

Environment Scrutiny Panel – 12 March 2008

Planning Enforcement Informal Scrutiny Group

Report of the Chair of the Planning Enforcement Scrutiny Group

Purpose of the Report

To provide feedback and recommendations from the investigations of the Planning Enforcement Informal Scrutiny Group into the effectiveness and efficiency of the Planning Enforcement Service.

Links to the Corporate Strategy

This report impacts on the corporate objectives relating to the provision of safe and secure communities, a high quality environment and an efficient and effective Council.

The review also accorded with two the four roles of Overview and Scrutiny, in that it:

- Contributes to the development and review of key Council policies and programmes, and:
- Reviews the overall benefit to the public from services provided by the City Council and other organisations.

Executive Summary

The Informal Group was established to consider the service provided to the public by the Planning Enforcement Team. The Group heard evidence from officers, the public, Parish and City Councillors and considered issues like workloads and the public perception of the service.

Having taken this evidence into account the Group suggests a number of recommendations that it considers will improve the Service, as set out below.

Chairman's Comment

The ISG was tasked with making a fairly searching and rigorous examination of the Council's Planning Enforcement Service. I hope that our report shows that we have done that fairly, thoroughly and objectively and that such comments, criticisms and suggestions we have made are all intended, as was our remit, to improve the service we provide, something which will benefit not only the public but also our staff who operate the system. ISG Members noted throughout that, while there was clearly dissatisfaction (sometimes quite deep) with aspects of the present service, all our witnesses stressed to us that their experience of the Enforcement Team Officers as individuals had been favourable and appreciated; we would echo that from our own findings and express our own thanks to the Enforcement Team for their efforts to provide a good service in often difficult and challenging circumstances. In short, the shortcomings we have identified are ones of systems, processes and policy, not of individuals.

I am very grateful to my colleague Councillors for their work and support in carrying out this work as Members of the ISG and on our behalf I express my warm thanks to all those who have given up their time to give invaluable evidence to us and to our Officers who have had the unenviable task of pulling all this together into this report.

I commend our findings to the Environment Scrutiny Panel, the Portfolio Holder for Planning and Transport and to Cabinet."

Recommendations

That the Environment Scrutiny Panel recommends that Cabinet approve the following:

1. That the post of E-planning Development Leader be made permanent.
2. That the size and structure of the Enforcement Team remains unchanged until other recommendations in this Report have been implemented. This will be monitored and assessed by the Portfolio Holder and Service Managers through performance information currently in place, with necessary changes being made if required.
3. That the Portfolio Holder be invited to note that the current level of resources afforded to the Planning Enforcement Team prevents it from proactively pursuing Enforcement Cases and that the Team Manager must have time to address team management and leadership issues.
4. That a prioritisation system be developed for dealing with complaints to be determined by the Head of Planning Control, to include prompt response to initial correspondence, with the priority based on planning harm and health and safety issues.
5. That Parish Councils and Members be informed of closed cases.
6. That the following core enforcement policy statement be agreed and feature prominently on the Council's Planning Enforcement web page and other relevant publications, with a review of its effectiveness one year after implementation and inclusion of actions available for the Council to take.

"Winchester City Council attaches great importance to the protection and enhancement of the natural and built environments of the District through the planning process. Compliance with and respect for that process are both essential and expected, and the Council will not condone wilful breaches of planning law.

While enforcement action will always need to be commensurate with the breach to which it relates, the Council will not hesitate to be firm and robust in its response in appropriate circumstances, including recourse to the Courts.

While every effort will be made to resolve inadvertent or minor breaches through discussion and retrospective applications, more serious breaches (including those considered to be wilful) are likely to result in positive enforcement action."

7. That a full enforcement policy be written and published, with a review of its effectiveness one year after implementation and inclusion of actions available for the Council to take.

8. That, in pursuance of the revised policy statement above, more robust and tougher decisions be taken in cases of significant abuse and that high profile cases be referred to Planning Development Control Committee for Members' input.

9. That formal recorded training of Enforcement Team staff, relating to the preparation of prosecution cases be implemented as soon as possible.

10. That Winchester City Council learns from good planning enforcement practices in other Local Authorities, commencing with a visit to Salisbury District Council, to include Members from the Environment Scrutiny Panel.

11. That there is improved publicity relating to the Council's planning enforcement processes, including timeframes for key stages when updates will be given to complainants, additional correspondence to the Parish Council as detailed above and making maximum use of the Council's website.

12. That the managers responsible for the planning enforcement function be positively encouraged to fully utilise their discretion and duty to manage the service within the policy framework approved by Cabinet.

13. That, in response to the internal problems with inter-departmental working, Service Level Agreements should be established between Planning Enforcement and other Council Departments to facilitate the efficient delivery of service.

14. That information clarifying the enforcement responsibilities of other agencies be put on the Council's website and that inter-agency working and awareness be improved.



Winchester
City Council

**ENVIRONMENT SCRUTINY PANEL
REPORT**

**Planning
Enforcement Informal
Scrutiny Group**

March 2008

REPORT OF THE PLANNING ENFORCEMENT INFORMAL SCRUTINY GROUP

1. Introduction

- 1.1. At their meeting of 2 August 2007 the Environment Scrutiny Panel resolved to establish the Planning Enforcement Informal Scrutiny Group (ISG). Its membership was Councillors Lipscomb (Chairman), Barratt, Higgins, Howell, Jackson and Saunders.
- 1.2. The establishment of the ISG was approved by the Principal Scrutiny Committee at its meeting on 24 September 2007 and by Cabinet at its meeting held on 19 September 2007.
- 1.3. The ISG met on six occasions between October 2007 and February 2008. They received a significant amount of background information and took evidence from both senior and junior officers from the Planning Enforcement Team together with the Planning Enforcement Solicitor, a member of the public, other City Councillors and fifteen representatives from Parish and Town Councils. At the conclusion of its work, the ISG made a number of recommendations to improve the effectiveness and efficiency of the Planning Enforcement Service.

2. Recommendations

That the Environment Scrutiny Panel recommends that Cabinet approve the following:

1. That the post of E-planning Development Leader be made permanent.
2. That the size and structure of the Enforcement Team remains unchanged until other recommendations in this Report have been implemented. This will be monitored and assessed by the Portfolio Holder and Service Managers through performance information currently in place, with necessary changes being made if required.
3. That the Portfolio Holder be invited to note that the current level of resources afforded to the Planning Enforcement Team prevents it from proactively pursuing Enforcement Cases and that the Team Manager must have time to address team management and leadership issues.
4. That a prioritisation system be developed for dealing with complaints to be determined by the Head of Planning Control, to include prompt response to initial correspondence, with the priority based on planning harm and health and safety issues.
5. That Parish Councils and Members be informed of closed cases.
6. That the following core enforcement policy statement be agreed and feature prominently on the Council's Planning Enforcement web page and other relevant publications, with a review of its effectiveness one year after implementation and inclusion of actions available for the Council to take.

“Winchester City Council attaches great importance to the protection and enhancement of the natural and built environments of the District through the planning process. Compliance with and respect for that process are both essential and expected, and the Council will not condone wilful breaches of planning law.

While enforcement action will always need to be commensurate with the breach to which it relates, the Council will not hesitate to be firm and robust in its response in appropriate circumstances, including recourse to the Courts.

While every effort will be made to resolve inadvertent or minor breaches through discussion and retrospective applications, more serious breaches (including those considered to be wilful) are likely to result in positive enforcement action.”

7. That a full enforcement policy be written and published, with a review of its effectiveness one year after implementation and inclusion of actions available for the Council to take.

8. That, in pursuance of the revised policy statement above, more robust and tougher decisions be taken in cases of significant abuse and that high profile cases be referred to Planning Development Control Committee for Members' input.

9. That formal recorded training of Enforcement Team staff, relating to the preparation of prosecution cases be implemented as soon as possible.

10. That Winchester City Council learns from good planning enforcement practices in other Local Authorities, commencing with a visit to Salisbury District Council, to include Members from the Environment Scrutiny Panel.

11. That there is improved publicity relating to the Council's planning enforcement processes, including timeframes for key stages when updates will be given to complainants, additional correspondence to the Parish Council as detailed above and making maximum use of the Council's website.

12. That the managers responsible for the planning enforcement function be positively encouraged to fully utilise their discretion and duty to manage the service within the policy framework approved by Cabinet.

13. That, in response to the internal problems with inter-departmental working, Service Level Agreements should be established between Planning Enforcement and other Council Departments to facilitate the efficient delivery of service.

14. That information clarifying the enforcement responsibilities of other agencies be put on the Council's website and that inter-agency working and awareness be improved.

3. Summary of Activity

3.1. At their first meeting on 18 October 2007, the ISG elected Cllr Lipscomb as Chairman and agreed the following terms of reference and the scoping and structure of their work:

3.2. Terms of Reference

1. To review the extent to which the City Council has set a clear policy framework including aims and objectives for the Planning Enforcement Service to work with.
2. To consider whether the resources allocated to the Planning Enforcement Service are efficiently used in pursuit of the policy objectives and to comment on the adequacy of those resources.
3. To consider whether the Planning Enforcement Service is meeting the needs of the community as perceived by local Members, Parish/Town Councils and residents.
4. To take full account of evidence from both internal and external sources, including assessments, reports, complaints and compliments on the file.
5. To recommend, through the Environment Scrutiny Panel, to the Planning Development Control Committee and Cabinet, any changes to existing policy, practice or use of resources which may be expedient to improve the effectiveness or efficiency of the Planning Enforcement Service.

