MUNICIPAL YEAR 2009/2010 REPORT NO.

MEETING TITLE AND DATE:
Environment, Parks and Leisure Scrutiniy Panel

REPORT OF:
Assistant Director of Planning & Environmental Protection

105	Agenda – Part:	1

Subject:

PLANNING ENFORCEMENT

Contact officer and telephone number:

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1. EXECUTIVE SUMMARY

This report provides an update on the actions carried out by the Planning Enforcement Team over the past 3 years.

2. Introduction

2.1 As the Local Planning Authority, Enfield Council discharges it's Planning Enforcement function with a dedicated team, which was created specifically as part of the Environmental Crime Unit in 2003. It investigates allegations of unauthorised development. The majority of complaints that are received are concerned with, amongst others, building work and material changes of use of buildings and land.

2.2 The Planning Enforcement Team also investigates complaints of other potential breaches of planning control, such as works to protected trees and hedgerows, works to listed buildings, unauthorised display of advertisements, unauthorised demolitions and untidy land.

2.3 The Planning Enforcement Team also endeavours to have a pro-active approach in monitoring development that has been granted planning permission to ensure compliance with the approved plans and conditions secured through the planning application process.

2.4 The Planning Enforcement Team also consider complaints about High Hedges that are submitted under the provisions of Part 8 of the Anti-Social Behaviour Act 2000.

2.5 The Planning Enforcement Team now sits within the Council's Planning & Environmental Protection Division, which has brought the Council's regulatory functions together.

3. Background

3.1 The Planning Enforcement Team relies primarily on reports of breaches by residents and businesses in the Borough. Any reports and allegations of breaches of control remain confidential and the person reporting the breach will be kept informed as to how investigations are progressing and what courses of action are taken.

3.2 Some complaints that are received may also require input from other departments and bodies, such as Environmental Health, Building Control etc. and outside bodies such as Highways Authority, Environment Agency etc. Where such complaints are received, the Enforcement Team will liase with them. In some instances a complaint is not identified as a breach of planning control, but a breach of other.

3.3 The integrity of the Development Control process depends upon the Local Planning Authority's (LPA) readiness to take effective enforcement action where it is deemed absolutely necessary. The public acceptance of the Development Control process is quickly undermined if unauthorised development, which is unacceptable in planning terms, is allowed to proceed without any apparent action by the LPA to intervene before serious harm to amenity results. Any enforcement action must not be based on any irrational factors or be taken without consideration of the relevant facts and planning issues. Nor should it be based on non-planning grounds.

4. Planning Legislation

4.1 In order for the Planning Enforcement Team to effectively tackle breaches of planning control, it uses all powers provided within the Town and Country Planning Act 1990. The action the Local Planning Authority can take is discretionary, but securing lawful use of land is a key aim for this service.

4.2 An in depth review of the powers that can be used by the Council to deal with breaches of planning control and the limitations imposed by the legislation can be found in Appendix 1.

5. Role of the Planning Enforcement Team

5.1 On investigating alleged breaches of planning control the Enforcement Officer must make an assessment of the impact of the development or change of use in order to recommend the appropriate course of action to be taken to either regularise the breach or to update the customer with the reasoning’s for the Council not taking any further action.

5.2 In cases where the Council has reviewed a breach of planning control and has concluded that no further action will be taken the customer is advised of the

discretionary nature of the enforcement powers and the reasoning for the decision to take no further action for the following reasons.

5.3 Enforcement officers can only investigate breaches of planning legislation. If the work which has been carried out does not need planning permission, or if the works have been carried out in accordance with a planning permission, enforcement action cannot be taken. Also, some matters do not fall within the scope of either development control/planning services and therefore cannot be investigated by enforcement officers, for example a boundary dispute or a covenant issue.

5.4 If a breach of planning control is found to have occurred, the Council can take enforcement action. However before such action is taken, the opportunity to put things right is allowed. If it is considered that the development may receive planning permission, the person responsible for the work may be invited to apply for permission retrospectively. However, if no application is made, or the breach is a significant one, then formal action would be considered. This could include serving an enforcement notice. This would only be a last resort – formal action will normally only be taken if other means of resolving the breach have not been successful.

5.5 The question is often asked: - if someone breaks planning regulations shouldn't they always be punished as a matter of principle, and made to remove or stop whatever they have done?

The answer is not straightforward. In planning law, other than in the case of unauthorised display of advertisements or works to listed buildings, carrying out building works or a change of use without the necessary planning permission is not a criminal act and, initially, not subject to penalties such as fines or imprisonment. Later in the process, if an enforcement notice has been served and not complied with, then court action and penalties such as fines can be imposed. However, planning enforcement is a discretionary power of a local authority that should only be used to put right any harm caused by a failure to comply with planning control.

When there is no harm, or it is insignificant (this is an important point), enforcement action is generally not justified. A harm requiring enforcement action would normally occur when the breach in question results in an unacceptable departure from relevant planning policies that would have justified refusing planning permission if it had been the subject of a planning application.

5.6 Again another question asked is: - Doesn't planning law mean some people who break the regulations get away with it?

In the first instance, the objective of planning enforcement is generally not to punish those who break the regulations but to remedy any harm caused by unlawful actions. However, people who do not get the necessary planning permission for something they are doing risk the possibility of serious consequences from enforcement action that can be extremely costly, and

failure to comply with an enforcement notice can result in court action and legal penalties. It may also be difficult or impossible to sell a property if planning permission's have not been properly obtained or followed.

6. Key Objectives

6.1 The Planning Enforcement Team is a key function within the Environmental Crime Unit. It not only provides a efficient and effective service on a reactive basis to the residents of the borough but it also focuses on key objectives for 2009– 2010 which fall within the service plan of Planning and Environmental Protection.

6.2 These objectives are as follows

- The Completion of a borough wide enforcement action against illegal advertising hoardings. The completion of a series of projects to map all existing locations and the subsequent service of Section 11 Notices, carrying out a structured works in default programme if non-compliant.
- To carry out pro-active investigations of unauthorised development within conservation areas and take formal action accordingly.
- To carry out investigations of planning contraventions in accordance with priorities as set by local indicators.
- To commence enforcement action identified from the recently completed Crews Hill Study.
- To increase use of works in default powers by a more timely intervention for unlawful development.

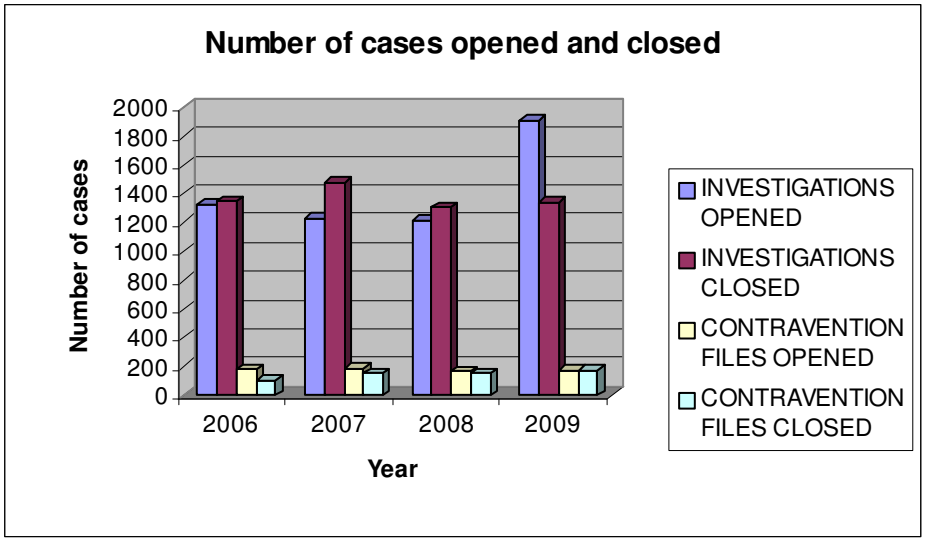
7. Performance of Service

7.1 The following table shows that from 2006 the number of investigations recorded by the Planning Enforcement Team decreased in total through 2007 and 2008. There are 2 main reasons for this drop in complaints recorded.

