

committee agenda



**Epping Forest
District Council**

***District Development Control Committee
Wednesday, 16th October, 2013***

You are invited to attend the next meeting of **District Development Control Committee**, which will be held at:

**Council Chamber, Civic Offices, High Street, Epping
on Wednesday, 16th October, 2013
at 7.30 pm .**

**Glen Chipp
Chief Executive**

**Democratic Services
Officer**

Simon Hill, The Office of the Chief Executive
Tel: 01992 564249 Email:
democraticservices@eppingforestdc.gov.uk

Members:

Councillors B Sandler (Chairman), J Wyatt (Vice-Chairman), A Boyce, J Hart, Mrs S Jones, Ms H Kane, J Knapman, Ms Y Knight, J Markham, R Morgan, J Philip, Mrs C Pond, B Rolfe and J M Whitehouse

**A BRIEFING WILL BE HELD FOR THE CHAIRMAN, VICE-CHAIRMAN AND GROUP
SPOKESPERSONS OF THE-COMMITTEE, AT 6.30 P.M.
IN COMMITTEE ROOM 1 PRIOR TO THE MEETING**

SUBSTITUTE NOMINATION DEADLINE:

18:30

WEBCASTING/FILMING NOTICE

Please note: this meeting may be filmed for live or subsequent broadcast via the Council's internet site - at the start of the meeting the Chairman will confirm if all or part of the meeting is being filmed. The meeting may also be otherwise filmed by third parties with the Chairman's permission.

You should be aware that the Council is a Data Controller under the Data Protection Act. Data collected during this webcast will be retained in accordance with the

Council's published policy.

Therefore by entering the Chamber and using the lower public seating area, you are consenting to being filmed and to the possible use of those images and sound recordings for web casting and/or training purposes. If members of the public do not wish to have their image captured they should sit in the upper council chamber public gallery area or otherwise indicate to the Chairman before the start of the meeting.

If you have any queries regarding this, please contact the Senior Democratic Services Officer on 01992 564249.

1. WEBCASTING INTRODUCTION

1. This meeting is to be webcast. Members are reminded of the need to activate their microphones before speaking.

2. The Chief Executive will read the following announcement:

"This meeting will be webcast live to the Internet and will be archived for later viewing. Copies of recordings may be made available on request.

By entering the chamber's lower seating area you are consenting to becoming part of the webcast.

If you wish to avoid being filmed you should move to the public gallery or speak to the webcasting officer"

2. ADVICE TO PUBLIC AND SPEAKERS AT COUNCIL PLANNING SUBCOMMITTEES (Pages 5 - 6)

General advice to people attending the meeting is attached.

3. APOLOGIES FOR ABSENCE

4. SUBSTITUTE MEMBERS (COUNCIL MINUTE 39 - 23.7.02)

(Assistant to the Chief Executive) To report the appointment of any substitute members for the meeting.

5. DECLARATIONS OF INTEREST

(Assistant to the Chief Executive) To declare interests in any item on this agenda.

6. MINUTES (Pages 7 - 12)

To confirm the minutes of the last meeting of the Committee held on 21 August 2013 (attached)

7. **PLANNING APPLICATION EPF/0981/13 - 13 FOREST DRIVE, THEYDON BOIS, ESSEX, CM16 7EX - RETROSPECTIVE APPLICATION FOR RETENTION OF REAR CONSERVATORY STORE AND EXTERNAL WALL MOUNTED AIR CONDITIONING UNITS AT THE REAR (Pages 13 - 20)**

(Director of Planning and Economic Development) To consider the attached report.

8. **PLANNING APPLICATION EPF/0735/13 - LAND AT 40A HAINAULT ROAD, CHIGWELL - CHANGE OF USE FROM VACANT FORMER AGRICULTURAL LAND TO USE FOR CAR PARKING ANCILLARY TO THE USE OF VICTORY HALL AND WORKS TO CONSTRUCT CAR PARK INCLUDING LOWERING OF LAND LEVELS AND REMOVAL OF TREES. (Pages 21 - 28)**

(Director of Planning and Economic Development) To consider the attached report.