3.3. Scoping and Structure

3.4. The ISG identified the following outcomes which they wanted to see achieved as a result of their scrutiny of the service. These outcomes were:

- Improved performance
- Increased customer satisfaction
- Cost effectiveness and efficiency
- Clarity of function
- Increased public profile of the service

3.5. It was agreed that assessment of the current level of service would be by a variety of methods:

- Paper information provided by officers relating to working practices, legislative requirements, caseload levels, caseload nature and performance information. These are listed in the Background Documents in the relevant section of the report below.
- Interviews/discussions with the Head of Planning Control, Enforcement Team Manager, Team Member, Planning and Information Solicitor,
- Informal meetings/discussions with Parish Councils, Complainants and those who had been the subject of enforcement investigations.
- Written representations from/discussion with Winchester City Councillors
- Questionnaire to all Parish Councils (See Appendix 1).

- 3.6. Four City Council Members accepted the invitation to address the ISG at its meeting held on 14 November 2007; Councillors Bell, Evans, Learney and Weston.
- 3.7. For its next meeting held on 11 December 2007, the ISG invited members of the public who had recently dealt with the Planning Enforcement Team, both as complainants and as residents that had been the subject of Enforcement investigations. Invitees were randomly selected from cases made in the last year but the ISG received an extremely poor response, with only one person attending. However, the ISG found her presentation very useful and enlightening.
- 3.8. The ISG followed this with a meeting held on 8 January 2008 with representatives of the Parish and Town Councils, which was well attended with representatives from 15 Parishes speaking. In addition to this, officers had sent a questionnaire to all Parish Councils and this generated twelve responses. The questionnaire and a summary of the responses are as set out at Appendix 1. Following the session with Parish and Town representatives, who had left, the ISG reviewed with the Head of Planning Control the recently introduced moratorium on certain aspects of enforcement activity.
- 3.9. The ISG meet on a further two occasions; on 14 January 2008 to consider its emerging conclusions and again on 6 February 2008 to take further evidence as to why a backlog of work had built up in the Team and to review a first draft of this Report.
4. Current Position
ISG Members received the following advice on the present position of the Planning Enforcement Service.
- 4.1. In terms of staffing, the Enforcement Team has been operating half a post short (part time enforcement officer) for approximately the past four months, and since January 2008 a full post short (another part time enforcement officer). The ISG noted that there had been a deliberate management decision to keep the first post vacant, as it was considered that when the second post became vacant, due to retirement of the post holder at Christmas, this would enable the way in which the posts operated to be re-examined. It has since been decided that this post would be best replaced by one full time post and the advertisement was placed shortly after Christmas, with a very positive initial level of interest.
- 4.2. An up-to-date structure chart for the team is at Appendix 2.
- 4.3. With regard to performance, accurate monitoring has been variable over the year due to IT software problems. However, the IT issues have been significantly improved over the past six months and more accurate and comprehensive performance information can now be provided, as set out in Appendices 3-5.
- 4.4. The Hampshire-wide Development Control Practitioners Group (DCPG), which comprises Development Control, Enforcement and Administration Team Managers, has discussed the problem of monitoring enforcement cases. The difficulty is that they can be classified and monitored upon receipt, but many of them can take several months to complete because of the complexities involved.
- 4.5. There have been periodic informal reviews of the enforcement service, but it seems that because of high staff turnover, it has been difficult to sustain improvements. The ISG also found that the focus in the recent past in the Planning Service had been on improving planning application turnover.

Currently all enforcement and compliance complaints received are logged and investigated. ISG Members were surprised to learn that there is no prioritisation or categorisation system. In addition, the enforcement team routinely and pro-actively check that development is being carried out in accordance with approved plans and that conditions are being discharged for:-

- residential developments of 5 dwellings or more
- all major commercial and industrial development
- all other development (excluding householder) in environmentally sensitive areas such as Sites of Special Scientific Interest and conservation areas
- development identified by officers where significant changes to the original proposal have been achieved through negotiation
- all potential breaches and breaches of planning control identified by Members

- 4.6. Members noted that approximately 75% of the work of the Service is reactive to complaints from Parish Councils, Ward Members or neighbours and 25% arises from the monitoring and checking described above [Note: this was subsequently revised to 90% and 10% respectively]
- 4.7. Members were concerned that, apparently due to staffing constraints, there was such a low level of pro-active enforcement activity. They felt that greater pro-activity would be beneficial to both the effectiveness of planning control and to the Council's image.

5. Results of Scrutiny Process

- 5.1. It became evident from discussions around the evidence considered - and significantly from the presentations made by Parish and Town Council representatives and by Ward Members - that there were several significant areas of concern, some of which overlapped; these are outlined below.

5.2. IT related matters

- 5.3. As with many of the Council services, reliance on IT has increased over recent years. There have been problems with providing performance information and maximising the use of the current systems in the past, which has recently improved. The creation of the E-Planning Development Leader has assisted greatly in enabling these improvements, as it provides the link between the capability of the systems and the requirements of the service, which has not existed before. The ISG expressed concern that this role was a temporary one, and that its loss would result in a slowing down in the level of improvements and would have an impact on the resources within the team available to deal with the ongoing workload as resources.

- 5.4. Comments on improvements to the website are contained in the Communication/Public perception section below.

- 5.5. *Recommendation* – That the post of E-planning Development Leader be made permanent

5.6. Capacity of Team/Workload/Resources

- 5.7. The ISG looked closely at the levels of staffing within the team and the workload compared to other authorities. A comparison table is at Appendix 6.

- 5.8. However, it should be noted that comparison with other Authorities has limited value for the following reasons:
- Job titles and responsibilities vary, and what one Senior Planning Officer does at one authority will not necessarily be the same as at another.
 - Some of the information received is not particularly clear. For example, Arun District Council's current caseload per officer adds up to 180, yet they are showing their current live caseload as 600. It is therefore evident that what one authority terms as a "live case" may be different from another.
 - The same information is not available for each authority.
- 5.9. However, it does give a broad indication of what existing officer caseload is and it can be seen that Winchester's is comparatively high.
- 5.10. The ISG considered the workload issue at some length and debated the possibility of expanding the team further. However, it was concluded that once the team were fully staffed and that level was maintained; had reduced their backlog of work (assisted by the temporary changes recently introduced); put in place a priority system for dealing with new complaints and implemented some of the other recommendations within this Report, the current staffing levels should be sufficient to manage the workload, as presently structured, i.e. almost exclusively reactive in nature. Senior officers were in agreement with this and the ISG were of the view that the Portfolio Holder and Service Managers should ensure that the service was adequately staffed with the right balance between administrative support and professional officers.
- 5.11. However, the ISG noted during its investigations that, due to the high work load and complexities of many of the cases, a fully staffed Enforcement Team based on the current establishment was likely to only just adequately deal with the workload. This prevented officers from proactively pursuing Enforcement Cases which would expand their scope and service to the public and answer many of the criticisms of the Service. The ISG therefore recommended that this be highlighted to the Portfolio Holder and that he be asked to review the caseloads per officer and the backlog of work once the current vacancies in the Team were filled. He was also invited to review the balance between pro-active and reactive work
- 5.12. The ISG further considered that it was important that the Enforcement Team Manager's workload should be organised to ensure that he had the time necessary to address team management and leadership issues.
- 5.13. *Recommendation* – That the size and structure of the Enforcement Team remains unchanged until other recommendations in this Report have been implemented. This will be monitored and assessed by the Portfolio Holder and Service Managers through performance information currently in place, with necessary changes being made if required.
- 5.14. *Recommendation* – That the Portfolio Holder be invited to note that the current level of resources afforded to the Planning Enforcement Team prevents it from proactively pursuing Enforcement Cases and that the Team Manager must have time to address team management and leadership issues. The Portfolio Holder is asked to consider the potential advantages to both planning control and the image of the Council from a shift of balance towards more pro-activity in planning enforcement.