- An improved Business Support Team who take the initial calls and enquiries, by both providing internal and external training, giving a greater knowledge of planning legislation and the processes involved in the planning process.
- In 2007 the Planning Enforcement Team changed locations within the Civic Centre, to where it is now based in B-Block North. Located now along side the Public Health, Street Scene, Licensing, Trading Standards and Environmental Health Team has allowed for greater joined up working and a significant reduction in allocated work, which cannot directly be actioned within the Planning remit.

7.2 As shown in the chart below, this also allowed the Planning Enforcement Team to action a greater number of cases than registered each year, reducing the overall work load of the team as a whole.

7.3 The chart also shows a significant rise in complaints received this year, a rise of **301 cases** to date. These figures are only representative of complaints received up to October 2009 when the information was collated. It is predicted that a further **400 investigations** will be registered with the Planning Enforcement Team by the end of 2009. This represents an increase of 701 investigations or **63%** over the volume of cases reported in 2008.



7.4 Reasons for this increase are possibly due to improvements in joined up working and project work, improvements to the Councils website providing easier contact to the Council and the economic down turn which has resulted in home owners extending their properties instead of moving.

7.5 This rise in complaints has in turn placed further pressures on the team which must continue to carry out all investigations within the timescales set by the Local indicators, while providing an effective service to meet customer expectations.

7.6 **Service of Notices**

The following table outlines the number of Formal Notices Served since 2006 to 2009. It is evident that since 2007 there has been an increase in the total number of Notices served. There has been an increase of **312** Notices served in 2009 or **26%** over the volume of Notices served in 2008.

YEAR	Breach of Condition Notice	Discontinuance Notice	Enforcement Notice	Planning Contravention Notice	Section 11 Notice	Section 215 Notice	Stop Notice	Temporary Stop Notice	Section 330 Notice	TOTALS
2006	17	0	103	34	0	15	6	2	0	**177**
2007	10	1	87	64	0	5	3	2	1	**173**
2008	14	0	83	76	4	6	1	4	2	**190**
2009	13	0	54	172	143	4	2	6	108	**502**
TOTAL	**54**	**1**	**327**	**346**	**147**	**30**	**12**	**14**	**111**	**1042**

8. **Analysis of Investigations Closed**.

8.1 The tables below (1 & 2) show in more detail the number of cases closed since 2007, breaking down the types of breaches investigated and Notices served and the reasons for closure.

8.2 It is evident from this information that flat conversions are always a major part of the enquiries raised through the Enforcement Team. Flat conversions represented 17% of cases actioned by the Enforcement Team through 2007 to 2009.

8.3 However it must be noted that the number of Section 215, Untidy Land Notices served by the Planning Enforcement Team has fallen each year. This does not mean that the Planning Enforcement Team has failed to effectively deal with complaints of untidy or derelict premises within the Borough.

8.4 In 2009 the Environmental Crime Unit received 417 enquiries regarding untidy and derelict land. To effectively deal with these complaints the Business Unit review each enquiry as to the nature of the problem, location, type of premise, type/amount of rubbish, vegetation etc. This allowed the Business Unit to allocate the investigation directly to the correct team within the department to action accordingly.

Reason for closure	ADDRESS MATCH PROPERTY	All Other Breaches	Alterations to Listed Buildings	Breaches in Crews Hill 'Defined Area'	Car Boot Sales	Car Washes	Felling and lopping of Protected Trees	Flat Conversions	Fly Posting-Advertisements	Garages and outbuildings	High Hedges	Hostels and care homes	Late night opening	Major bldg work- substantive. Undertaken	Major building work- recently commenced	Major building works - Residential prop.	Minor works at residential properties	MPs' enquiries	Other breaches of condition	Other changes of use	Sale or repair of motor vehicles	Shop fronts and Canopies	Smoking Shelter	Unauthorised residential occupation	Untidy or derelict land	Use of Garage as a Habitable Room	Vehicular Access	Ventilation equipment	Ward Councillors' enquiries	Works to commercial property	Z-Advertisements, Signs, Hoardings	Z-Breach of Conditions	Z-Car Repairs/Spraying	Z-Commercial Use- Residential Properties	Z-Dev Not in Accordance with Plan	Z-Extension to Commercial Property	Z-Extension to Residential Property	Z-Fencing in excess of P.D.	Z-Patio/changing level of land	Z-Satellite Dish	**Grand Total**
Anonymous Complaint - No Further Action.	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	**2**
Application Allowed on Appeal	0	7	0	0	0	0	0	1	0	3	0	1	0	0	0	4	2	0	1	3	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	**23**
Application Submitted & Approved	2	55	2	1	0	2	5	43	5	27	0	1	2	13	12	54	19	1	21	17	2	4	0	2	1	3	1	1	1	3	0	0	0	0	0	0	0	0	0	0	**300**
Breach has been rectified	0	114	9	0	0	2	1	39	62	38	3	2	1	3	10	42	30	4	39	26	20	7	1	18	40	3	1	3	4	2	0	1	0	0	0	0	0	1	0	1	**527**
Ceased	0	1	0	0	0	0	1	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	**3**
Complaint Referred to another Dept	1	10	1	1	0	0	1	1	3	0	0	0	0	0	0	2	3	1	4	0	6	1	0	1	11	0	1	0	1	0	0	0	0	0	0	0	0	0	0	0	**49**
Complaint withdrawn	0	6	0	0	0	0	0	2	0	5	0	1	0	0	2	8	2	0	0	0	0	0	0	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1	0	**29**
Complied with Enforcement Notice	0	2	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	**4**
Deemed Consent	311	3	0	0	0	0	0	28	1	3	0	0	0	0	3	16	4	0	1	2	4	1	0	3	1	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	**383**
Investigation now a Contravention	1	81	2	3	0	5	1	71	11	26	0	0	3	4	12	43	33	0	29	28	3	5	1	8	19	4	1	3	3	4	3	1	0	0	2	0	1	0	0	1	**412**
No Breach Found	11	245	9	4	1	3	30	130	27	165	1	4	3	29	50	187	95	11	88	91	87	9	1	44	26	23	2	3	10	8	0	0	0	1	0	1	0	0	0	0	**1399**
No Further Action Taken	24	109	3	1	0	4	12	43	17	56	2	1	3	6	16	86	49	6	40	17	22	27	2	13	16	4	0	8	3	6	0	0	0	0	1	0	0	0	0	1	**598**
Not a Planning Matter - no further action	0	7	0	0	0	0	1	0	3	1	1	0	1	0	0	2	0	0	3	0	2	0	0	2	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	**25**
Permitted Development	0	37	0	0	0	0	0	2	1	76	0	0	0	3	18	72	36	0	7	4	1	0	0	3	0	3	0	0	3	0	0	0	0	0	0	0	1	0	0	0	**267**
Planning Application Received	0	1	0	0	0	0	0	0	1	0	0	0	0	1	1	2	0	0	1	1	0	0	0	0	0	0	0	0	0	1	0	0	1	0	0	0	0	0	0	0	**10**
Request Planning Application	1	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	**2**
Transferred to Existing Complaint.	9	20	0	0	0	2	0	16	13	18	0	1	1	3	5	12	7	1	7	9	2	1	0	2	2	1	0	1	1	1	0	1	0	0	1	0	0	0	0	0	**137**
Grand Total	**360**	**698**	**26**	**10**	**1**	**18**	**52**	**376**	**144**	**420**	**9**	**11**	**14**	**62**	**129**	**530**	**280**	**24**	**242**	**199**	**149**	**55**	**5**	**98**	**116**	**44**	**8**	**19**	**26**	**25**	**3**	**3**	**1**	**1**	**4**	**1**	**2**	**1**	**1**	**3**	**4170**

