

Wolverhampton City Council

OPEN INFORMATION ITEM

Planning Committee

Date 28th February 2012

Originating Service Group(s) **Education and Enterprise**

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& TREES**

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Title **ENFORCEMENT UPDATE – Nov – Dec 2011**

RECOMMENDATION

1. Committee is recommended to note the contents of the report

NOTE

This report is accompanied by a further report detailing actions in specific cases. That report is an exempt item as it discloses information in relation to prosecution activity. See agenda item no 14.

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, in which members have expressed an interest or which are otherwise controversial (**this information is exempt and contained in a further report**).

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, nor can it be a reason in itself to justify enforcement action.
- 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 and we have received 557 complaints in 2011.
- 2.4. There are currently 147 cases under investigation and 52 where a notice has been served.
- 2.5. The Service is being more active in issuing notices where breaches are confirmed and where planning permission would not be recommended in order to provide surety for the complainant and the subject of the complaint.
- 2.6. Any comments made by the recipient of notices, in terms of time scales or hardship, is accounted for in the time limit given for complying with the notice.

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 1st October the enforcement team has received a total of 97 complaints.
- 3.3. Month by month (Oct – Dec) complaints were received as follows (some complaints fall into more than one category);
 - Householder complaints – including unauthorised outbuildings and extensions – October **11** November **8** December **5**
 - Complaints about untidy land and buildings – Derelict building sites, public houses, and domestic dwellings – October **3** November **4** December **6**

- Complaints relating to fences and walls – October 2 November 3 December 4
- Breaches of Condition – Operating outside permitted hours, highway works, October 3 November 3 December 1
- Change of Use (to non-residential uses) – Includes Car Washes, hot food takeaway, car repairs / sales – October 1 November 1 December 2
- Businesses being run from domestic properties – October 3 November 7 December 2
- Development not being carried out in accordance with the approved plans – October 1 November 3 December 1
- Advertisements – October 2 November 3 December 0
- Satellite Dishes – October 3 November 2 December 0
- Gypsy and traveller sites – 0
- Complaints affecting the historic environment – October 1 November 2 December 0

4. **An Overview**

- 4.1. There are a number of reasons why cases are closed without resorting to formal action. These include those which are non planning complaints or development which is permitted by the General Permitted Development Order. Cases where the Enforcement Team are most successful are those which are concluded because works have been completed to a satisfactory standard without the need for formal action.
- 4.2. As failure to make a planning application is not a reason for taking formal enforcement action, then planning decisions must also be taken in the light of this, where the development is acceptable in planning terms if an application was to be submitted. In these cases the owner is advised that the sale of the property could be difficult should permission not be gained.
- 4.3. Where it is necessary to undertake formal action the Enforcement Team can issue a variety of notices (see explanations below). Notices are only issued where it is expedient to do so.

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 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 alleged breach of control and can ask about any 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 normally is the first sort of formal notice served and often persuades the recipient to enter into negotiations to avoid formal action.

Notices Served – October 4, November 5, December 0

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 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 – November 1

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. This is a particular problem in the current economic climate as businesses and land owners struggle to maintain land to a reasonable 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. 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 team are working with other teams 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 as 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 however 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 an effective tool to deal with sites which are subject to anti-social behaviour.

Number of Notices Served October 2, November 1, December 0.

Temporary Stop Notices

- 5.10. Temporary Stop Notices are served where the Local Planning Authority think that there has been a serious breach of planning control AND that it is expedient and proportional to the damage created, that the activity (or any part of the activity) which amounts to the breach is stopped immediately.
- 5.11. After the initial period of notice 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 serious adverse effects on amenity. This type of notice has also been used to prevent damage to protected trees.
- 5.13. Notices can where considered expedient and proportionate, 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. However, 3 were authorised and works ceased or were remedied without having to serve the notices.

- 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 proportionate and expedient to issue the notice having regard to the seriousness of the damage done and 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. Notices take some time to process as 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 reason for refusal of granting of a planning permission. As such the enforcement team consult in a similar way to planning applications.
- 5.17. This type of notice cannot take effect until at least 28 days after its service. 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. When a notice is appealed it will not take effect until a decision is issued by the Planning Inspectorate.
- 5.18. Once a notice has taken effect there will be a further time period for compliance set by the Inspector. In the case of simple requirements such as the removal of a fence this can be as little as 2 weeks, in the case of complex cases where people may need time to find an alternative or where businesses are at stake then the time period can be considerably longer.
- 5.19. The Local Planning Authority has the power to vary requirements of notices at any stage once it has taken effect, this especially relates to the time given for compliance.
- 5.20. 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 – October 1 – November 2

Breach of Condition Notices

- 5.21. Where planning permission has been granted for development it is generally subject to conditions, should an applicant not agree with a condition applied to a permission then they have a right of appeal on receipt of the decision notice.
- 5.22. 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 has to be at least 28 days.

1 Notice was served in November.

- 5.25. This type of notice has not often been 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 mortgagor 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 consider a prosecution 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. A 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 utilised only when all other avenues have been exhausted. The costs of any works carried out can be considerable and are registered as a charge on the land and can be recovered either at the time a property is sold or pursued through the courts as a debtor.
- 5.29. The Enforcement Team, in collaboration with other departments, has managed to secure limited amounts of funding to undertake works in default. As a result of which a number of direct actions on untidy properties have been carried out.
- 5.30. Should it be necessary, proportional 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 There are no legal implications arising directly from this report. The Government's Planning Policy Guidance Note 18 recommends that there should be close working arrangements with the Council's legal services team to ensure a swift formal enforcement process. At this Local Authority the enforcement team does consult with the legal services team when it is expected that formal enforcement action will need to be taken. (LD/13022012/D)

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 a site. A failure to take proper enforcement action which is not followed up through the provisions of the relevant legislation may undermine the general enforcement function.

9. Conclusion

- 9.1. The enforcement team continues to deal with a large number of complaints relating to breaches of planning control and untidy land.