- 5.15. There was some discussion amongst the ISG relating to learning good practices from other authorities, and it was considered that contact should be made with Salisbury District Council, to see how the enforcement service there operates.
- 5.16. *Recommendation* – That Winchester City Council learn from good practices in place at other Local Authorities, commencing with an Officer/Member (to include ESP representatives) visit to Salisbury District Council.
- 5.17. Budget information was provided to the ISG (see Appendices 7 and 8).
- 5.18. Although there are variances within the budget, the main one being underspend on salaries because of vacancies, the ISG were satisfied that the service is operating within the budget and that, at present, no changes to it are required. The service managers confirmed to the ISG that they believed the level of financial resource post the review of October 2006 was correct.
- 5.19. Communication/Public Perception
- 5.20. It was agreed early on in discussions between the ISG and officers that feedback from the service to its customers was not always as effective as it should be, due to the volume of work the team were dealing with and that this caused frustration and difficulty for the customer. It was also agreed that there was a lack of information relating to the level of communication that customers should expect.
- 5.21. It became evident from the background information submitted that the lack of a clear policy, defining the purpose and scope of the service, hampered both officers' understanding of their role and the public perception of it. Members felt strongly that this was a surprising omission which needed early rectification. That would help manage public expectation of the service. The Group therefore recommended the following core Policy Statement:
- “Winchester City Council attaches great importance to the protection and enhancement of the natural and built environments of the District through the planning process. Compliance with and respect for that process are both essential and expected, and the Council will not condone wilful breaches of planning law.
- While enforcement action will always need to be commensurate with the breach to which it relates, the Council will not hesitate to be firm and robust in its response in appropriate circumstances, including recourse to the Courts.
- While every effort will be made to resolve inadvertent or minor breaches through discussion and retrospective applications, more serious breaches (including those considered to be wilful) are likely to result in positive enforcement action.”
- 5.22. *Recommendation* – That the above policy statement be agreed and features prominently on the Council's Planning Enforcement web page and other relevant publications, with a review of its effectiveness one year after implementation and inclusion of actions available to the Council to take.
- 5.23. It was also clear that there is very little enforcement information available on the Council's website and that increasing and improving this would assist in communicating the aims and objectives of the service. Work on this has already commenced.

- 5.24. The ISG were also of the view that Parish Councils would benefit from training sessions. It was pointed out that training did take place but that further events for 2008 were yet to be arranged, and needed to take account of officers' existing commitments.
- 5.25. **Discussions with Councillors and the Parish Councils raised the following points, many of which are linked to the issue of Communication. The response of the ISG is below each point.**

Enforcement is an extremely important issue for many Winchester constituents; there is a perception amongst them that the Council does not do enough and was not seen to be "tough" enough in this area. It was felt that the team should react quickly to complaints received and advertise its services more widely. This particular point was also reinforced by the Parish Councils.

ISG's Comment: While the complex realities of enforcement work, including legal constraints, inevitably mean that the public may sometimes feel disappointed, the ISG concluded that there was reason and scope to provide clearer publicity relating to the role and work of the service and a priority system for dealing with complaints, with clear advice on what would be done by the team and when.

Regarding the call for the Team to be seen to be taking a tougher stance, the ISG noted with empathy the very strong emphasis placed on this by Parish and Town witnesses, together with the citing of more direct action taken by some Councils in appropriate circumstances and recommended that the Portfolio Holder consider a less tolerant approach to wilful abuse, including bringing contentious Enforcement cases to Planning Development Control Committee for Members' consideration and input.

- *Public meetings between officers and local residents on contentious/high profile sites could be extremely useful.*
ISG's Comment: These do take place from time to time and can be useful, although will not always be possible primarily due to time constraints.
- *Communication between enforcement officers and planning officers before determination of a planning application is necessary to ensure more enforceable and appropriate Conditions.*
ISG's Comment: This does take place in some instances but is not appropriate to all applications and could place an additional and unnecessary workload on the team. However, planning conditions should comply with the six tests set out in Circular 11.95, The Use of Conditions in Planning Permissions, which requires all conditions to be necessary; relevant to planning; relevant to the development to be permitted; enforceable; precise and reasonable in all other respects.
- *The team should be expanded to include an administration officer whose main role would be to keep the public updated on progress of cases and improve the accuracy of information.*
ISG's Comment: The team already has a technician, who does a certain element of this, but with improved use of the web and clarity of the operation of the team, this could be improved as an integral part of the team's development. The introduction of an administrative post would therefore have decreasing benefits for the team and may not be justified in the current economic climate.
- *There is often difficulty accessing the Council's website to find out conditions on permission when dealing with complaints. This is a particularly significant matter for*

Councillors and Parish Councils, as they are often the first port of call for complainants.

ISG's Comment: The web site is not as reliable as it should be for this information but officers can provide such information on request. The introduction of corporate EDRMS should improve the quality of information available on the web.

- *Frustration was expressed by the Parish Councils about the perceived inaction of the team most of the time and the fact that the process could be so long and drawn out, with solutions being offered with little regard to other residents' views; there was dissatisfaction that Enforcement Officers could make a judgement on whether or not planning permission would have been granted had it been applied for.*

ISG's Comment: Improved publicity and information about the legislation within which enforcement are able to act will assist in an understanding of why this happens, although it is acknowledged that there are instances of cases that should have been dealt with more quickly. With regard to the comment on planning permissions, this decision is made on the basis of adopted planning policy and the impact of the development, in accordance with guidance from government.

- *There was a strongly expressed desire for the City Council to take a higher profile and firmer stance against non-compliers and increase the level of prosecutions. Parish Councils reported that the general view in the area is that enforcement in Winchester is significantly weaker than in other authorities and that there is very limited or no respect for the enforcement process among developers and agents in Winchester District.*

ISG's Comment: Such cases need to be carefully chosen and the cost of unsuccessful action taken into consideration. The success of enforcement should not necessarily be measured by the number of notices served and prosecutions carried out. It is often possible to resolve issues in a different way and this is encouraged by the government. Nevertheless, the ISG recognised that it would be appropriate and beneficial to take tougher high-profile decisions on certain cases.

- *Planning application fees for retrospective applications should be more than for other applications and fines should be imposed on transgressors.*

ISG's Comment: Planning applications fees are set by the government and are not at the discretion of local government. There is currently no ability to fine transgressors.

- *Concern was expressed about the high staff turnover in Enforcement.*

ISG's Comment: This has been a problem in the past but the team has been relatively stable for a while, with the one remaining vacancy anticipated to be filled soon. Retention of staff in planning generally can be problematic, as there is more work than qualified staff available.

- *The Parishes wanted detailed information on why cases were closed.*

ISG's Comment: Letters go out to the complainants advising when complaints have been closed and why. A copy of this could go to the Parish Council, which is not always the complainant.

6. Recommendations

- 6.1. That there be improved publicity relating to the enforcement processes, including timeframes for key stages when updates will be given to complainants, additional correspondence to the Parish Council as detailed above and maximising use of the website.

- 6.2. That a prioritisation system be developed for dealing with complaints to be determined by the Head of Planning Control, to include prompt response to initial correspondence
- 6.3. An enforcement policy be written, with a review of its effectiveness one year after implementation and inclusion of actions available for the Council to take (Draft of policy attached at Appendix 9)
- 6.4. Parish Councils and Members be informed of closed cases.
- 6.5. That, in pursuance of the revised policy statement above, more robust and tougher decisions be taken in cases of significant abuse and that high profile cases be referred to Planning Development Control Committee for Members' input.
- 6.6. Other Matters
- 6.7. The ISG were concerned that officers had no formal training for the preparation of prosecution cases and that there was not a general procedure manual for new staff or existing officers to refer to.
- 6.8. *Recommendation* – That formal, recorded, training relating to the preparation of prosecution cases be implemented as soon as possible and that a general procedure manual be produced.
- 6.9. Discussions during the various meetings of the Group identified a concern about the need to improve joint working with other agencies such as Natural England, and it was agreed that clarity regarding the enforcement responsibilities of various agencies outside the Council should be provided and put on the website for information. ISG Members also felt that fuller awareness of other agencies' interests, powers and responsibilities would be beneficial.
- 6.10. *Recommendation* – That information clarifying the enforcement responsibilities of other agencies be put on the website and that improvements be updated and maintained.
- 6.11. *Recommendation* – That in response to the internal problems with inter-department working Service Level Agreements should be established between Planning Enforcement and other Council Departments to facilitate the efficient delivery of service.
- 6.12. *Recommendation* – That the managers responsible for the planning enforcement function be positively encouraged to fully utilise their discretion and duty within the policy framework approved by the Council.

7. Conclusion

- 7.1. In order to pull all the information together the ISG re-visited their terms of reference and came to the following conclusions and recommendations. The terms of reference are addressed individually

1. To review the extent to which the City Council has set a clear policy framework including aims and objectives for the Planning Enforcement Service.

The conclusion is that the policy framework, aims and objectives are largely absent and, by definition, inadequately publicised. Recommendations are made for urgent improvement.

2. To consider whether the resources allocated to the Planning Enforcement Service are efficiently used in pursuit of the policy objectives and to comment on the adequacy of those resources.

The conclusion is that there are (just) adequate resources and that the team is operating as efficiently as it can within its existing parameters, which presently exclude pro-active work. However, the implementation of the recommendations outlined in this report will enable the achievement of the policy objectives, assuming no further long term vacancies arise in the team. The Council's image would benefit from a greater level of pro-active activity, were that to be resourced.

3. To consider whether the Planning Enforcement Service is meeting the needs of the community as perceived by local Members, Parish/Town Councils and residents.

There is a strong perception that these needs are not being met, and, in some instances, this perception is correct, particularly in terms of communication and robustness. However, there is a lack of clarity about the role of the service and the powers that it has, and therefore it is difficult for the service to manage public expectations. This lack of clarity must be urgently addressed and rectified. In particular, there needs to be a positive statement of intent on the part of the Council as to the level of compliance it expects and the action it will take in the case of failure. Recommendations are made to address these negative perceptions and the balance of pro-active and reactive work is also relevant here.

4. To take full account of evidence from both internal and external sources, including assessments, reports, complaints and compliments on file.

This has been done and details of meetings and background information are contained throughout this report and in the appendices.