Table 1 - Investigations closed by the Planning Enforcement Team 2007 - 2009

Reason for closure	All Other Breaches	Alterations to Listed Buildings	Breaches in Crews Hill 'Defined Area'	Car Boot Sales	Car Washes	Flat Conversions	Fly Posting-Advertisements	Garages and outbuildings	Hostels and care homes	Late night opening	Major bldg work- substantive. Undertaken	Major building work- recently commenced	Major building works - Residential prop.	Minor works at residential properties	MPs' enquiries	Other breaches of condition	Other changes of use	Sale or repair of motor vehicles	Shop fronts and Canopies	Unauthorised residential occupation	Untidy or derelict land	Use of Garage as a Habitable Room	Vehicular Access	Ventilation equipment	Ward Councillors' enquiries	Works to commercial property	Z-Advertisements, Signs, Hoardings	Z-Breach of Conditions	Z-Canopy	Z-Commercial Use- Residential Properties	Z-Dev Not in Accordance with Plan	Z-Extension to Residential Property	Z-Fencing in excess of P.D.	Z-Parking Commercial Vehicles	Z-Satellite Dish	Z-Untidy Condition of Land/Garden	Grand Total
Appeal Allowed - Enf.Notice Quashed	1	0	1	0	0	0	0	1	0	0	0	0	1	1	0	1	1	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	8
Application Allowed on Appeal	0	0	0	0	0	1	0	1	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	3
Application Submitted & Approved	2	0	0	0	0	4	0	0	0	0	1	0	5	1	0	2	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	18
Breach has been rectified	12	2	0	0	0	14	6	2	0	0	1	1	6	7	0	4	5	2	2	0	9	0	0	0	0	0	1	0	0	1	0	1	0	1	3	0	80
Ceased	41	2	1	0	1	31	11	16	0	1	2	6	24	16	1	20	16	1	2	3	22	1	1	0	1	0	23	0	1	0	1	0	1	0	0	1	247
Complaint Referred to another Dept	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	2
Complaint withdrawn	0	0	0	0	0	1	1	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	3
Complied with Conds of Plan.Perm	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	3
Complied with Enforcement Notice	11	0	0	0	0	4	0	2	0	0	0	0	4	6	0	1	4	0	0	0	0	0	0	0	0	0	10	0	0	0	0	0	0	0	0	0	42
Deemed Consent	1	0	0	0	0	0	1	3	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1	0	0	8	0	0	0	0	0	0	0	0	0	15
Investigation now a Contravention	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
No Breach Found	1	0	0	0	0	2	0	0	0	0	0	0	1	1	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	6
No Further Action Taken	11	0	1	0	0	3	3	1	1	0	0	1	3	2	0	1	1	1	0	0	3	0	0	0	0	1	1	0	0	0	0	0	0	0	0	0	34
Not a Planning Matter -no further action	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Notice Withdrawn	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Planning Application Received	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Transferred to Existing Complaint.	2	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	5
Grand Total	84	4	3	1	1	60	23	26	1	1	5	8	46	34	1	32	30	5	4	4	35	1	1	1	1	1	44	1	1	1	1	1	1	1	4	2	470

Table 2 - Contraventions closed by the Planning Enforcement Team 2007 - 2009

9. Performance Indicators

9.1 Local performance indicators are set by the Planning Committee which sets out a priority rating for breaches of planning control and appropriate timescales in which they should be investigated and the customer updated. A copy of this priority list can be found in Appendix 2. The Local performance indicators require all breaches of planning control reported to the Planning Enforcement Team to be investigated within the prescribed timescales. 95% of all cases must be visited within this time in order to meet the targets set by the department's objectives.

9.2 In 2008 and through 2009 100% of cases reported to the Enforcement Team were actioned in accordance with the local indicators.

9.3 Customer satisfaction is measured on a quarterly basis through a questionnaire seeking information regarding their views of the performance of the officer through the investigation.

9.4 In 2008/2009 **73.1%** of customers were satisfied with the service they had received. Currently through 2009 **74.1%** of customers are satisfied with the service they had received. A marginal increase in satisfaction, but the final overall figure is calculated in April 2010. These responses however are always open to varied responses and opinions of the residents of the borough but the ways in which the Council provides this service is constantly under review in order to meet the demands of the customer.

10. Specific Projects

10.1 Unauthorised Hoardings within the Borough

10.1.1 In May 2008 a detailed survey of all hoardings within the borough was carried out. The survey identified, photographed and logged each hoarding. A review of Council records held by development control, business rates and council mapping systems were cross-referenced with the location and form of hoarding at each site.

10.1.2 From this information the following information was outlined

420 Hoardings were identified within the borough
139 Hoardings with a valid permission
53 Hoardings benefit from deemed consent
228 Hoardings were unauthorised/no record

10.1.3 In order to effectively take action against unauthorised hoardings, an action plan focussed on Gateways to the borough, conservation areas and sites causing a detrimental impact on the surrounding area.

10.1.4 To date **76 formal Notices** have been served, requiring the removal of the advert and support structure within 21 days. **71 sites** have been removed by

the owner of the land and or the advertiser itself. **3 sites** have been actioned by the Council through works in default.

10.1.5 It is projected that all unauthorised hoarding within the borough will have been actioned by the end of March 2010.

10.2 Crews Hill Defined Area Report

10.2.1 In June 2008 a detailed review of all advertisements, building work and commercial activity was carried out. 23 sites within the defined area were investigated, photographed, mapped and logged.

10.2.2 A detailed review of Council records held by Development Control, Building Control, Business Rates and mapping systems were then cross reference with the data recorded from the sites.

10.2.3 Identified breaches of planning control have been assessed with regards to time scales and impact on the surrounding areas. The report outlines all the information collated, breaches of planning control identified and recommended actions for each site.

10.2.4 Currently the following actions have been taken.

9 Enforcement Notices have been served
2 Stop Notices have been served against unauthorised development
105 Planning Contravention Notices
105 Section 330 Notices
83 Section 11 Notices against unauthorised adverts
3 Enforcement Notices have been complied with
2 Stop Notices have not been breached
84 Unauthorised adverts have been removed

10.2.5 From this action 6 planning applications were received regarding signage on Cattlegate Road. These applications have been processed with 5 of the 6 applications have been refused. Further Section 11 Notices have been served by the Council requiring the unauthorised signage to be removed within 21 days.

10.2.6 The Planning Enforcement Team have also successfully prevented the unauthorised use of Premises within the Crews Hill area for the storage and recycling of tyres. Action was taken within 24 hours of the enquiry being received to prevent further activity on the site. Within 48 hours, the site was cleared of all tyres and containers with no further deliveries being received.

11 Conservation Areas

11.1 With the designation of a further 4 Conservation areas within the borough, now totalling 19 designated areas an ongoing review of these areas is being carried out to identify recurring problems on a local scale and to document current development that has both taken place historically and current development that is underway.

11.2 Each conservation area also has a study group which meet collectively on a monthly basis at CAG. Through these meetings the council has provided cameras for each group to actively play a part in recording and updating areas of interest within their area.

11.3 This information is stored by the Conservation Area Team, which provides a benchmark allowing future enforcement action to be effectively be taken.

12 Works in Default

12.1 In 2009 the Council secured 2 contractors to carry out works in default against unauthorised hoardings and unauthorised development in breach of formal Notice.

12.2 The Council authorised works in default to be carried out against **10** properties for none compliance of an Enforcement Notice. Final Notice served on the owner/occupiers of the properties subsequently resulted in urgent action to be taken by the property owner/occupier to rectify the breach of planning control; therefore no further action was taken.

12.3 The Council has successfully carried out works in default to remove **3** unauthorised hoardings and support structure. The company responsible for the hoardings maintenance was subsequently recharged for works carried out.

12.4 The Council has also carried out works in default with regards to non-compliance **2** Section 215 Notices. On each occasion the land was cleared and all charges regarding the works were recharged to the landowner.

12.5 The Council has successfully carried out works in default with regard to failure to comply with an Enforcement Notice. The outbuilding was removed and a charge was placed on the land. The outstanding balance was paid after the property was sold this year.

12.6 Currently the Enforcement Team is formulating an action plan to effectively tackle breaches of planning control where formal Notice has been served and compliance with the requirements has not been met.This plan will prioritise works by breach and the impact and harm on the surrounding area and adjoining neighbours.

13 Coordinating Action

13.1 In order for the Environmental Crime Unit to effectively deal with problem premises, the Planning Enforcement Team have carried out joined up formal action against a number of Premises.

13.2 Premises/development which require planning permission, more often than not are also at risk of causing nuisance to neighbours and the surrounding area, through excessive noise, smell and light.