9. **LOCAL ENFORCEMENT PLAN (Pages 29 - 52)**

(Director of Planning and Economic Development) To consider the attached report and plan.

10. **SCHEME OF OFFICER DELEGATION FOR DEVELOPMENT CONTROL FUNCTIONS - PROPOSED CHANGES (Pages 53 - 66)**

(Director of Planning and Economic Development) To consider the attached report.

11. **THREAT OF SPECIAL MEASURES AND REFUNDING OF PLANNING FEES (Pages 67 - 70)**

(Director of Planning and Economic Development) To consider the attached report.

12. **ANY OTHER BUSINESS**

Section 100B(4)(b) of the Local Government Act 1972, together with paragraphs 6 and 25 of the Council Procedure Rules contained in the Constitution requires that the permission of the Chairman be obtained, after prior notice to the Chief Executive, before urgent business not specified in the agenda (including a supplementary agenda of which the statutory period of notice has been given) may be transacted.

In accordance with Operational Standing Order 6 (non-executive bodies), any item raised by a non-member shall require the support of a member of the Committee concerned and the Chairman of that Committee. Two weeks' notice of non-urgent items is required.

13. **EXCLUSION OF PUBLIC AND PRESS**

Exclusion: To consider whether, under Section 100(A)(4) of the Local Government Act 1972, the public and press should be excluded from the meeting for the items of business set out below on grounds that they will involve the likely disclosure of exempt information as defined in the following paragraph(s) of Part 1 of Schedule 12A of the Act (as amended) or are confidential under Section 100(A)(2):

Agenda Item No	Subject	Exempt Paragraph Number	Information
Nil	Nil	Nil	

The Local Government (Access to Information) (Variation) Order 2006, which came into effect on 1 March 2006, requires the Council to consider whether maintaining the exemption listed above outweighs the potential public interest in disclosing the information. Any member who considers that this test should be applied to any currently exempted matter on this agenda should contact the proper officer at least 24 hours prior to the meeting.

Confidential Items Commencement: Paragraph 9 of the Council Procedure Rules contained in the Constitution require:

- (1) All business of the Council requiring to be transacted in the presence of the press and public to be completed by 10.00 p.m. at the latest.
- (2) At the time appointed under (1) above, the Chairman shall permit the completion of debate on any item still under consideration, and at his or her discretion, any other remaining business whereupon the Council shall proceed to exclude the public and press.
- (3) Any public business remaining to be dealt with shall be deferred until after the completion of the private part of the meeting, including items submitted for report rather than decision.

Background Papers: Paragraph 8 of the Access to Information Procedure Rules of the Constitution define background papers as being documents relating to the subject matter of the report which in the Proper Officer's opinion:

- (a) disclose any facts or matters on which the report or an important part of the report is based; and
- (b) have been relied on to a material extent in preparing the report and does not include published works or those which disclose exempt or confidential information (as defined in Rule 10) and in respect of executive reports, the advice of any political advisor.

Inspection of background papers may be arranged by contacting the officer responsible for the item.

Advice to Public and Speakers at Council Planning Subcommittees

Are the meetings open to the public?

Yes all our meetings are open for you to attend. Only in special circumstances are the public excluded.

When and where is the meeting?

Details of the location, date and time of the meeting are shown at the top of the front page of the agenda along with the details of the contact officer and members of the Subcommittee.

Can I speak?

If you wish to speak **you must register with Democratic Services by 4.00 p.m. on the day before the meeting**. Ring the number shown on the top of the front page of the agenda. Speaking to a Planning Officer will not register you to speak, you must register with Democratic Service. Speakers are not permitted on Planning Enforcement or legal issues.

Who can speak?

Three classes of speakers are allowed: One objector (maybe on behalf of a group), the local Parish or Town Council and the Applicant or his/her agent.