5. To recommend, through the Environment Scrutiny Panel, any changes to existing policy, practice or use of resources which may be expedient to improve the effectiveness or efficiency of the Planning Enforcement Service.

Recommendations are contained throughout the report and set out in full above.

Background Documents

- EN40 – Draft Programme and Appointment of Informal Scrutiny Groups – Environment Scrutiny Panel 2 August 2007
- PS297 – Scrutiny Work Programme – Principal Scrutiny Committee 24 September
- Minutes of the Informal Scrutiny Group – available to Members only via the Intranet – click on “Members, Councillors and Committees” then “Cabinet and Committees” then “Committee Reports” then “Scrutiny Panels” then “Environment” then “Informal Scrutiny Groups” then “Enforcement” then “Minutes”.

List of background information provided to ISG at their meetings

- Department of the Environment, Transport and the Regions: “Enforcing Planning Control: Good Practice Guide for Local Planning Authorities”
- Print off from the Planning Enforcement Service’s page on the Council’s website
- Planning Enforcement Service staff establishment chart
- Planning Enforcement Budget 06/07 to 07/08
- Planning Service Improvement Plan 2007
- Planning Control Business Plan 2007
- CAB856: “Planning Delivery Grant” 20 April 2004
- EA29: “Planning Enforcement” 15 March 2004 (Exempt report)
- Officers Draft report to Cabinet “Planning Enforcement” 11 October 2006
- List of open enforcement cases by officer as at 14 November 2007
- Informal officer notes on the enforcement process
- Informal “day in the life of” notes from enforcement officer
- PPG18 Enforcement

Appendices

- Appendix 1: Parish Council Questionnaire Summary
- Appendix 2: Planning Enforcement Team, current staff establishment chart
- Appendix 3: Notices Issued by Enforcement 2006
- Appendix 4: Notices Issued by Enforcement 2007
- Appendix 5: Total Enforcement Cases June 2006 – January 2008
- Appendix 6: Comparison of Enforcement Workloads with other Authorities (as at Jan 2008)
- Appendix 7: Enforcement Budget September 2007
- Appendix 8: Enforcement Budget January 2008
- Appendix 9: Draft Planning Enforcement Policy

Appendix 1: Parish Council Questionnaire Summary**Q1 Can you please enter the Unique Reference Number you have been sent****Completed by individual Parish Councils on submissions or by WCC on receipt****Q2 Has your Council had any involvement with the Planning Enforcement Service in the last 5 years?**

Yes	10		No	3
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Q3 Thinking about your Parish Council's involvement with the Planning Enforcement Service what year was the last time such involvement occurred?

2007	2006	2005	2004	2003
8	2	0	0	0

Q4 The last time your Parish Council was involved with the Planning Enforcement Service how was it instigated?

WCC internally	A local WCC Member	A Local HCC Member	The Parish / Town Council	A local resident
2	1	0	8	1

Q6 At the conclusion of the enforcement investigation, did you feel that the time taken to complete the case was

Very Timely	Timely	Too Long	Unacceptably long.
0	3	5	2

Q7 How well, during the course of the case, did the WCC officers keep you informed?

Very Well	Well	Acceptably	Not Well Enough	Very little information provided
1	0	2	5	2

Q8 What was the decision of the Planning Enforcement Service at the conclusion of the case?

To Take Enforcement Action	To Take Partial Enforcement Action	To take No Action
5	1	4

Q9 In the opinion of your Parish Council was this decision *(Please tick one box only)*

Appropriate	Inappropriate
7	3

Q10 Overall, would you describe your Council's assessment of the service provided by the Council's Planning Enforcement Service as *(Please tick one box only)*

Excellent	Very good	Satisfactory	Poor	Very Poor
0	1	3	2	4

Q11 Would your Parish/Town Council be willing to accept an invitation to address a future meeting of the ISG?

Yes	No
5	5

Q5 What was the involvement of your Council in the case?

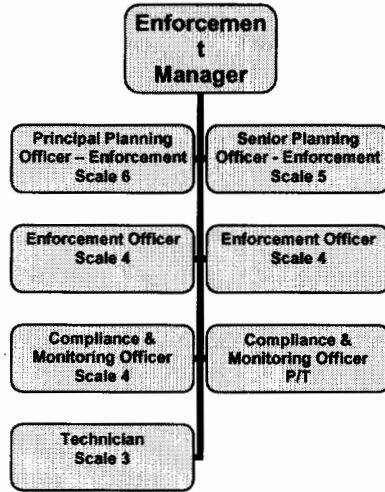
- Resident had reported to the Parish Council a suspected breach of planning consent. Clerk reported to Enforcement to investigate and acted as intermediary.
- Due to complaints with regard to an access to a field dug through a chalk bank, this was passed to Planning to ask if permission was required, which it was, then the retrospective plan submitted was refused. When six months had almost expired just as enforcement were to step in a new plan was submitted and this was permitted.
- Due to complaints with regard to an access to a field being dug through a chalk bank, this was passed to Planning to ask if permission was required, which it was. A retrospective plan was submitted and refused, when six months had almost expired just as enforcement were to step, in a new plan was submitted and this was permitted
- As an example - Objected to original application and reported breach of planning decision
- Total support for local residents whose amenities were affected.
- Old Football Field, Droxford. The Council asked for the gateway to be inset as horseboxes stopping near the junction cause an obstruction. There was also concern that mobile units were not being moved, there not justifying being know as mobile.
- Referral to Enforcement Team of works being carried out at a commercial site.
- Attempting to protect a tree in a conservation area
- Objection to siting of stabling in a field.

- Drawing attention of the PES, some 3 years ago, to a failure of the site owner of Sutton Scotney Services South to establish a site access control barrier and enlisting the assistance of WCC and HCC Councillors in this action

Q12 Do you have any other comments you would like to make about the Council's Planning Enforcement Service?

- Enforcement cases with breaches of conditions rather than full planning consent appear to take much longer to rectify and breach can often reoccur. Cases should be flagged up for follow up visits 6 mths later to ensure that this does not happen.
- The only criticism that could be made was, the person who dealt with this case only worked one day per week and no one else could help with any questions. This comment covers most of Planning which can be frustrating when trying to find out information on queries. (One person one job appears to be the case).
- The only criticism that could be made was the enforcement officer dealing with this in the first instance, only worked one day a week and if questions were asked no-one else could answer any queries. This comment cover most of Planning, where it appears the policy that it is one person, one job and this can be frustrating when dealing with the public and councillors alike.
- Latest case is still unresolved. Earliest case is about 12 years old!
- Decisions take too long, no support for complainants. Involved parties are not informed. Reluctance to take action because of cost. Do not enforce deadlines - Do not enforce conditions.
- Site visit made and copy of letter to developer sent to PC. No information given with regards to conclusion.
- Appeared to only be able to act after the event, rather than to prevent it occurring. Would like more information on relevant cases. Would like to see action being taken faster.
- The case cited is the only involvement the PC has had with the PES for a number of years. It is unacceptable that after some 3 years, enforcement action has not yet been concluded. How would addressing the ISG make this any better?

Appendix 2 : Planning Enforcement Team, current staff establishment chart



Appendix 3: NOTICES ISSUED BY ENFORCEMENT 2006

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	<u>Total</u>
Enforcement Notice	4	5	7		2	2	1		1			1	23
Stop Notice							1						1
Temporary Stop Notice													
Breach of Condition Notice	1					1							2
Planning Contravention Notice	12	8	14	5	8	3	2	10	1	3	2		68
Listed Bldg Enforcement Notice											1		1
Con Area Enforcement Notice													
High Hedge Remedial Notice			2				1		1				4
Section 16 Notice							1	1	1				3
Section 215 Notice													
<u>TOTAL</u>	17	13	23	5	10	6	6	11	4	3	3	1	102

Appendix 4: NOTICES ISSUED BY ENFORCEMENT 2007

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	<u>Total</u>
Enforcement Notice			1	12	2	1	2	1		3	2		24
Stop Notice			1		2			1					4
Temporary Stop Notice		1			1		2		1				5
Breach of Condition Notice													
Planning Contravention Notice		2	3	3	6	8	4	2	3	7	2	4	44
Listed Bldg Enforcement Notice										1			1
Con Area Enforcement Notice											1		1
High Hedge Remedial Notice													
Section 16 Notice			1								1		2
Section 215 Notice													
<u>TOTAL</u>		3	6	14	11	9	8	4	4	11	6	4	81

Appendix 5 TOTAL CASES JUNE 2006 - JAN 2008

Month	Cases Opened	Cases Closed	Total cases outstanding
Jun-06	69	45	567
Jul-06	39	36	570
Aug-06	43	50	563
Sep-06	37	45	555
Oct-06	36	40	551
Nov-06	51	41	561
Dec-06	19	29	551
Jan-07	28	23	556
Feb-07	41	35	562
Mar-07	54	54	562
Apr-07	68	70	560
May-07	37	60	537
Jun-07	41	49	529
Jul-07	34	55	508
Aug-07	31	49	490
Sep-07	21	35	476
Oct-07	48	48	476
Nov-07	48	36	488
Dec-07	26	35	479
Jan-08	16	31	464

Appendix 6: Comparison of Enforcement workloads with other local authorities (as at Jan 08)