13.3 Through 2009 The Environmental Crime Unit has effectively dealt with problem supermarkets, unauthorised Social Clubs, restaurants opening out of permitted hours,

14 Prosecutions

Date of conviction	Planning Breach	Fine	Costs
24 January 2008	Unauthorised flat conversion	£750	£434.85
7 February 2008	Unauthorised Dormer & gable end	£10,000	£455.35
7 February 2008	Unauthorised fence and gates	£4,000	£629.15
7 February 2008	Unauthorised change of use	£4,000	£629.15
27 March 2008	Untidy Land	£250	£464.65.
6 May 2008	Unauthorised change of use	£400	£3286.42
8 May 2008	Unauthorised development	£5,000	£422,85
29 May 2008	Wilful obstruction	£200	£543
3 July 2008	Unauthorised development	£4,000	£750
31 July 2008	Unauthorised change of use	£2,500	£605,60
27 November 2008	Unauthorised flat conversion	£10,000	£1,870,36
27 November 2008	Unauthorised flat conversion	£10,000	£1,870,36
27 November 2008	Unauthorised works to a TPO	£500	£684.10

8 prosecution files were submitted to the magistrate's court within 2009. On service of the summons, works were subsequently carried out by the defendants and costs were paid the Councils work involved.

15 Planned Future Activity of Planning Enforcement

15.1 Over the coming months Planning Enforcement aim to continue in its success of reaching the 95% benchmark set by the Local Indicator.

15.2 It aims to conclude all actions against unauthorised Hoardings and secure compliance of all actionable breaches of planning control within the Crews Hill Defined Area.

15.3 Planning Enforcement aims to improve on customer satisfaction by implementing customer comments and feedback where able to provide a more accessible service.

APPENDIX 1

PLANNING ENFORCEMENT GUIDANCE

<u>Section A</u>: Powers to deal with breaches of planning control.

The powers available to Local Planning Authorities to deal with breaches of planning control are set out in the Planning and Compensation Act 1991, which amended Part VII of the Town and Country Planning Act 1990.

The powers include:

- The power to serve a **planning contravention notice**. This may be used where it appears that there may have been a breach of planning control and the Local Planning Authority requires information about the activities on the land or to find out more about the nature of the recipient's interest in the land.
- The power to issue an **enforcement notice**, requiring steps to be taken to remedy the breach within a given period. There is a right of appeal to the Secretary of State against an enforcement notice. If the notice is upheld, failure to comply is an offence with a maximum penalty on conviction of £20,000 *(this is the maximum fine in the Magistrates' Court. If the case goes to the Crown Court the fine is unlimited).*
- The power to serve a **breach of condition notice** where there is a failure to comply with any condition or limitation imposed on a grant of planning permission. This procedure provides a fast track enforcement option to secure compliance, with no statutory right of appeal to the Secretary of State.
- The ability to seek an **injunction** in the High Court or County Court to restrain any actual or expected breach of planning control.

Each of these is described more fully below.

The use of these powers is discretionary. A breach of planning control is not criminal in itself. A Local Planning Authority should only pursue enforcement action where it has concluded that it is expedient so to do, having assessed all the relevant planning considerations in the case. The key factor is whether the breach of control unacceptably affects public amenity or the existing use of land or buildings meriting protection in the public interest.

Any action taken should be proportionate to the breach. If enforcement action would serve no useful purpose – for example, where the breach is a minor one or the unauthorised development is not contrary to the provisions of the UDP – the Local Planning Authority can reasonably decide not to take any action.

Planning Contravention Notices (PCN)

The serving of a PCN [under Section 171© of the Town and Country Planning Act 1990] is one of the main powers available to Local Planning Authorities to investigate alleged unauthorised developments.

A PCN should only be served if the Local Planning Authorities already have some prime facie evidence for believing that a breach may have occurred. *(The High Court has found that while the PCN is not as draconian as an enforcement notice it is nevertheless "an intrusive procedure" that should not be deployed unless it appears to the LPA that a breach might have occurred).*

A PCN has four main objectives:

- It acts as a formal warning of the prospect of enforcement action;
- It requires the recipient to confirm at an early stage what has been happening on the land in question, and giving him the opportunity to provide a legal justification (if any);
- It gives the Local Planning Authority the opportunity, in cases where the development is broadly acceptable, of encouraging the submission of a planning application;
- The response (or lack thereof) provides the Local Planning Authority with a firmer basis for deciding whether to proceed with enforcement action.

Failure to comply with a PCN within 21 days is a summary offence. It is also an offence to knowingly or recklessly make a false or misleading statement in responding to a notice.

Other powers available for investigating allegations of unauthorised development.

Section 330 Notice:

Under Section 330 the Local Planning Authority may serve a notice on the occupier of the relevant land requiring him to state the nature of his interest in it and to provide the name and address of any persons with an interest in the land and to provide details of the current use of the land, and when it commenced.

Section 16 of the Local Government (Miscellaneous Provisions) Act 1976

These provisions enable an authority to establish facts about ownership of land.

Powers to enter land

A person authorised by the Local Planning Authority may enter land for the purposes of investigating an alleged breach of planning control (Section 196A of the Town and Country Planning Act 1990). This is a specific power related to enforcement investigations that are additional to the power under Section 324 of the Act to enter land for the purposes of 'surveying' in connection with the proposed serving of a notice. If admission to the land is refused the local planning authority may apply to a Justice of the Peace for a warrant to enter the land (Section 196B).

Enforcement Notices

Under Section 173 of the Town and Country Planning Act 1990, an enforcement notice must specify:

a) The breach of planning control (stating whether the breach constitutes development without permission or failure to comply with a condition);
b) The steps that the Local Planning Authority requires to be taken to remedy the breach;
c) The date on which the notice is to take effect;
d) The period within which any steps are required to be taken or activities are required to cease;
e) The reasons why the Local Planning Authority considers it expedient to issue the notice, listing the relevant UDP policies (see below);
f) The boundaries of the land to which the notice relates (best done by attaching to the notice an OS extract clearly showing the site).

It is very important that the notice clearly describes the breach of control and the action required to remedy it. If the notice is not clear or precise on either of these points it could be grounds for successful legal challenge.

The action required must not go beyond what is necessary to remedy the breach or alternatively, to remedy any injury to amenity; for example, it would be reasonable to require a site to be restored to the condition it was in prior to the breach, but not to require it to be landscaped or laid out in a wholly different manner.

The *Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002*, which came into effect on 23 December 2002, introduced revised provisions for the content of enforcement notices and the information to be provided by Local Planning Authorities when serving copies of enforcement notices. New Regulation 4 requires that the statement of reasons in the enforcement notice should cite the relevant development plan policies. The statement must also make clear whether or not those reasons are only for the purpose of remedying an injury to amenity. *See Annex 1 of ODPM Circular 02/2002 Enforcement Notices and Appeals*.

The enforcement notice must be accompanied by an explanatory note regarding – the right of appeal; the need for an appeal to be made in writing; the grounds on which an appeal can be made; and the fee payable for a deemed application for planning permission (Regulation 5).

Local Planning Authorities are advised to enclose with the enforcement notice a copy of the Planning Inspectorate's booklet "Making your Enforcement Appeal". Under the new Regulation 5, Local Planning Authorities are required to inform the recipient of who else has been served with a copy of the notice, and to calculate the appropriate fee for the deemed application in the event of an appeal under ground (a). The fee is double that payable for a normal planning application, half of which the appellant should pay to the Local Planning Authority and half to the Planning Inspectorate.

Local Planning Authorities are asked to send <u>two</u> copies of every enforcement notice they issue, so that the intending appellant can submit one copy with any appeal (Regulation 8).

Under-Enforcement

A Local Planning Authority may decide not to cover every aspect of the breach of planning control in the required remedial actions – for instance, where it considers that some elements of the unauthorised development are acceptable. Where the Local Planning Authority under-enforces and the recipient of the notice has complied with the requirements of the notice, planning permission is deemed to be granted for the unauthorised developments or activities which were not subject to the required steps.

Period of compliance

The period for compliance should normally be as short as can reasonably be allowed to carry out the steps required. A notice can be challenged on the ground that the compliance period is unreasonably short.