Sometimes members of the Council who have a prejudicial interest and would normally withdraw from the meeting might opt to exercise their right to address the meeting on an item and then withdraw.

Such members are required to speak from the public seating area and address the Sub-Committee before leaving.

What can I say?

You will be allowed to have your say about the application but you must bear in mind that you are limited to three minutes. At the discretion of the Chairman, speakers may clarify matters relating to their presentation and answer questions from Sub-Committee members.

If you are not present by the time your item is considered, the Subcommittee will determine the application in your absence.

Can I give the Councillors more information about my application or my objection?

Yes you can but it must not be presented at the meeting. If you wish to send further information to Councillors, their contact details can be obtained through Democratic Services or our website www.eppingforestdc.gov.uk. Any information sent to Councillors should be copied to the Planning Officer dealing with your application.

How are the applications considered?

The Subcommittee will consider applications in the agenda order. On each case they will listen to an outline of the application by the Planning Officer. They will then hear any speakers' presentations.

The order of speaking will be (1) Objector, (2) Parish/Town Council, then (3) Applicant or his/her agent. The Subcommittee will then debate the application and vote on either the recommendations of officers in the agenda or a proposal made by the Subcommittee. Should the Subcommittee propose to follow a course of action different to officer recommendation, they are required to give their reasons for doing so.

The Subcommittee cannot grant any application, which is contrary to Local or Structure Plan Policy. In this case the application would stand referred to the next meeting of the District Development Control Committee.

Further Information?

Can be obtained through Democratic Services or our leaflet 'Your Choice, Your Voice'

EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: District Development Control **Date:** 21 August 2013
Committee

Place: Council Chamber, Civic Offices, **Time:** 7.30 - 8.00 pm
High Street, Epping

Members Present: B Sandler (Chairman), J Wyatt (Vice-Chairman), A Boyce, J Hart, Ms H Kane, Ms Y Knight, J Markham, R Morgan, J Philip, Mrs C Pond, B Rolfe, D Stallan, G Waller and J M Whitehouse

Other Councillors:

Apologies: C Finn, Mrs S Jones and J Knapman

Officers Present: J Shingler (Principal Planning Officer), M Jenkins (Democratic Services Assistant) and P Seager (Chairman's Secretary)

57. WEBCASTING INTRODUCTION

The Assistant to the Chief Executive reminded everyone present that the meeting would be broadcast live to the Internet, and that the Council had adopted a protocol for the webcasting of its meetings.

58. SUBSTITUTE MEMBERS (COUNCIL MINUTE 39 - 23.7.02)

It was noted that Councillor G Waller was substituting for Councillor Mrs S Jones and Councillor D Stallan was substituting for Councillor J Knapman.

59. DECLARATIONS OF INTEREST

There were no declarations of interest made pursuant to the Member's Code of Conduct.

60. MINUTES

RESOLVED:

That the minutes of the meeting held on 26 June 2013 be taken as read and signed by the Chairman as a correct record.

61. ANY OTHER BUSINESS

It was noted that there was no further business to be trasacted at the meeting save that published on the agenda.

62. PLANNING APPLICATION EPF/2343/12. DEMOLITION OF EXISTING TIMBER CONSTRUCTION USE CLASS B1 UNITS AND REPLACEMENT WITH NEW CLASS B1 UNITS AND 6 THREE BEDROOM COTTAGES (INCLUDING 3

AFFORDABLE) AT STONE HALL, DOWNHALL ROAD, MATCHING GREEN, CM170RA

The Committee considered an application referred to it by Area Plans Sub-Committee East at their meeting on 19 June with a recommendation that the application be refused.

The application sought to demolish an existing timber construction Use Class B1 units and replacement with new Class B1 units of 6 three bedroom cottages, including 3 affordable, at Stone Hall, Downhall Road, Matching Green CM17 0RA.

The Plans East Sub-Committee felt that the application should be refused on the basis that very special circumstances were not demonstrated sufficiently to outweigh the harm to Green Belt from the residential element of the proposal.