	WCC		SALISBURY		CHICHESTER		EASTLEIGH		ARUN		CANTERBURY	
	No	Live cases	No	Live cases	No	Live cases	No	Live cases	No	Live cases	No	Live cases
Team Leader	1	57			1	20	1	31	1	30	1	20
Principal PO	1	97	1	20			1	58				
Senior PO	1	74			1	61 (vacant)	1	51	1	50*	1	61
Planning Officer			1.5	77					1	50*		
Enforcement Officer	1	71	1	43	1	155 (vacant)	1	28			1	53
Enforcement Officer	1	50 (vacant)			1	85 (vacant)					1	96
Enforcement Officer											1	34
Enforcement Officer											1	29
Compliance Officer	1	89	1	12			1	20	1	50*		
Technician	1	4	1						1			
Unallocated		34								80		
Complaints rec'd 2007		496		1000		580		697		630		577
Current live caseload		476		152		Unknown		253		260		293

*Officer workload capped at a maximum of 50 cases

**APPENDIX 7 ENFORCEMENT -
TOTAL COSTS – SEPT 07**

	2006/07	2007/08	2007/08	2007/08	
	Actual	Budget	Budget	Actual	Variance
	£	£	To Date	End	£
			£	Sept	
				£	
<u>Employees</u>					
Salaries - Operational	188,445	254,110	126,710	95,958	(30,752)
FRS 17 Pensions Adjustment	6,479	0	0	0	0
Overtime	1,473	430	216	0	(216)
Agency Staff	15,884	(700)	0	4,359	4,359
Interview Expenses	0	0	0	0	0
Staff Training	1,552	0	0	3,302	3,302
Staff Advertisements	0	0	0	0	0
Employee Insurance	1,847	1,750	1,750	0	(1,750)
Total Employees	215,680	255,590	128,676	103,619	(25,057)
<u>Premises</u>					
Room Hire Charges (Internal)	0	500	252	0	(252)
Land Registry Fees	0	0	0	0	0
Total Premises	0	500	252	0	(252)
<u>Transport</u>					
Hired Vehicles	0	0	0	1,340	1,340
Operating Lease	2,776	0	0	1,028	1,028
Vehicle Leasing Recharge	6,115	7,350	7,350	7,354	4
Public Transport	327	500	252	110	(142)
Car Allowances	9,742	12,160	6,082	3,375	(2,707)
Parking Permits	417	690	0	221	221
Total Transport	19,377	20,700	13,684	13,428	(256)
<u>Supplies & Services</u>					
Purchase of Equipment & Materials	124	500	252	0	(252)
Protective Clothing	82	0	0	0	0
External Printing, Publications etc.	42	0	0	0	0
Stationery	0	0	0	0	0
Technical Books	499	200	102	0	(102)
Services	1,547	0	0	0	0
Professional Fees & Consultancy	0	5,940	2,970	0	(2,970)
Services Provided by HCC	174	0	0	0	0
Other Professional Services	3,888	0	0	0	0
Legal Costs & Consultancy	32,794	0	0	4,350	4,350
Other Services	3,018	0	0	0	0
Professional Association Fees	406	450	352	0	(352)

Postages	0	0	0	0	0
Mobile 'Phones	2,325	0	0	634	634
Conferences & Seminars	0	0	0	0	0
Insurance Claims Excess	0	0	0	0	0

Total Supplies & Services	44,899	7,090	3,676	4,984	1,308
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Management Overheads

Other Services	73,487	36,490	680	1,051	371
Planning Management & Support	108,416	117,780	0	0	0

Total Management Overheads	181,903	154,270	680	1,051	371
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TOTAL EXPENDITURE	461,858	438,150	146,968	123,082	(23,886)
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External Income

Enforcement Appeals	(1,405)	(260)	(132)	(935)	(803)
Planning Delivery Grant (PDG)	(83,621)	(106,830)	(55,162)	(55,090)	72
Enforcement Recovery	0	(5,000)	0	0	0
High Hedges	(450)	0	0	(900)	(900)

Total External Income	(85,476)	(112,090)	(55,294)	(56,925)	(1,631)
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Recharges

CSS - DRM	(6,370)	(6,730)	0	0	0
Conservation	0	0	0	0	0

Total Recharges	(6,370)	(6,730)	0	0	0
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TOTAL INCOME	(91,846)	(118,820)	(55,294)	(56,925)	(1,631)
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NET REVENUE COST	370,012	319,330	91,674	66,157	(25,517)
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Transfer to/(from) Reserves	0	0	0	0	0
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NET COST	370,012	319,330	91,674	66,157	(25,517)
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<u>ENFORCEMENT - FUNDED BY GF</u>			2007/08	2007/08	
	2006/07	2007/08	Budget	Actual	
	Actual	Budget	To Date	End Sept	Variance

	£	£	£	£	£
<u>Employees</u>					
Salaries - Operational	112,886	155,410	77,360	45,250	(32,110)
FRS 17 Pensions Adjustment	6,479	0	0	0	0
Overtime	734	430	216	0	(216)
Agency Staff	15,884	(700)	0	4,359	4,359
Interview Expenses	0	0			0
Staff Training	1,552	0	0	3,302	3,302
Staff Advertisements	0	0	0	0	0
Employee Insurance	1,847	1,750	1,750	0	(1,750)
Total Employees	139,382	156,890	79,326	52,911	(26,415)
<u>Premises</u>					
Room Hire Charges (Internal)	0	500	252	0	(252)
Land Registry Fees	0	0	0	0	0
Total Premises	0	500	252	0	(252)
<u>Transport</u>					
Hired Vehicles	0	0	0	1,340	1,340
Operating Lease	2,776	0	0	1,028	1,028
Vehicle Leasing Recharge	780	3,860	3,860	3,735	(125)
Public Transport	327	500	252	110	(142)
Car Allowances	7,981	7,720	3,862	2,708	(1,154)
Parking Permits	417	690	0	221	221
Total Transport	12,280	12,770	7,974	9,142	1,168
<u>Supplies & Services</u>					
Purchase of Equipment & Materials	124	500	252	0	(252)
Protective Clothing	82	0	0	0	0
External Printing, Publications etc.	42	0	0	0	0
Stationery	0	0	0	0	0
Technical Books	499	200	102	0	(102)
Services	1,547	0	0	0	0
Professional Fees & Consultancy	0	5,940	2,970	0	(2,970)
Services Provided by HCC	174	0	0	0	0
Other Professional Services	3,888	0	0	0	0
Legal Costs & Consultancy	32,794	0	0	4,350	4,350
Other Services	3,018	0	0	0	0
Professional Association Fees	179	250	250	0	(250)
Postages	0	0	0	0	0
Mobile 'Phones	2,325	0	0	538	538
Conferences & Seminars	0	0	0	0	0
Insurance Claims Excess	0	0	0	0	0

Total Supplies & Services	44,672	6,890	3,574	4,888	1,314
<u>Management Overheads</u>					
Other Services	73,487	36,490	680	1,051	371
Planning Management & Support	108,416	117,780	0	0	0
Total Management Overheads	181,903	154,270	680	1,051	371
TOTAL EXPENDITURE	378,237	331,320	91,806	67,992	(23,814)
<u>External Income</u>					
Enforcement Appeals	(1,405)	(260)	(132)	(935)	(803)
Enforcement Recovery	0	(5,000)	0	0	0
High Hedges	(450)	0	0	(900)	(900)
Total External Income	(1,855)	(5,260)	(132)	(1,835)	(1,703)
<u>Recharges</u>					
CSS - DRM	(6,370)	(6,730)	0	0	0
Conservation	0	0	0	0	0
Total Recharges	(6,370)	(6,730)	0	0	0
TOTAL INCOME	(8,225)	(11,990)	(132)	(1,835)	(1,703)
NET REVENUE COST	370,012	319,330	91,674	66,157	(25,517)
Transfer to/(from) Reserves	0	0	0	0	0
NET COST	370,012	319,330	91,674	66,157	(25,517)

<u>ENFORCEMENT - FUNDED BY PDG</u>			2007/08	2007/08	
	2006/07	2007/08	Budget	Actual	
	Actual	Budget	To Date	End	Variance
	£	£	£	Sept	£

Employees

Salaries - Operational	75,559	98,700	49,350	50,708	1,358
Overtime	739	0	0	0	0
Total Employees	76,298	98,700	49,350	50,708	1,358
<u>Transport</u>					
Vehicle Leasing Recharge	5,335	3,490	3,490	3,619	129
Car Allowances	1,761	4,440	2,220	667	(1,553)
Total Transport	7,096	7,930	5,710	4,286	(1,424)
<u>Supplies & Services</u>					
Mobile Phones	0	0	0	96	96
Professional Association Fees	227	200	102	0	(102)
Total Supplies & Services	227	200	102	96	(6)
TOTAL EXPENDITURE	83,621	106,830	55,162	55,090	(72)
Income					
Planning Delivery Grant	(83,621)	(106,830)	(55,162)	(55,090)	72
NET COST	0	0	0	0	0