Authorisation

Because an enforcement notice issued without proper authorisation is likely to be vulnerable to legal challenge, it is essential that the decision to issue the notice (whether by Committee resolution or under officer's delegated powers) be properly recorded.

Serving of an Enforcement Notice

Copies of the Notice must be served on the owner and occupier of the land in question and on any other person having an interest in the land (which applies to anyone whom the authority considers to be materially affected by the Notice).

The Notice must be served within 28 days of the date of issue and 28 days prior to the date on which it is to take effect.
The Notice may be served:

a) By delivering it in person;
b) By leaving it at the person's last known address;
c) By sending it by registered or recorded delivery;
d) In the case of a company sending the Notice by registered or recorded delivery to the company secretary at the principal or registered office.

A copy of the Notice must also be placed on the register of the enforcement and stop notices.

Withdrawal of an Enforcement Notice

The Local Planning Authority can withdraw, or waive or relax any requirements of a Notice, and extend the period of compliance. The Local Planning Authority must immediately notify all those on whom it served the Notice (Section 173A).

Stop Notices

If an enforcement notice is the subject of an appeal it does not take effect until the appeal has been finally determined or withdrawn – which can result in a considerable delay in securing the termination of the breach of control.

Under the provisions of Section 183 of the Town and Country Planning Act 1990, a Local Planning Authority may serve a stop notice to enable it to deal effectively with the interim period. The stop notice can prohibit the carrying out, on the land to which the enforcement notice applies, of any activity that falls within the scope of the breach of control alleged in the enforcement notice.

A stop notice cannot be used to prohibit:

a) The use of a building as a dwellinghouse;
b) The carrying out of an activity that has been carried out for a period of four or more years (ending with the date of service of the notice).

The Terms of a stop notice

A stop notice needs to be clearly and precisely drafted as there is no opportunity for correcting or revising it after it has been served. It must be clearly relate to the corresponding enforcement notice, preferably using the same description of the breach. However, unlike the enforcement notice, the stop notice cannot specify any remedial steps to be taken: it simply prohibits the activities specified.

The notice can be drafted to cover only some of the activities covered by the enforcement notice (such as those causing the most harm to local amenity).

Servicing of a stop notice

A stop notice may be served either simultaneously with an enforcement notice, or subsequently so long as the enforcement notice has not already taken effect. A stop notice cannot be served in the absence of a corresponding enforcement notice.

The notice cannot normally take effect for at least 3 days after it has been served, and cannot take effect later than 28 days after it has been served. The 3-day limit can be waived if the Local Planning Authority considers there are special reasons for specifying an earlier date. This enables an authority to bring the notice into immediate effect where an unauthorised activity is so environmentally damaging that it is imperative to stop it at once.

A site notice may be displayed to publicise the stop notice. This is particularly advisable where there is difficulty in identifying everyone who may have an interest in the land.

Assessing whether to serve a stop notice

Because a stop notice can have immediate serious consequences on a business, Government advice in Circular 10/97 is that a ‘cost/benefit’ assessment should be carried out. This does not need to be an elaborate technical exercise, but should be sufficient to demonstrate that the authority has made an assessment of the likely

impact on the affected business and weighed this against the benefit to local amenity of having the unauthorised activity terminated.

There is no right of appeal against a stop notice, although it can be subject to legal challenge on the grounds that it was not properly authorised or is unreasonable in law.

Liability to compensation

A Local Planning Authority can be liable to pay compensation in certain circumstances under Section 186 of the Act. These are where:

I. The related enforcement notice is quashed on appeal on grounds other than ground (a) [this means that compensation is not payable when the enforcement notice is quashed because planning permission is granted]
II. The enforcement notice is varied such that it ceases to cover the activity prohibited in the stop notice.
III. The Local Planning Authority decide to withdraw the related enforcement notice for a reason other than to grant planning permission for the development
IV. The Local Planning Authority decides to withdraw the stop notice.

Provided the stop notice is legally well-founded and proper procedures are followed the risk of having to meet a successful claim for compensation are probably slight, and even where compensation is awarded the liability may be reduced or eliminated if the claimant failed to co-operate with the Local Planning Authority in providing information about the alleged breach.

Temporary Stop Notices

The temporary stop notice falls within the provisions of Part 4 of the Planning and Compulsory Purchase Act 2004 which inserted sections 171E to 171H of the Town and Country Planning Act 1990.

The power to serve a temporary stop notice

Where the local planning authority consider that there has been a breach of planning control and it is necessary in order to safeguard the amenity of the area that the activity that amounts to the breach should stop immediately, section 171E enables the local planning authority to issue a temporary stop notice. This differs from the normal stop notice powers because the temporary stop notice does not have to wait for an enforcement notice to be issued. In addition the effect of a temporary stop notice will be immediate, it will not be necessary to wait three days before the temporary stop notice takes effect or give reasons why the temporary stop notice will take effect immediately.

The temporary stop notice must be in writing and must set out the activity that the local planning authority thinks is a breach of planning control. It must prohibit the carrying on of the activity and set out the local planning authority's reasons for issuing the temporary stop notice. The temporary stop notice may be served upon any person who appears to be carrying out the activity prohibited by the temporary

stop notice, anyone who seems to be an occupier of the land to which the notice relates, or anybody who appears to have an interest in the land. It is for the local planning authority to decide which is the appropriate person or persons. In cases where such persons cannot immediately be located, or refuse service of the temporary stop notice, a copy of the notice on the site will suffice.

Cessation of the effect of a temporary stop notice

The temporary stop notice expires 28 days after the display of the notice on the site, or any shorter period set out in the temporary stop notice, or if the local planning authority withdraws it. The maximum length of time that the temporary stop notice will have effect is for a period of 28 days. During this period the local planning authority must decide whether it is appropriate to take enforcement action. At the end of the 28 days there is the risk of the activity resuming if an enforcement notice is not issued and a stop notice served.

Scope of the prohibition of temporary stop notice

The activities that a temporary stop notice may prohibit include: a use of the land which is ancillary, or incidental to the unauthorised main use of the land; or a particular activity taking place only on part of the land; or an activity which takes place on the land intermittently or seasonally. Therefore the activity need not be taking place on the entire site. It might be confined to a specific area of the site, e.g. a particular building from which noise, fumes and dust are being emitted; or a part of the site where open storage of scrap materials is unacceptable because of the height at which the scrap is piled. In deciding whether to limit the temporary stop notice to only part of the site, the local planning authority will need to consider whether the activity to be prohibited is capable of readily being moved around to any other part of the site, e.g. open storage of pallets. If so, it will usually be prudent to make the temporary stop notice apply to the entire site to prevent the prohibited activity from being carried out on another part of the site. An “activity” which the temporary stop notice may prohibit is defined in section 171E(1) of the 1990 Act as “the activity (or any part of the activity) which amounts to the breach.” Because a temporary stop notice is prohibitory, it is not appropriate for use in any circumstances, which require some positive action to be taken in response to it.

A temporary stop notice can only require an activity to cease, or reduce or minimise the level of an activity. The “immediate” cessation of activities should allow for the shutting down or making safe any activity. Where building operations are stopped allowance should be made for any work necessary to make the site safe. A temporary stop notice may prohibit an unauthorized activity, which is ancillary or incidental to the change of use of land. A temporary stop notice may be served in cases where planning permission has been granted subject to conditions which if not complied with can result in serious harm and those conditions have not been complied with. Examples of these types of conditions include: archaeological surveys required before works commence on the site; tree protections required before works commence on the site; tree surveys indicating trees to be retained before works commence on the site; and wheel washing equipment for vehicles on the site.