Members, in the course of their discussion, suggested that additional information was needed regarding the financial viability of the development without the housing element as it was felt that if business re-development was not viable in its own right, then the housing may have been justified as enabling development. In response to this query, the applicant supplied figures demonstrating that the re-development of the site solely for the proposed business units would not be a financially viable option and indeed would result in a net loss.

The Committee heard from the applicant.

The Committee agreed with the assessment of officers that planning permission should be granted.

RESOLVED:

That planning application EPF/2343/12 at Stone Hall, Downhall Road, Matching Green CM17 0RA be granted subject to the following conditions:

- 1 The development hereby permitted will be completed strictly in accordance with the approved drawings nos:211/S/100, S/101, S/102, P/11A,P/012, P/013, P/014, P/015, P/016, P/017, P/018P/019.
- 2 The development hereby permitted must be begun not later than the expiration of three years beginning with the date of this notice.
- 3 No development shall take place until samples of the types and colours of the external finishes have been submitted to and approved by the Local Planning Authority in writing prior to the commencement of the development. The development shall be implemented in accordance with such approved details. For the purposes of this condition, the samples shall only be made available for inspection by the Local Planning Authority at the planning application site itself.
- 4 No development shall take place until details of foul and surface water disposal have been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with such agreed details.
- 5 No development shall take place until wheel washing or other cleaning facilities for vehicles leaving the site during construction works have been installed in accordance with details which shall be submitted to and agreed in writing by the Local Planning Authority. The approved installed cleaning facilities shall be used to clean vehicles immediately before leaving the site.

- 6 Notwithstanding the provisions of the Town and Country Planning General Permitted Development Order 1995 as amended (or any other order revoking, further amending or re-enacting that order) the B1 units hereby approved shall not be used only for uses falling within the B1 use and shall not be used for any other purpose without the prior written permission of the Local Planning Authority.
- 7 Notwithstanding the provisions of the Town and Country Planning General Permitted Development Order 1995 as amended (or any other order revoking, further amending or re-enacting that order) no development generally permitted by virtue of Part 1, Classes A, B or E shall be undertaken without the prior written permission of the Local Planning Authority.
- 8 The B1 use hereby permitted shall not operate outside the hours of 0.800 to 20.00 on Monday to Saturday and 10.00 to 16.00 on Sundays and Bank/Public Holidays.
- 9 No development, including works of demolition or site clearance, shall take place until a Tree Protection Plan, Arboricultural Method Statement and site monitoring schedule in accordance with BS 5837:2012 (Trees in relation to design, demolition and construction - Recommendations) has been submitted to the Local Planning Authority and approved in writing. The development shall be carried out only in accordance with the approved documents unless the Local Planning Authority gives its written consent to any variation.
- 10 No development shall take place, including site clearance or other preparatory work, until full details of both hard and soft landscape works (including tree planting) and implementation programme (linked to the development schedule) have been submitted to and approved in writing by the Local Planning Authority. These works shall be carried out as approved. The hard landscaping details shall include, as appropriate, and in addition to details of existing features to be retained: proposed finished levels or contours; means of enclosure; car parking layouts; other minor artefacts and structures, including signs and lighting and functional services above and below ground. The details of soft landscape works shall include plans for planting or establishment by any means and full written specifications and schedules of plants, including species, plant sizes and proposed numbers /densities where appropriate. If within a period of five years from the date of the planting or establishment of any tree, or shrub or plant, that tree, shrub, or plant or any replacement is removed, uprooted or destroyed or dies or becomes seriously damaged or defective another tree or shrub, or plant of the same species and size as that originally planted shall be planted at the same place, unless the Local Planning Authority gives its written consent to any variation.
- 11 There shall be no external storage in connection with the approved B1 business use.
- 12 The parking areas for the B1 uses, shown on the approved plans shall be provided prior to the first use of any of the B1 units hereby approved and shall be maintained free of obstruction for the parking of vehicles in connection with the approved B1 uses thereafter and shall not at any time be used for the storage or parking of vehicles unconnected with the businesses operating at the site.
- 13 Prior to commencement of development details shall be submitted to and approved in writing by the Local Planning Authority for a bellmouth access into the site to include minimum kerb radii of 8m returning to the carriageway width of no less than 6metres for the first 10metres into the site, unless otherwise agreed in writing by the