APPENDIX 8 - ENFORCEMENT -
TOTAL COSTS – JAN 08

	2006/07 Actual £	2007/08 Budget £	2007/08 Budget To Date £	2007/08 Actual End Jan £	Variance £
<u>Employees</u>					
Salaries - Operational	188,445	254,110	211,178	174,786	(36,392)
FRS 17 Pensions Adjustment	6,479	0	0	0	0
Overtime	1,473	430	360	0	(360)
Agency Staff	15,884	(700)	0	4,359	4,359
Interview Expenses	0	0	0	0	0
Staff Training	1,552	0	0	5,631	5,631
Staff Advertisements	0	0	0	0	0
Employee Insurance	1,847	1,750	1,750	1,775	25
Total Employees	215,680	255,590	213,288	186,551	(26,737)
<u>Premises</u>					
Room Hire Charges (Internal)	0	500	418	0	(418)
Land Registry Fees	0	0	0	0	0
Total Premises	0	500	418	0	(418)
<u>Transport</u>					
Hired Vehicles	0	0	0	1,474	1,474
Operating Lease	2,776	0	0	1,851	1,851
Vehicle Leasing Recharge	6,115	7,350	7,350	7,221	(129)
Public Transport	327	500	418	172	(246)
Car Allowances	9,742	12,160	10,134	5,716	(4,418)
Parking Permits	417	690	0	402	402
Total Transport	19,376	20,700	17,902	16,836	(1,066)
<u>Supplies & Services</u>					
Purchase of Equipment & Materials	124	500	418	406	(12)
Protective Clothing	82	0	0	9	9
External Printing, Publications etc.	42	0	0	0	0
Stationery	0	0	0	54	54
Technical Books	499	200	168	27	(141)
Services	1,547	0	0	0	0
Professional Fees & Consultancy	0	5,940	4,950	1,090	(3,860)
Services Provided by HCC	174	0	0	0	0
Other Professional Services	3,888	0	0	0	0
Legal Costs & Consultancy	32,794	0	0	7,400	7,400
Other Services	3,018	0	0	0	0
Professional Association Fees	406	450	417	0	(417)

Postages	0	0	0	10	10
Mobile 'Phones	2,325	0	0	1,135	1,135
Conferences & Seminars	0	0	0	0	0
Insurance Claims Excess	0	0	0	250	250

Total Supplies & Services	44,899	7,090	5,953	10,381	4,428
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Management Overheads

Other Services	73,487	36,490	1,224	1,504	280
Planning Management & Support	108,416	117,780	0	0	0

Total Management Overheads	181,903	154,270	1,224	1,504	280
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TOTAL EXPENDITURE	461,858	438,150	238,785	215,272	(23,513)
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External Income

Enforcement Appeals	(1,405)	(260)	(218)	(1,295)	(1,077)
Planning Delivery Grant (PDG)	(83,621)	(106,830)	(89,607)	(92,465)	(2,858)
Enforcement Recovery	0	(5,000)	0	(200)	(200)
High Hedges	(450)	0	0	(900)	(900)

Total External Income	(85,476)	(112,090)	(89,825)	(94,860)	(5,035)
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Recharges

CSS - DRM	(6,370)	(6,730)	0	0	0
Conservation	0	0	0	0	0

Total Recharges	(6,370)	(6,730)	0	0	0
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TOTAL INCOME	(91,846)	(118,820)	(89,825)	(94,860)	(5,035)
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NET REVENUE COST	370,012	319,330	148,960	120,412	(28,548)
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Transfer to/(from) Reserves	0	0	0	0	0
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NET COST	370,012	319,330	148,960	120,412	(28,548)
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<u>ENFORCEMENT - FUNDED BY</u> <u>GF</u>			2007/08	2007/08	Variance £
	2006/07 Actual £	2007/08 Budget £	Budget To Date £	Actual End Sept £	

Employees

Salaries - Operational	112,886	155,410	128,928	88,250	(40,678)
FRS 17 Pensions Adjustment	6,479	0	0	0	0
Overtime	734	430	360	0	(360)
Agency Staff	15,884	(700)	0	4,359	4,359
Interview Expenses	0	0	0	0	0
Staff Training	1,552	0	0	5,631	5,631
Staff Advertisements	0	0	0	0	0
Employee Insurance	1,847	1,750	1,750	1,775	25
Total Employees	139,382	156,890	131,038	100,015	(31,023)

Premises

Room Hire Charges (Internal)	0	500	418	0	(418)
Land Registry Fees	0	0	0	0	0
Total Premises	0	500	418	0	(418)

Transport

Hired Vehicles	0	0	0	1,340	1,340
Operating Lease	2,776	0	0	1,851	1,851
Vehicle Leasing Recharge	780	3,860	3,860	2,536	(1,324)
Public Transport	327	500	418	172	(246)
Car Allowances	7,981	7,720	6,434	4,771	(1,663)
Parking Permits	417	690	0	402	402
Total Transport	12,280	12,770	10,712	11,072	360

Supplies & Services

Purchase of Equipment & Materials	124	500	418	406	(12)
Protective Clothing	82	0	0	9	9
External Printing, Publications etc.	42	0	0	0	0
Stationery	0	0	0	54	54
Technical Books	499	200	168	27	(141)
Services	1,547	0	0	0	0
Professional Fees & Consultancy	0	5,940	4,950	1,090	(3,860)
Services Provided by HCC	174	0	0	0	0
Other Professional Services	3,888	0	0	0	0
Legal Costs & Consultancy	32,794	0	0	7,400	7,400
Other Services	3,018	0	0	0	0
Professional Association Fees	179	250	250	0	(250)
Postages	0	0	0	10	10
Mobile 'Phones	2,325	0	0	970	970
Conferences & Seminars	0	0	0	0	0
Insurance Claims Excess	0	0	0	250	250
Total Supplies & Services	44,672	6,890	5,786	10,216	4,430

Management Overheads

Other Services	73,487	36,490	1,224	1,504	280
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Planning Management & Support	108,416	117,780	0	0	0
Total Management Overheads	181,903	154,270	1,224	1,504	280
TOTAL EXPENDITURE	378,237	331,320	149,178	122,807	(26,371)
<u>External Income</u>					
Enforcement Appeals	(1,405)	(260)	(218)	(1,295)	(1,077)
Enforcement Recovery	0	(5,000)	0	(200)	(200)
High Hedges	(450)	0	0	(900)	(900)
Total External Income	(1,855)	(5,260)	(218)	(2,395)	(2,177)
<u>Recharges</u>					
CSS - DRM	(6,370)	(6,730)	0	0	0
Conservation	0	0	0	0	0
Total Recharges	(6,370)	(6,730)	0	0	0
TOTAL INCOME	(8,225)	(11,990)	(218)	(2,395)	(2,177)
NET REVENUE COST	370,012	319,330	148,960	120,412	(28,548)
Transfer to/(from) Reserves	0	0	0	0	0
NET COST	370,012	319,330	148,960	120,412	(28,548)

<u>ENFORCEMENT - FUNDED BY PDG</u>			2007/08	2007/08	Variance
	2006/07	2007/08	Budget	Actual	
	Actual	Budget	To Date	End Sept	
	£	£	£	£	£

Employees

Salaries - Operational	75,559	98,700	82,250	86,536	4,286
Overtime	739	0	0	0	0
Total Employees	76,298	98,700	82,250	86,536	4,286

Transport

Hired Vehicles	0	0	0	134	134
Vehicle Leasing Recharge	5,335	3,490	3,490	4,685	1,195

Car Allowances	1,761	4,440	3,700	945	(2,755)
Total Transport	7,096	7,930	7,190	5,764	(1,426)
<u>Supplies & Services</u>					
Mobile Phones	0	0	0	165	165
Professional Association Fees	227	200	167	0	(167)
Total Supplies & Services	227	200	167	165	(2)
TOTAL EXPENDITURE	83,621	106,830	89,607	92,465	2,858
Income					
Planning Delivery Grant	(83,621)	(106,830)	(89,607)	(92,465)	(2,858)
NET COST	0	0	0	0	0

Appendix 9:

DRAFT

ENFORCEMENT POLICY

Winchester City Council

Introduction

The Council attaches great importance to the protection of the district's built environment, countryside and heritage from inappropriate development and is fully committed to the provision of the Enforcement Service.

Without an Enforcement Service the planning system would fall into disrepute. However, it is a discretionary service and it is therefore up to each local authority to decide how the Enforcement Service in its area should operate, and ultimately, whether or not enforcement action should be taken in each case.

Winchester District is subject to immense development pressures and the demands placed on its Enforcement Service are high. Since 2000 it has received, on average 600, complaints a year. The Council has increased the staffing resources in the team to try to improve the Service, although the number and complexity of cases generated has meant that the efficiency of the Service has suffered in the past and there remains a high backlog of cases.

The purpose of this policy is to:

- Explain how Winchester City Council intends to operate its Enforcement Service;
- Define the role of the service, with the aim of making it more effective and efficient;
- Sets out the priorities for investigating breaches of planning control;
- Serve as a guide to Officers, Members, Parish Council's and members of the public.

Guiding Statement

The Council's approach to Planning Enforcement is set out in the following statement:

"Winchester City Council attaches great importance to the protection and enhancement of the natural and built environments of the District through the planning process. Compliance with and respect for that process are both essential and expected, and the Council will not condone wilful breaches of planning control.