Temporary stop notice restrictions

The primary legislation makes clear that a temporary stop notice may not prohibit the use of a building as a dwelling house. The Town and Country Planning (Temporary Stop Notice) Regulations 2005 further make clear that a temporary stop notice may not prohibit the continued stationing of a caravan on land where the caravan is the main place of residence of the occupier of the caravan, subject to the qualifications referred to below. The Town and Country (General Permitted Development) Order 1995 in part 5, Class A of Schedule 2 links a permitted development right to land use for a caravan to the situations, set out in Schedule 1 to the Caravan Sites and Control of Development Act 1960, where there is no need to obtain a caravan site license. Therefore this permitted development right covers the following:

a) use of land by a person traveling with a caravan for one or two nights, subject to an annual limit of 28 days of such use on that land or adjoining land;
b) use of up to three caravans for up to 28 days a year on holdings of not less than 5 acres;
c) use of any land for up to five touring caravans at once by members of the Caravan Club, the Camping and Caravanning Club and other recognised recreational organisations, provided the site has an exemption certificate from Defra;
d) stationing a caravan on agricultural land to accommodate a person or persons employed in farming operations 'during a particular season' (this can cause uncertainty and controversy where season follows season, and workers' caravans remain most, or all, of the year);
e) use of land as a caravan site for the accommodation of workers employed in carrying out building or engineering operations; and
f) use of land as a caravan site by a traveling showman who is a member of an organisation of traveling showmen which holds a certificate and who is traveling for the purpose of his business. These permitted development rights apply whether or not land has been sub-divided, though the right under (b) above would not apply to plots of less than 5 acres.

There are no permitted development rights specifically for Gypsies. Temporary stop notices may be used in cases where there are no permitted development rights and where the local planning authority considers that the risk of harm to a compelling public interest arising from the stationing of the caravan is so serious so as to outweigh any benefit, to the occupier of the caravan, in the stationing of the caravan for the period for which the temporary stop notice has effect. Some examples of locations where the unauthorised stationing of a caravan would normally be unacceptable are:

• Sites of Special Scientific Interest (SSSI) where an encampment endangers a sensitive environment or wildlife;
• Grounds of ancient monuments or listed buildings, battlefields or sites of potential archaeological interest;
• A site where pollution from vehicles, or dumping, or from poor sanitation could damage ground water or water courses;
• A derelict area with toxic waste or other serious ground pollution;
• The verge of a busy road where fast traffic is a danger to unauthorised campers;
• Where the site is exposed to unacceptable levels of air pollution;

• Where there is an immediate negative impact on the health of the occupiers of the caravans.

A temporary stop notice may be used to prohibit the stationing of any additional caravans on land, on which a caravan is already stationed. A single temporary stop notice may apply to the whole of the site (planning unit) in circumstances where a field is subdivided into plots, irrespective of the fact that the field may not be in single ownership. The temporary stop notice may also be used to stop other development associated with using the site for further caravans and any further work developing the site. Local planning authorities should ensure at least minimum standards of health, hygiene and public health are maintained before taking action and, for existing caravans, should allow basic temporary facilities including some form of temporary foul waste disposal which prevents nuisance or risk to anyone's health.

A temporary stop notice may not prohibit the carrying out of any activity which has been carried out (whether continuously or not) for a period of more than four years ending with the day on which a copy of the notice is first displayed. (For this purpose, no account is to be taken of any period during which the activity was authorised by planning permission.) A temporary stop notice may be used to prohibit "operational development" – activity consisting of, or incidental to building, engineering, mining or other operations, or the deposit of refuse or waste materials, or the change of use to operational development.
The local planning authority may not issue a further temporary stop notice upon the expiry of a temporary stop notice. The local planning authority will only be able to issue a temporary stop notice for the same activity if it has taken some form of enforcement action (including obtaining an injunction under section 187B) against the activity set out in the original temporary stop notice. Therefore, where a temporary stop notice is issued stopping a specified activity and an enforcement notice is issued and this is complied with but some time later the same activity commences again, the local planning authority would be able to issue a further temporary stop notice against the same activity.

Penalties for the contravention of a temporary stop notice

Section 171G provides that, when a person contravenes a temporary stop notice after a site notice has been displayed or the temporary stop notice has been served on them, they shall be guilty of an offence. The offence may be charged by reference to any day or longer period of time and a person may be convicted of a second, or subsequent offence by reference to any period of time following the preceding conviction for such an offence. A person guilty of this offence is liable, on summary conviction, to a fine not exceeding £20,000; and, on conviction on indictment, to an unlimited fine. In determining the amount of any fine to be imposed, the Court is to have regard to any financial benefit which has accrued, or appears likely to accrue, in consequence of the
offence. It is a defence for any person prosecuted for an offence under section 171G to prove that the temporary stop notice was not served on them and that they did not know, and could not reasonably have been expected to know, of its existence.

Challenging the prohibition of a temporary stop notice

Any person affected by a temporary stop notice will be able to make representations to the local planning authority. The local planning authority should include the name, address and telephone number of their nominated officer in the temporary stop notice. There is no right of appeal to the Secretary of State against the prohibition in a temporary stop notice. The validity of a temporary stop notice, and the propriety of the local planning authority's decision to issue a temporary stop notice, may be challenged by judicial review. To do so the person affected by a temporary stop notice will need to seek leave from the court. The temporary stop notice continues to apply (for a maximum of 28 days) even when a person served with a temporary stop notice has challenged it under section 171G(5) or
by way of judicial review. If the developer has not already got planning permission, he still has the right to make an application for a lawful development certificate, or for planning permission. Only if a lawful development certificate is granted will there be any right to compensation for any financial loss the recipient may have incurred as a consequence of the temporary stop notice. The temporary stop notice will have a similar effect to an interim injunction. An enforcement notice can be issued before the temporary stop notice expires, with the onus on the developer to prove that the development is not in breach of planning control. Alternatively a planning application can be submitted although this will not affect the temporary stop notice, which will continue to take effect. The existing powers to serve a stop notice under section 183 may have to be used following the issue of an enforcement notice in order to prevent any further works or use taking place unless and until planning permission is granted either by the local planning authority or by the Secretary of State on appeal. If the application is refused, or any resulting appeal is also unsuccessful, enforcement action can be taken to remove any unauthorised works. This approach will apply only to work in progress; if the development is complete then an enforcement notice should be issued in the usual way.

Breach of Condition Notices

Section 187A of the Act enables a Local Planning Authority to serve a breach of condition notice (BCN) as an alternative to serving an enforcement notice to secure compliance with conditions imposed on a planning permission.

The DOE 'Good Practice Enforcement Guide' lists out the following advantages and disadvantages to be considered when deciding whether to serve a BCN or an EN:

The advantages of a BCN are:

I. There is no right of appeal
II. The breach is a criminal offence, which the Local Planning Authority can prosecute immediately in the Magistrates' court.
III. The threat of prosecution may be sufficient to persuade the recipient of the notice to comply with the condition without further action from the Local Planning Authority.

Possible disadvantages of a BCN are:

I. As there is no right of appeal, the notice cannot be amended to correct any defects in it
II. The onus of proof in a prosecution is on the Local Planning Authority who must show 'beyond reasonable doubt' that the offence has occurred
III. A fundamentally defective notice could be quashed through successful judicial review, thus delaying the enforcement process and involving the Local Planning Authority in considerable expense
IV. The Local Planning Authority has no default power to enter the land and carry out works to remedy the breach following a successful prosecution arising from a BCN.

A BCN may be served on:

1) Any person who is carrying out or has carried out the development 9or has caused or permitted another to do so), or,
2) Any person who has control of the land.

This enables the Local Planning Authority to serve a BCN on a builder or Construction Company as well as a building's owner where works are not being carried out in accordance with one or more conditions. However, a BCN can only be served on persons who fall within category 2 ('persons having control of the land') where the breach is in respect of a condition 'regulating the use of the land'. Thus, for example, in the case of a residential development where the roofing materials used are not the same as those approved, it is not possible to serve enforcement notices on the residents of the properties.

The BCN must specify:

I. The condition that has been breached;
II. The steps to be taken, or the activities that ought to cease, to secure compliance with the condition; and
III. The period for compliance.

It is particularly important to ensure that the action specified as necessary to comply with the notice is stated clearly and precisely as it is likely to be carefully examined in the Magistrates' court.

The period for compliance must not be less than 28 days. The compliance period should allow a reasonable time to carry out the steps set out in the notice.

A copy of the BCN must be placed on the enforcement register.

Once a BCN has been served it remains in force until withdrawn. It can therefore be enforced if the breach re-occurs without the need for a new notice, provided that the person responsible for the breach remains the same.