- Local Planning Authority. The approved details shall be implemented prior to first occupation of any element of the development.
- 14 Prior to the first use of any part of the approved development the site shall be provided with a size 3 turning head, as per the Essex Design Guide, before the gates to the business/industrial area.
 - 15 No unbound material shall be used in the surface treatment of the vehicular access within 10m of the highway boundary.
 - 16 Prior to commencement of development details showing the means to prevent the discharge of surface water from the development onto the highway shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be carried out in its entirety prior to the access becoming operational and shall be retained at all times.
 - 17 Any gates provided at the vehicular access shall be inward opening only and shall be set back a minimum of 6 metres from the back edge of the carriageway.
 - 18 Prior to commencement of development details of phasing of the development including timing of demolition of the existing buildings, and erection of the replacement units and housing, shall be submitted to and agreed in writing by the Local Planning Authority. The works shall then be carried out in accordance with the agreed phasing plan unless alternative phasing is agreed in writing by the Local Planning Authority.
 - 19 A flood risk assessment and management and maintenance plan shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of development. The assessment shall include calculations of increased run-off and associated volume of storm detention using WinDes or other similar best practice tools. The approved measures shall be carried out prior to the substantial completion of the development and shall be adequately maintained in accordance with the management and maintenance plan.
 - 20 No development shall take place until a Phase 1 Land Contamination investigation has been carried out. A protocol for the investigation shall be submitted to and approved in writing by the Local Planning Authority before commencement of the Phase 1 investigation. The completed Phase 1 report shall be submitted to and approved by the Local Planning Authority prior to the commencement of any necessary Phase 2 investigation. The report shall assess potential risks to present and proposed humans, property including buildings, crops, livestock, pets, woodland and service lines and pipes, adjoining land, groundwaters and surface waters, ecological systems, archaeological sites and ancient monuments and the investigation must be conducted in accordance with DEFRA and the Environment Agency's "Model Procedures for the Management of Land Contamination, CLR 11", or any subsequent version or additional regulatory guidance.
[Note: This condition must be formally discharged by the Local Planning Authority before the submission of details pursuant to the Phase 2 site investigation condition that follows]
 - 21 Should the Phase 1 Land Contamination preliminary risk assessment carried out under the above condition identify the presence of potentially unacceptable risks, no development shall take place until a Phase 2 site investigation has been carried out. A protocol for the investigation shall be submitted to and approved in writing by the Local Planning Authority before commencement of the Phase 2 investigation. The completed Phase 2 investigation report, together with any necessary outline

remediation options, shall be submitted to and approved by the Local Planning Authority prior to any redevelopment or remediation works being carried out. The report shall assess potential risks to present and proposed humans, property including buildings, crops, livestock, pets, woodland and service lines and pipes, adjoining land, groundwaters and surface waters, ecological systems, archaeological sites and ancient monuments and the investigation must be conducted in accordance with DEFRA and the Environment Agency's "Model Procedures for the Management of Land Contamination, CLR 11", or any subsequent version or additional regulatory guidance.