While enforcement action will always need to be commensurate with the breach to which it relates, the Council will not hesitate to be firm and robust in its response in appropriate circumstances, including recourse to the Courts.

While every effort will be made to resolve inadvertent or minor breaches through discussion and retrospective applications, more serious breaches (including those considered to be wilful) are likely to result in positive enforcement action".

Planning Policy Guidance Note 18 – Enforcing Planning Control

The Council's Enforcement Service is guided by the advice contained in Planning Policy Guidance Note 18. This advises that:

- Parliament has given Local Planning Authorities (LPA's) the primary responsibility for taking whatever enforcement action may be necessary, in the public interest, in their administrative area (the private citizen cannot initiate enforcement action);
- Failure to take effective enforcement action which was plainly necessary could be deemed 'maladministration';
- In considering any enforcement action, the decisive issue for the LPA should be whether the breach of control would unacceptably affect public amenity or the existing use of land or buildings meriting protection in the public interest;
- Enforcement action should always be commensurate with the breach of planning control to which it relates (for example, it is usually inappropriate to take formal enforcement action against a trivial or technical breach of control which causes no harm to amenity in the locality of the site);
- Where the LPA's initial attempt to persuade the owner or occupier of the site voluntarily to remedy the harmful effects of unauthorised development fails, negotiations should not be allowed to hamper or delay whatever formal enforcement action may be required to make the development acceptable on planning grounds, or to compel it to stop.

Planning Policy Guidance Note 18 also provides clear guidance to LPA's on the 'expediency' of taking enforcement action. It states that:

'... where the LPA's assessment indicates that it is likely that unconditional planning permission would be granted for development which has already taken place, the correct approach is to suggest to the person responsible for the development that he should at once submit a retrospective planning application (together with the relevant fee).'

'While it is clearly unsatisfactory for anyone to carry out development without first obtaining the required planning permission, an enforcement notice should not normally be issued solely to "regularise" development which is acceptable on its planning merits, but for which planning permission has not been sought'.

The guidance note also advises that in cases where the operator or owners of a small business, or a self-employed person, has carried out a breach of planning control in good faith, believing that no planning permission was needed, the cost of enforcement action to the business should be taken into account and every effort made to resolve the situation voluntarily.

WCC Enforcement Service

The Enforcement Service currently operated by WCC involves both reactive (dealing with complaints received about alleged breaches of planning control) and proactive (monitoring large developments after planning permission to make sure that they are building in accordance with the approved plans and are complying with all conditions).

At present, the reactive work generates approximately 90% of the caseload and proactive work 10%.

The development pressures and nature of the enforcement cases generated in the district are such that a large part of the service will always be devoted to reactive working, however, the Council acknowledges the benefit of proactive enforcement work and will continue to look at ways at developing this part of the service.

Breaches of Planning Control

A breach of planning control occurs when development is carried out without first obtaining the necessary planning permission. There are two types of development:

- Operational development, i.e. building / engineering works.
- Change of use (of land or buildings).

Ascertaining whether or not a breach of planning control has taken place can sometimes be difficult to establish, especially where changes of use are concerned. The legislation governing planning (Town and Country Planning Act 1990) can be complex, and local authorities are often required to make judgements as to whether a breach of planning control has occurred.

To assist the Council in determining whether or not a breach of planning control has occurred, the Council can issue a 'Planning Contravention Notice' which is a legal notice that requires landowners or occupiers to provide the Council with certain information about the activities taking place. The information required by the Notice has to be returned within 21 days, otherwise an offence will have been committed liable for prosecution in the Magistrates Court (up to £5,000 fine). The Planning Contravention Notice is a useful tool and represents the largest number of Notice's issued by the Enforcement Service.

Carrying out development without first obtaining planning permission

In all instances, the Council would expect planning permission to be sought before development is carried out. However, it is acknowledged that in some cases works are carried out in ignorance or in the mistaken belief that planning permission is not required.

It is important to note that:

IT IS NOT AN OFFENCE TO CARRY OUT DEVELOPMENT WITHOUT PLANING PERMISSION.

The legislation allows planning permission to be sought retrospectively, and where there is a prospect of planning permission being granted, the person carrying out the breach will be invited to submit a retrospective application in order to regularise the breach of planning control, although in most instances there is nothing to prevent a retrospective application being submitted at any time. If this happens then the Council would normally wait to determine the application before taking enforcement action (unless the unauthorised development constitutes a serious breach of planning control requiring immediate enforcement action).

Time periods for submitting retrospective applications / negotiating breaches of planning control

Once a breach of planning control has been established, the landowner or occupier will normally be given 28 days in which to submit a retrospective planning application. A further extension of 14 days will be given in some circumstances. If an application is not submitted within this time period then the Council will consider the expediency of taking enforcement action (see below).

The time period for negotiations is more difficult to gauge and will very much depend on the nature of the breach and the willingness of the landowner/occupier to remedy the breach. It is the Council's preferred option to secure voluntary compliance through negotiation as this will ultimately save the Council time and resources, however, the matter will not be allowed to become protracted. If after 2 months, there is little effort on the landowners / occupiers part to remedy the breach of planning control, then the expediency of taking enforcement action will be considered (see below).

Permitted Development

Most minor development, particularly that carried out by householders in respect of a single dwelling house, will constitute 'Permitted Development'.

These rights are set out in the Town and Country Planning (General Permitted Development) Order 1995. Most permitted development rights are criteria based and in some cases it can therefore be difficult to determine whether proposed works require planning permission or not. People thinking about doing certain works to their property should therefore always seek advice beforehand. The Council's Planning Department should be able to offer informal advice (workloads permitted) or you can also seek the advice of a qualified Planning Consultant. It is possible to obtain a formal determination from the Council by applying for a Certificate of Lawfulness of a Proposed Use or Development (CLOPUD), for which a fee is required.

Permitted development rights also extend to:

- The erection of fencing up to 2 metres high (1m if adjacent to a highway) on any land; and;
- The temporary use of open land for any activity (except motorised vehicle racing, caravan sites and war games) for up to 28 days in any calendar year.

Article 4 Direction

The planning legislation enables LPA's to issue a Direction under Article 4 of the Town and Country Planning (General Permitted Development) Order 1995, more commonly referred to as an 'Article 4 Direction', which has the effect of removing specific permitted development rights. Government advice makes it clear that Article 4 Directions should only be used in exceptional cases where there is a real and specific threat.

Examples of when the Council might issue an Article 4 Directions include in Conservation Areas (to prevent certain features, such as timber windows, being replaced) or in open fields in the countryside which are proposed to be sub-divided into pony paddocks or allotments (by preventing fencing from being erected).

Article 4 Directions are initially issued by the Council, but have to be confirmed by the Secretary of State within 6 months. Historically, the Council has issued 8 Article 4 Directions, although only 2 were ever confirmed by the Secretary of State.

A landowner can apply for compensation (from the Council) if planning permission is subsequently sought and refused for the works cited in the Direction within 12 months of the Direction being issued.

Immunity from Enforcement Action

The Town and Country Planning Act 1990 sets out time limits, after which development that has taken place without planning permission becomes lawful, i.e. immune from enforcement action.

In the case of operational development, the time limit is 4 years (from the date that the development was substantially complete)

In the cases of the change of use* of a building to a dwelling, the time limit is 4 years.

In the case of all other changes of use*, the time limit is 10 years.

In the case of a breach of condition, the time limit is 10 years.

* For changes of use, the use must have occurred continuously for the whole of the requisite period

If it appears to the Council that a breach of planning control may be immune from enforcement action then the landowner will be invited to apply for a Certificate of Lawfulness or Existing Use or Development (CLEUD).

In most cases, the landowner will be given a short period to prove lawfulness, failing which the Council will consider the expediency of taking enforcement action. In cases where a development is very close to gaining immunity, enforcement action will be taken immediately.

Provided enforcement action is taken before the end of the 4 year/10 year periods, then the development cannot continue to gain further immunity.

Immunity does not apply to works to listed buildings.

Expediency of taking enforcement action

The Council would normally consider the expediency of taking enforcement action when it is satisfied that a breach of planning control has occurred and:

- i) the landowner or occupier has been invited to submit a planning application but declined; or
- ii) an application has been submitted but has been refused; or
- iii) negotiations to remedy the breach of planning control have failed.

With regards to i) and iii), enforcement action would only be taken if the development is considered to be harmful in planning terms, or would have only been granted planning permission subject to certain conditions.

In most cases, the refusal of retrospective planning permission (point ii)) is likely to result in Enforcement action being taken (unless the applicant agrees at that stage to voluntarily resolve the breach of planning control within a short time period).

Taking enforcement action attracts a right of appeal (much like an appeal against the refusal of planning permission) and the Council's evidence therefore needs to be robust in its defence of any subsequent appeal. In cases where a retrospective application has not been submitted, it may be necessary to formally consult internal departments within the Council (e.g. Conservation, Environmental Health, etc) or external organisations (e.g. Environment Agency, Natural England, etc) on the acceptability of the unauthorised development (in the same way that they would have been consulted, had an application been submitted).

When it has been decided that enforcement action should be taken, instructions are drafted by the Enforcement Team to the Council's Legal Services. In most case, the preparation of an Enforcement Notice by the Council's Solicitors should not take more than 4 weeks (in many cases it is a lot less than this).