<u>Prosecutions</u>

The Local Planning Authority can initiate prosecution proceedings in the Magistrates' court under Section 187 of the Town and Country Planning Act 1990 to deal with contravention of a stop notice or a breach of condition notice. The maximum penalty on conviction in the Magistrates' court is £20,000. There is no upper limit on the penalty, which a Crown court can impose for contravening a stop notice.

Enforcement Injunctions

A Local Planning Authority may apply to the High Court or County Court for an enforcement injunction (under Section 187B of the Town and Country Planning Act 1990) to restrain a breach of planning control. The injunction can also require the defendant to carry out certain acts (such as in-filling an unauthorised basement excavation). This is known as a 'mandatory injunction'.

In contrast to other enforcement action, an injunction is granted against a named person(s). In reaching its decision the Court has to weigh the public interest against the private interest of the person or persons whom the Local Planning Authorities seek to restrain.

An injunction may be sought at any stage of an enforcement process where the Local Planning Authority considers it 'necessary or expedient'. However, an injunction is unlikely to be granted unless the following criteria are satisfied:

a) The Local Planning Authority must be able to show that it has taken account of all relevant considerations, including the personal circumstances of those concerned;
b) There is clear evidence that the breach has occurred or is likely to occur;
c) 'Injunction relief' is a proportionate remedy in the circumstances;
d) In the case of an injunction sought against a person whose identity is unknown, it is practicable to serve the court's order.

As regards (a), relevant considerations will include the need to enforce planning control, the planning history of the site, the degree of environmental damage caused by the breach and whether normal enforcement measures have failed. The Human Rights Act makes it essential that the Local Planning Authority should be able to demonstrate that its action in seeking an injunction is necessary and proportionate.

Where there has been a contravention of a stop notice and there is a delay in the hearing of the prosecution a Local Planning Authority can apply for an interlocutory (i.e. interim) injunction to restrain the prohibited activity.

The penalty for defying an injunction can be imprisonment or an unlimited fine for contempt of court.

A decision to apply for an injunction should always be taken in conjunction with the Council's legal department, and it is normally prudent to seek advice from planning counsel beforehand.

“Default” Action – execution of works

Section 178 of the Town and Country Planning Act 1990 enables the Local Planning Authority to enter onto land and take action to remedy a breach of control where, on the expiry of the compliance period, the required steps have not been taken.

The Local Planning Authority is also entitled to recover from the owner of the land the expenses incurred in taking action. The Local Planning Authority’s expenses become a legal charge on the land until they are fully recovered, and are binding on any successive owners of the land. The Local Panning Authority can also recover its expenses by selling materials removed from the land.

106 Section B: Limitations on taking action

The “four-year rule”

(a) Operational Development

Enforcement action cannot be taken to remove buildings or other operational development constructed without planning permission after the expiry of 4 years from the date of substantial completion of the development.

(b) Changes of use to use as a single dwelling-house and subdivision into Flats

Enforcement action cannot be taken against the unauthorised change of use of a building into use as a single dwelling, or against the unauthorised sub-division of a single dwelling house into two or more separate dwellings after the expiry of 4 years from the date when the change took place.

The “ten-year rule”

(c) Any other change of use

In the case of other changes of use, no enforcement action can be taken after the expiry of 10 years (from the date when the breach first occurred).

However, enforcement action can be taken after the expiry of the relevant period where there is already an outstanding enforcement or breach of condition notice relating to the breach.

The granting of a certificate of lawful use or development renders the development in question immune from subsequent enforcement action, provided that the terms of the certificate are complied with.

Estoppels

The Local Planning Authority may be stopped from taking enforcement action if a developer can demonstrate that he relied on a statement made by planning officers that he need not apply for planning permission or a certificate of lawful use.

For an estoppel to arise there must be some evidence (other than, for example, simply the fact that the relevant officer was a senior planner) which justifies the person dealing with the officer in thinking that what the officer said would be binding on the council.

To minimise the risk of estoppel it is important that whenever advise is given on regarding the need for planning permission, whether a certificate of lawful development should be submitted, or whether the Council intend to pursue enforcement action, it is made clear that the advice does not represent a formal decision of the Local Planning Authority.

Estoppel can also arise where the Local Planning Authority fails to carry out a procedural requirement in dealing with an application, enforcement notice or appeal. (Relevant cases on estoppel are *Western Fish Products v. Penrith District Council* (1978) and *Costain Homes and Another v. Secretary of State and Hillingdon BC* (1998) JPL 101.

Section C: Enforcement Appeals

A person having an interest in the land to which an enforcement notice relates has a right of appeal – even if the notice has not been served on him.

The appeal must be lodged before the notice takes effect.

Grounds of appeal

The grounds on which an appeal may be lodged are:

a) That planning permission out to be granted for the matter stated in the notice
b) That the matters referred to have not occurred
c) That the matters (if they occurred) did not constitute a breach of planning control
d) That, at the date when the notice was issued, no enforcement action could be taken in respect of the matters referred to in the notice
e) The copies of the notice were not properly served (as required by Section 172)
f) That the steps required by the notice exceed what is necessary to remedy the breach of planning control, or to remedy any injury caused to amenity by the breach
g) That the period for compliance is unreasonable

An appeal on ground (a) is an appeal solely on planning merits, and is in effect a “deemed” application for planning permission for which a fee must (in most cases) be paid.

Grounds (b), (c), (d) and (e) are referred to as “legal grounds” and will usually involve a detailed examination of the planning history of the site.

The submission of a valid appeal suspends the effect of the enforcement notice. It is therefore important to respond quickly to the Planning Inspectorate’s requests for information.

As with other types of planning appeal, an enforcement appeal may be dealt with by written representations, local hearing or public inquiry. A public inquiry is appropriate where there are conflicts of evidence about one of the “legal grounds”.

Procedural Requirements for Enforcement Appeals

As with planning appeals, enforcement appeals may be dealt with by written representation, hearings or inquiries, and similar criteria apply in deciding which is the most appropriate procedure in a particular case.

New procedures for handling enforcement appeals came into effect on 23 December 2002, and apply to all appeals received on or after that date. The new procedures are set out in ODPM Circular 02/2002 Enforcement Appeals: Procedures and the annexes to it. They are intended to improve the speed and efficiency of the process, and follow closely the procedures for planning appeals that came into force in August 2000.

The enforcement appeal procedures also apply to appeals against listed building and conservation area enforcement notices, and to lawful development certificate appeals.

Circular 02/2002 emphasises the importance attached to adherence to deadlines. As with planning appeals, failure to comply with the deadlines set will, except in extraordinary circumstances, also result in a party’s representations not being taken into account.

For the purposes of enforcement appeals:

<u>Interested persons</u>: The papers which should be sent to the Planning Inspectorate, along with the completed questionnaire are – Committee report and minutes (if any); any representations received from the interested parties; other relevant correspondence, for example, about previous planning applications; and extracts from the relevant plans or policies.

<u>The Statement</u>: The statement in a Written Representation case must include:

a) Summary of response to each ground of appeal;
b) Statement of whether the local planning authority would be prepared to grant planning permission for the alleged breach, and if so indicating what conditions they would wish to be imposed.

The statement should include a schedule of any development plan policies, which are material to the appeal. The status of these should be made clear. Where

reference is made to PPGs and Circulars, the relevant paragraph number should be given, but the text need not be quoted. Where conflict with policy is given as a reason for refusal, the statement must explain in what way the objectives of the policy would be harmed or put at risk. It is essential that the statements are served within the prescribed time limits as the Secretary of State may allow an appeal if the local planning authority fails to do so.

A hearing statement should contain full particulars of the local planning authority's case, including any documents to be referred to at the hearing. Further guidance on the format of statements in hearings cases is given in Appendix 3 (i) of Circular 02/2002.

In inquiry appeals, the Rule 8 statement of case should contain full particulars of the local planning authority's case and describe, but not contain, the evidence, citing any statutory provisions and case law to which it will refer. Guidance on proofs of evidence and statements of common ground is given in Annexes 4 (i) and 4 (ii), respectively.