[Note: This condition must be formally discharged by the Local Planning Authority before the submission of details pursuant to the remediation scheme condition that follows]

- 22 Should Land Contamination Remediation Works be identified as necessary under the above condition, no development shall take place until a detailed remediation scheme to bring the site to a condition suitable for the intended use has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved remediation scheme unless otherwise agreed in writing by the Local Planning Authority. The remediation scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures and any necessary long term maintenance and monitoring programme. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 or any subsequent version, in relation to the intended use of the land after remediation.
[Note: This condition must be formally discharged by the Local Planning Authority before the submission of details pursuant to the verification report condition that follows]
- 23 Following completion of measures identified in the approved remediation scheme and prior to the first use or occupation of the development, a verification report that demonstrates the effectiveness of the remediation carried out must be produced together with any necessary monitoring and maintenance programme and copies of any waste transfer notes relating to exported and imported soils shall be submitted to the Local Planning Authority for approval in writing. The approved monitoring and maintenance programme shall be implemented.
- 24 In the event that any evidence of potential contamination is found at any time when carrying out the approved development that was not previously identified in the approved Phase 2 report, it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with a methodology previously approved by the Local Planning Authority. Following completion of measures identified in the approved remediation scheme, a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with the immediately above condition.
- 25 All construction/demolition works and ancillary operations, including vehicle movement on site which are audible at the boundary of noise sensitive premises, shall only take place between the hours of 08.00 to 18.30 Monday to Friday and 08.00 to 13.00 hours on Saturday, and at no time during Sundays and Public/Bank Holidays unless otherwise agreed in writing by the Local Planning Authority.

And subject to the applicant first entering into a legal agreement under section 106 of the Town and Country Planning Act within 1 month of the date of this meeting to secure three of the proposed residential units as affordable rented accommodation.

63. ERECTION OF A TWO STOREY DETACHED DWELLING AND COMMUNITY NATURE RESERVE, SPARKS FARM, 185 NINE ASHES ROAD, HIGH ONGAR - EXTENSION OF S106 PERIOD

The Committee considered an application, which they had previously considered on 3 October 2012, for erection of a two storey detached dwelling and Community Nature Reserve, Sparks Farm, 185 Nine Ashes Road, High Ongar, when they had resolved to grant planning permission subject to the completion of an S106 Agreement within 6 months. The S106 Agreement required the developer to:

- (1) Provide a Community Nature Reserve accessible by members of the public.
- (2) The maintenance of the Community Nature Reserve by the owners of the proposed house in accordance with the approved 10 year Nature Conservation Management Plan.
- (3) Seek approval of further Nature Conservation Management Plans for implementation from and beyond 10 years after the date of planning permission.
- (4) Implement, in perpetuity, all subsequent approved Nature Conservation Management Plans.

It was advised that the developer was in a position to sign a completed S106 Agreement, however, since the 6 month time limit given by this committee to complete it had lapsed, it was not possible for the Council to sign the agreement. Authority was sought to complete the agreement within 3 months.

The Extension of the S106 Agreement period was granted.

RESOLVED:

That conditional planning permission be granted subject to the completion, within 3 months of the 21 August 2013, of an agreement under Section 106 of the Town and Country Planning Act 1990, in respect of the formation of a Community Nature Reserve accessible by members of the public and maintained by the owners of the proposed house in accordance with a Nature Conservation Management Plan.

CHAIRMAN

Report to District Development Control Committee

Date of meeting: 16th October 2013



**Epping Forest
District Council**

**Subject: Planning Application EPF/0981/13 – 13 Forest Drive, Theydon Bois, Essex,
CM16 7EX - Retrospective application for retention of rear conservatory
store and external wall mounted air conditioning units at the rear**

**Officer contact for further information: Marie-Claire Tovey Ext: 4371
Committee Secretary: S Hill Ext: 4249**

Recommendation:

**That the application be granted planning permission subject to the following
conditions:**

- 1. The rear conservatory hereby approved shall only be used for storage in
connection with the A3 restaurant use of 13 Forest Drive and shall not at any
time be used as a seating/dining area**

Reason:- In the interests of neighbouring amenity.