Appeals

An appeal against an enforcement notice has to be lodged within 28 days of the service of the Notice. An appeal is made to the Planning Inspectorate, who determine the appeal on behalf of the Secretary of State.

An appeal against an Enforcement Notice can be made on the following grounds:

- a) That planning permission should be granted for what is alleged in the notice;
- b) That the breach of control alleged in the enforcement notice has not occurred as a matter of fact;
- c) That there has not been a breach of planning control;
- d) That, at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice;
- e) The notice was not properly served on everyone with an interest in the land;
- f) The steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections
- g) That the time given to comply with the notice is too short.

Appeals can be dealt with by way of written representation, Hearing or Public Inquiries. Many enforcement appeals involve Public Inquiries as there are often legal arguments such as whether a breach of planning control has occurred and whether immunity had already been achieved at the point the notice was served, and when it is necessary to cross examine witnesses.

All complainants will be notified of the appeal and given the opportunity to submit comments to the Planning Inspectorate.

The appeal process can be lengthy, time consuming and costly. In addition costs be can awarded against the Council on the grounds of unreasonable behaviour, for example, for issuing an Enforcement Notice without taking into account relevant judicial authority's, Government guidance (PPG 18) or well publicised appeal decisions, or for failing to substantiate the reasons for issuing the notice.

Offences

Whilst it is not an offence to carry out development without planning permission, it is an offence not to comply with the requirements of an Enforcement Notice once it has taken effect and the period for compliance has expired. The maximum fine in the Magistrates Court is £20,000.

Likewise, it is also an offence not to comply with the following notices:

- Listed Building Enforcement Notice (max fine £20,000)
- Conservation Area Enforcement Notice (max fine £20,000)
- Breach of Condition Notice (max fine £1,000)
- Section 215 'Untidy site' (max fine £1,000)
- Planning Contravention Notice (max fine £5,000)

Breaching the requirements of a Temporary Stop Notice or a Stop Notice is also an offence liable to a maximum fine in the Magistrates Court of £20,000.

The following breaches of planning control also constitute an offence:

- Unauthorised works to a listed building (that effect its special character and appearance) (£20,000)
- Works to a tree subject of a Tree Preservation Order or in a Conservation Area (£20,000)
- Demolition of a non-exempt building in a Conservation Area without Conservation Area Consent (£20,000)
- Displaying an advert without consent (£2,500)

If it has been established that an offence has been committed, the Council will normally invite the landowner and/or the person responsible for committing the offence to the Council Officers for an 'Interview under Caution'. The interview is a formal process which gives the person being interviewed the opportunity to explain their actions.

Interviews under Caution are also sometimes carried out on site, particularly with tree and listed building offences where the works are often in the process of being carried out.

Ultimately, the decision to prosecute rests with the Council's Solicitors and will largely depend on the type of offence and the evidence available.

Use of Temporary Stop Notice and Stop Notices

The Council widely encourages the use of Temporary Stop Notices (TSN) and Stop Notices to bring about the immediate cessation of unauthorised building or engineering works.

A TSN lasts for 28 days and in most cases will be issued very quickly. Since the legislation that allowed LPA's to issue TSNs was introduced in 2004, the Council has been very active in the use of the TSN and values their ability to secure the cessation of works in very short period of time.

A Stop Notice has to be issued at the same time as an Enforcement Notice and has the effect of bringing the requirements of the Notice (or certain requirements of the Notice) into immediate effect. Before issuing a Stop Notice the Council is required to undertake a Cost/Benefit analysis of the proposed action in order to consider any financial implications of stopping works. The Stop Notice normally takes effect after 3 days, although can be brought into effect straightaway if there are special reasons for doing so. The Stop Notice lasts for as long as the Enforcement Notice remains in force.

In cases where a TSN or a Stop Notice is being ignored, the Council would normally apply for an ex parte injunction in the County Court (as well as commence prosecution proceedings in the Magistrates Court). Failure to comply with an Injunction would be 'contempt of court' and could result in a custodial sentence.

Residential use in the Countryside

In recent years the Council has experienced an upsurge in the number of unauthorised residential dwellings being established in the countryside. In many cases, the dwellings are associated with an agricultural or equine enterprise or business, and whilst there is scope in the adopted local plan for planning permission to be granted for an agricultural or equine workers dwelling, any new residential dwellings are subject to strict tests in terms of functional need and financial tests to demonstrate that the business is viable or has been planned on a sound financial basis. The creation of new residential dwellings in the countryside represents a serious breach of planning control and in most cases the Council will not hesitate to take swift enforcement action in order to secure the cessation / removal of the residential use, include the use of Stop Notices where applicable.

Pre-commencement conditions

'Condition precedent' is a term used to describe a condition on a planning permission which requires something to be done before development commences on site, such as the submission of details for the Council's approval.

The Council is firmly of the view that it is the developers responsibility to ensure that all of the 'condition precedents' on a planning permission are fully discharged before development works commences on site. It is established law that in cases where development works commence on site without complying with 'condition precedents' then the development carried out is unauthorised and it is therefore open to the Council to take immediate enforcement action in the form of a Stop Notice or Temporary Stop Notice in order to bring a halt to the development until the condition has been complied with. Recently, the courts have held that it is only non-compliance with condition precedents that go to the heart of the planning permission, i.e. details of materials, levels, etc, that would render the development unauthorised. Non-compliance with conditions such as landscaping and boundary treatment would not therefore render the development unauthorised and would have to dealt with by a Breach of Condition Notice instead.

In cases where the site is believed to be contaminated or requires an archaeological inspection to be carried out, the Council will not hesitate to take immediate enforcement action in order to bring about an immediate cessation of all works until the matter has been satisfactorily resolved.

In most cases, site clearance works, such as the removal of shrubs and hedgerows does not require planning permission and is not therefore a breach of planning control.

Prioritisation of Enforcement Investigations

The Enforcement Service is well resourced. However, the number of enforcement complaints received and their often complex nature means that it is not possible to deal with every case immediately upon receipt and in order that the Enforcement Team can concentrate their resources on the most significant cases, it is necessary to have a system of prioritisation in dealing with Enforcement complaints.

The highest priority will be given to the most serious cases that involve development or activities that cause immediate harm to listed buildings or protected trees, or cause significant harm to public health or safety or seriously undermine development plan policies for the area.

Lesser priorities involve cases which if left unchecked would result in potentially unacceptable development, by being contrary to development policies or cause harm to residential amenity. Issues which generate significant local concern will also be expedited.

The lowest priority will be given to cases relating to minor breaches of planning control such as small residential outbuildings, fences, satellite dishes, etc, which result in little or no harm to occupants of surrounding properties or other interests of acknowledged importance.

Priority 1 –

- Residential caravans in the countryside (including gypsies and travelling showmen caravan sites) which are either in the process of being brought onto the land or have recently been established (e.g. over the preceding weekend)
- Works that are causing physical damage the character or appearance of a Listed Building
- Works to trees subject of a Tree Preservation or in Conservation Area.
- Commencement of development (with planning permission) without discharging 'pre-commencement' conditions (except peripheral issues such as landscaping or means of enclosure)
- Building / engineering works that cause severe harm to the East Hants Area of Outstanding Natural Beauty, South Downs proposed National Park or SSSI.
- Breach of condition which results in serious harm to residential amenity

Priority 2 –

- All other residential dwellings and caravans in the countryside
- Works not in accordance with approved plans (significant changes to approved plans)
- Householder works that cause harm to residential amenity

Priority 3 –

- All other works not in accordance with approved plans
- All other breaches of conditions
- Advertisements
- Creation of a new access
- Equestrian related development

Priority 4 –

- Gates, walls, fences and all other householder development
- Satellite dishes
- Untidy land

Time limits for Site Visits

Priority 1 cases will be visited within 24 hours of the complaint first being received.

Priority 2 cases will be visited within 5 working days of the complaint first being received.

Priority 3 cases will be visited within 10 working days of the complaint first being received.

Priority 4 cases will be visited within 15 working days of the complaint first being received.

The speed at which a breach of planning control can be resolved will vary depending on the complexity of the individual case and general workloads, however, officers will, in general, normally aim to confirm whether there is a breach of planning control and set out the Council's position in writing to the landowner / developer and the complainant within eight weeks of a complaint being received.

Process for dealing with unauthorised Adverts

The display of advertisements without prior consent is a criminal offence. Once it has been established that a sign is being displayed without the necessary consent, the Council will write to the landowner or the person /company displaying the sign requiring its removal within 7 days. If the sign is not removed by then, the Council will commence Prosecution proceedings in the Magistrates Court.

Very often signs are displayed on land belonging to the Highway Authority. In such cases, although it is open to the Council to prosecute the offender, in most cases the matter will be referred to the Highway Authority with a view to them taking their own action to secure the removal of the sign.

Performance Monitoring

It is notoriously difficult to monitor performance in Enforcement due to the complexity of certain cases and the time it can take to resolve breaches of planning control through negotiation.

At present the following aspects of the Service are monitored:

- Number of enforcement site visits carried out within 10 working days
- Number of cases served an enforcement notice
- Number of enforcement cases opened
- Number of enforcement cases closed
- Total number of enforcement cases outstanding