The onus of proof

The onus of proof in an enforcement appeal is on the appellant to show that the appeal should be allowed. Where there is a conflict of evidence on material facts, the inspector must decide, on the balance of probabilities, which evidence to accept. (In contrast, in a prosecution case the onus is on the local planning authority to prove its case beyond "reasonable doubt").

Preparing for an inquiry

It is important to carefully assemble the relevant documentary evidence – such as, sworn affidavits, copies of any relevant planning permissions and correspondence, and photographs of the site (reliably dated). It is useful to have witnesses who can give first-hand evidence of the condition of the site and the activities taking place – particularly if there is a likelihood that the appellant might tidy up or lessen his activities prior to the inquiry and inspector's site visit!

Awards of costs

The appellant and the local planning authority can apply for costs, regardless of the appeal procedure (unlike planning appeals, cost applications may be made in enforcement appeal cases dealt with by written representation), on grounds of unreasonable behaviour by the other party.

Legal challenge of an appeal decision

If an appeal succeeds, the local planning authority can seek leave in the High Court to appeal against the decision on a point of law, under the provisions of Section 289 of the Town and Country Planning Act 1990. The time limit for such an appeal is 28 days from receipt of the decision letter, although the court has discretion to accept a late application.

Where planning permission is granted, an appeal to the High Court can be made within 6 weeks of the decision, under Section 288.

Section D: Enforcement of listed building control

If work is carried out to a listed building without consent a listed building enforcement notice can be issued under Section 38 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended). Schedule 3 of the Planning amended the Act and Compensation Act 1991 to reflect changes made to the planning enforcement regime. There is a right of appeal, and the appeal procedures are similar to those for planning enforcement notices.

The main differences between the enforcement of planning control and the enforcement of listed building and conservation area control are that:

1) Neither listed building and conservation area consent applications, nor appeals under Section 39 of the Listed Buildings Act attract any application fee;
2) There are no time-limits for issuing listed building and conservation area enforcement notices;
3) Carrying out work without the necessary listed building or conservation area consent, or failing to comply with a condition attached to that consent, is an offence under Section 9 of the Act, whether or not an enforcement notice has first been issued;
4) That listed building and conservation area consents are never made retrospective.

Brief guidance on listed building enforcement is given in PPG 15.

Section E: Advertisement control

Advertisements displayed without consent

Under Section 224(3) of the Town and Country Planning Act 1990 it is an offence to display an advertisement without the necessary consent. Circular 5/92 (paragraph 8) advises that before proceeding to prosecution, a local planning authority should normally invite the person who has displayed an unauthorised advertisement either to remove it or to apply for consent. However, in cases of blatant, deliberate or repetitive unauthorised displays it is appropriate to proceed straight to prosecution. Continuing offences may be the subject of further prosecution and daily fines on conviction. (Regrettably the levels of fines imposed by Magistrates' Courts may be insufficient to deter unscrupulous advertisement companies).

Discontinuance action for advertisements with deemed consent

Under Regulation 8 of the Town and Country Planning (Control of Advertisements) Regulations 2007 local planning authorities are empowered to take action to remove advertisements that are displayed with deemed consent. Discontinuance action may only be taken if the local planning authorities are satisfied that it is necessary to

remedy a substantial injury to the amenity of the locality or a danger to members of the public. A discontinuance notice must contain a full statement of the reasons why the local planning authorities consider it expedient for the display to be discontinued.

A local planning authority may take discontinuance action against either a specific advertisement or in regard to the use of an entire site for advertisements. This latter power is particularly apposite where temporary advertisements, such as window-stickers, are to be discontinued.

A discontinuance notice must specify the period within which the display must be discontinued. Local planning authorities are advised to consider the particular circumstances and allow a reasonable time for discontinuing a display, especially when discontinuance action is likely to have serious financial consequences for a particular advertiser.
The notice must be served on the advertiser and on the owner and occupier of the land on which the advertisement is displayed.

There is a right of appeal to the Secretary of State. The appeal will be dealt with as if the appellant had applied for express consent to display the advertisement and the local planning authority had refused it.

Section F: Enforcement Policy, Guidance and Good Practice

PPG18 (Enforcing Planning Control), published in 1991, is still the main source of policy guidance on planning enforcement. A review of enforcement is underway with the objective of producing a simpler, quicker and more effective system. *See Review of the Planning Enforcement System in England – Consultation Paper, ODPM September 2002.* This will inevitably result in revised policy guidance.

PPg18 makes it clear that Local Planning Authorities have a duty to take whatever enforcement action may be necessary in the public interest. Failure to take timely or effective action where it is plainly necessary can result in a finding of maladministration by the Local Government Ombudsman – and potentially a recommendation for payment to the complainant for the consequent injustice.

Enforcement by Local Planning Authorities is largely a reactive process. Whilst some Local Authorities do take a more proactive approach, actively monitoring the implementation of planning permissions and seeking out breaches of planning control, others tend to react only when they receive a complaint.

Some of the keys to achieving an efficient and effective service are:

- Properly documented records of all enforcement investigations. These should include for each case, the outcome of the investigation and an explanation of the reasons for either taking no action or instigating action.
- Effective liaison arrangements with other council regulatory services (e.g. Building Control, Environmental Health, Transport and Highways) and external agencies (Police, Environment Agency etc.).
- Access to sound legal advice

- Clear set of agreed priorities.

Performance Standards

There are no statutory Best Value performance indicators for planning enforcement. The Planning Charter Standards, published in December 1994, advocated that a good standard of service should involve:

- Acknowledging complaints within 3 working days;
- Writing to complainants within 20 days telling them of the action the authority intends to take, or explaining why no further action is to be taken and;
- Informing complainants of decisions to take enforcement action within 10 working days of the decision.

The Council has targets set by Planning Committee for dealing with planning enforcement investigations. The above guidelines are interpreted and included within the Council's 4 priority areas, and, provides a realistic timescale for both officers and complainants for action to be taken.

In 1998, the Government, in association with business and local authority associations, published an 'Enforcement Concordat', setting out certain principles of good enforcement. These included, clear performance standards, openness, helpfulness, effective complaints procedures, proportionality and consistency.

APPENDIX 2

Priorities for Planning Enforcement

Priority 1:

- Major building works recently commenced at residential properties (e.g. extensions, dormers, outbuilding) within a Conservation or Article 4 area
- Alterations to listed buildings
- Felling and lopping of trees (TPO)(the subject of a Tree Preservation Order or in Conservation Area)

Response time: Initial inspection within 1 working day and full or interim report to Planning Enforcement Manager within 7 working days.

Priority 2:

- Ward Councillors' Enquiries (initial investigation only)
- MP's Enquiries (initial investigation only)
- Breaches in Crews Hill Defined Area
- Major building works recently commenced or substantially undertaken at residential properties (e.g. extensions, dormers) outside a Conservation or Article 4 area
- Commercial activity that impacts upon Residential Property (including late night opening and sale or repair of vehicles)
- Use of outbuildings/external garages as a separate unit of accommodation
- Repair of motor vehicles
- Untidy or derelict land causing immediate detriment to residential amenity and/or the street scene
- Car washes – usually hand car washes (not at traffic lights)

Response time: Initial inspection and full or interim report to Planning Enforcement Manager within 10 working days

Priority 3:

- Late night opening
- Hostels and care homes
- Flat conversions
- Unauthorised residential occupation / HMO
- Car boot sales
- Advertisements
- Sale of motor vehicles

Response time: Initial inspection within 10 working days and full or interim report to Planning Enforcement Manager within 30 working days.

Priority 4:

- Other breaches of condition
- Other changes of use
- Minor works at residential properties (porches, fences, balustrade, patios)
- Garages and outbuildings
- Shop fronts and canopies
- Ventilation Equipment
- Vehicular accesses – Main/major roads i.e. Hertford Rd
- Satellite dishes (check with Enforcement Officer first)
- Use of integral garages as a habitable room
- High Hedge complaints (Anti Social Behaviour Act)
- All other breaches

Response time: Initial inspection within 20 working days and full or interim report to Planning Enforcement Manager within 40 working days.

Note: Priority 3 and 4 cases in Conservation Areas or in the Green Belt will be prioritised above other investigations in that category.