

- 5.3. Notices under Section 330 have no specific planning purpose; they are served in order to establish the ownership, tenure and personal information in relation to properties in order that formal notices can be served. These are usually used as a pre-cursor to ‘tidy up’ action (See S215 Notices below). As the questions are limited in nature they are not used where a Planning Contravention Notice would be more appropriate.

Number of Notices Served 1st April 2011 – 30th September 2011 – 4

Section 215 Notices – ‘Tidy Up’ / Maintenance Notices

- 5.4. Section 215 of the Town and Country Planning Act deals with land which adversely affects the amenity of neighbourhoods. This type of notice deals with land which is untidy or not maintained to an adequate standard.
- 5.5. S215 notices can deal with untidy gardens and land, and untidy buildings. It has been used successfully as a tool for regeneration and can assist in persuading owners, amongst other things to replace windows and doors, paint properties. It is an especially useful tool to assist in the maintenance of Listed Buildings and Conservation Areas. It is also hoped that this type of notice can be used to assist in the context of environmental improvements within the City Centre.
- 5.6. Section 215 notices can be appealed to the Magistrates Court. Failure to comply with the requirements of this type of notice can lead to prosecution in the magistrate’s court, and the owner of the property is liable for a criminal conviction and a fine. Should a second prosecution be necessary then the fine can be calculated on a daily basis.
- 5.7. The Enforcement team is working with other services including Local Neighbourhood Partnerships, the Fire and Rescue Service and the Empty Properties Team and are assisting them in achieving their objectives where they are consistent with the provisions of the Act.

- 5.8. A large number of complaints continue to be received about derelict development sites, which are very difficult to deal with and most of the complaints stem from anti-social behaviour taking place on the site rather than the appearance of the site and associated detriment to amenity.
- 5.9. Furthermore this type of notice cannot require sites to be secured; there are limited powers under the Local Government Act 1982 which allow for ground floor windows of properties to be boarded. Notices cannot require that development requiring planning permission is carried out for instance the erection of fencing, nor is it a tool to deal with sites which are subject to anti-social behaviour.

Number of Notices Served 1st April 2011 – 30th September 2011 – 11

Temporary Stop Notices

- 5.10. Temporary Stop Notices are served where the Local Planning Authority think that there has been a breach of planning control AND that it is expedient that the activity (or any part of the activity) which amounts to the breach is stopped immediately.
- 5.11. After the initial period of 28 days has expired, the Local Planning Authority must have either served an enforcement notice (with or without a permanent stop notice) in order to further the action. However, in most cases the recipient of this type of notice has responded by negotiation and matters have been resolved, without the need to resort to further action.
- 5.12. These notices have been used for major developments where deviations from the plan are considered either to render the planning permission unimplemented or where the breach will cause permanent loss of amenity. This type of notice has also been used to prevent damage to protected trees.
- 5.13. Notices can require the entire development to cease, or can require parts of an activity to cease. It takes effect immediately and renders any individual carrying out work in breach of it liable to prosecution and a substantial fine.

None have been served during the period.

- 5.14. The threat of this type of notice is, in almost all cases, enough to restrain the breach of control and the continued threat of service maintains the momentum after the initial threat, subject to officers continuing to apply pressure for compliance. For this reason 3 notices have been proposed in the last six months but not served due to timely and satisfactory compliance being achieved.

Enforcement Notices

- 5.15. Enforcement Notices are issued where there has been a breach of planning control and where it is expedient to issue the notice, having regard to the provisions of the Development Plan and any other material considerations. As such this type of notice is only issued in cases where planning permission would not be granted.
- 5.16. In cases where planning permission is required but it is considered that unconditional approval will be granted, no further action should be taken even if a planning application is not made. Planning Enforcement Notices cannot be used as a punishment for carrying

out development without first asking permission, nor can they be issued as a way to regularise development.

- 5.17. Notices take time to process, due to the fact that they contain reasons for issue which include reasons for refusing planning applications. The reasons need to stand scrutiny on appeal in the same way as reasons for refusal of planning permission. Consequently, the Enforcement team carries out consultation in a similar manner to planning application consultations.
- 5.18. An Enforcement notice cannot take effect until at least 28 days after its issue. This type of notice carries a right of appeal to the Planning Inspectorate in a similar way to a planning refusal; however there are more grounds of appeal: for example a ground of appeal can be made on the basis that the steps requested are too onerous. Where a notice is appealed it will not take effect until the decision is issued by a Planning Inspector.
- 5.19. Once a notice has taken effect there is a further time period for compliance. In the case of simple requirements such as the removal of a fence this can be as little as 2 weeks, in more complex cases (for instance where people may need time to find an alternative or where businesses are at stake), the time period is longer.
- 5.20. The Local Planning Authority has the power to vary requirements of notices at any stage once it has taken effect, particularly in respect of the time given for compliance.
- 5.21. In the event of a prosecution, the defendant may elect to be heard in the Crown Court and if found guilty of an offence could be subject to a fine which has no statutory limit.

Number of Notices Served 1st April 2011 – 30th September 2011 – 10

Breach of Condition Notices

- 5.22. Where planning permission has been granted for development it is generally subject to conditions. Should an applicant not agree with a condition applied to permission, they have a right of appeal upon receipt of the decision notice. As such there is no direct right of appeal against a Breach of Condition Notice. However, a breach of condition notice can be challenged by judicial review on the basis that it is unreasonable.
- 5.23. Where developers breach conditions a notice may be served to secure compliance.
- 5.24. The period allowed for compliance with this type of notice must at least 28 days.

Number of Notices Served 1st April 2011 – 30th September 2011 – 2

- 5.25. This type of notice is not generally used. It has been found that developers will generally comply with requirements of condition when asked, or will negotiate. In such circumstances it is often the case that sites are mortgaged and as such developers would not wish to involve the mortgagee in matters of planning enforcement.

Prosecutions

- 5.26. Failure to comply with any type of notice mentioned above is an offence and the first course of action would be to prosecute the relevant person in the Magistrates Courts.

- 5.27. Often, even developers who have ignored formal notices will commence negotiations once a summons has been served. The enforcement team use this time to seek compliance with the notices with a great deal of success. Consequence of this course of action is that court cases are often adjourned to allow extra time for works to be carried out.

Works in Default – Direct Action

- 5.28. The Local Planning Authority has the power to enter land and carry out all or part of the works required by an enforcement notice. This is potentially an expensive course of action and is generally only employed when all other avenues have been exhausted. The costs of any works carried out are registered as a charge on the land and can be recovered either at the time a property is sold or the developer can be pursued through the courts.
- 5.29. The Enforcement Team, in collaboration with other departments, has managed to secure limited amounts of funding to undertake works in default; a number of direct actions on untidy properties have been carried out.
- 5.30. Should it be necessary and expedient to do so this power should be used were a property owner has consistently ignored the requirements of the Local Planning Authority.

6. Legal Implications

- 6.1. None arising directly from this report (LD/31103011/Q)

7. Financial Implications

- 7.1. None arising directly from this report

8. Environmental Implications

- 8.1. Active enforcement action can improve the general amenity of the above site. A failure to take proper enforcement action which is followed up through the provisions of the relevant legislation may undermine the general enforcement function.

9. Conclusion

- 9.1. The Council's Planning Enforcement team have become more proactive and result driven in the past 12 months: this is reflected in the number of notices served over the two periods.