- 2. The rating level of noise (as defined by BS4142:1997) emitted from the air
conditioning unit shall not exceed 5dB(A) above the prevailing background
noise level. The measurement position and assessment shall be made
according to BS4142:1997.**

**Reason: To protect nearby noise sensitive premises from significant loss of
amenity due to noise.**

Report

1. This application has been referred by the Area Plans Sub Committee East with no recommendation, however it was recommended for grant of planning permission by Planning Officers subject to condition 1 above. As part of the referral, Area Plans Sub Committee East instructed Planning Officers to seek further information from the Council's Environmental Health Officers with regard to noise issues in relation to the operation of the air conditioning units and report the findings to this committee.

Planning Issues

2. Following a second consultation with Environmental Health the following comments were received:

"From the Environmental Health visits to the area, the air conditioning units do not appear to be causing any significant loss of amenity due to noise and therefore we have no objection. However, Environmental Health cannot be certain that all the air conditioning units were all operating at the time of our visits and noise from the air conditioning units may be currently

being masked by noise from the kitchen extract unit (which appears to be the main source of noise/complaint) and which will be the subject of a separate planning application.

In order to safeguard residential amenity due to any potential for noise from the air conditioning units a noise condition could be imposed in line with a standard condition that Environmental Health often apply for air conditioning units when any concerns are raised.”

Conclusion

3. The application in this case, was referred to District Development Control Committee with no recommendation from the sub-committee, however the Planning Officers recommendation to grant planning permission still stands. The area committee requested for further information with regards to noise from the air conditioning units has been done, following a second consultation with Environmental Health Officer. The Planning Officer recommendation to approve the application still stands, but with the addition of the extra condition no.2 in the recommendation to ensure no significant impact on surrounding amenity.

4. The original report to Sub-Committee East is reproduced below:

Extract from Area Plans East Agenda from 14 August 2013

APPLICATION No:	EPF/0981/13
SITE ADDRESS:	13 Forest Drive Theydon Bois Essex CM16 7EX
PARISH:	Theydon Bois
WARD:	Theydon Bois
APPLICANT:	Mr M Haque
DESCRIPTION OF PROPOSAL:	Retrospective application for retention of rear conservatory store and external wall mounted air conditioning units at the rear.
RECOMMENDED DECISION:	Grant Permission (With Conditions)

Click on the link below to view related plans and documents for this case:

http://planpub.eppingforestdc.gov.uk/AniteIM.websearch/ExternalEntryPoint.aspx?SEARCH_TYPE=1&DOC_CLASS_CODE=PL&FOLDER1_REF=549391

CONDITIONS

- 1 The rear conservatory hereby approved shall only be used for storage in connection with the A3 restaurant use of 13 Forest Drive and shall not at any time be used as a seating/dining area.

This application is before this Committee since the recommendation is for approval contrary to an objection from a local council which is material to the planning merits of the proposal (Pursuant to The Constitution, Part Three: Planning Directorate – Delegation of Council function, Schedule 1, Appendix A. (g))

This application is before this Committee since it is for a type of development that cannot be determined by Officers if more than two objections material to the planning merits of the proposal to be approved are received (Pursuant to The Constitution, Part Three: Planning Directorate – Delegation of Council function, Schedule 1, Appendix A.(f).)

Description of Site:

13 Forest Drive is a shop unit located within a small parade of shops on the west side of Forest Drive within the built up area of Theydon Bois. Forest Drive has a small parade of shops and then is mainly residential properties to the north and immediately to the south. 13 Forest Drive is currently trading as a restaurant. There is a side service road, which accesses the rear area. The application site is not within the Metropolitan Green Belt or a Conservation Area.

Description of Proposal:

The proposal seeks retrospective consent for the retention of a rear conservatory and external wall mounted air conditioning units at the rear. This application has been submitted following an

ongoing enforcement investigation. The rear conservatory measures 3.7m deep and 6.9m wide with a maximum height of 3.1m. The air conditioning units are located beside the conservatory to the rear. There are four wall mounted units at a maximum height of 2.9m. This application does not include the kitchen extractor duct which is the subject of enforcement action.

Relevant History:

EPF/0261/09 – Change of use from A1 to A3 – App/Con

EPF/0820/12 - Proposed outside seating area at the front, retention of front canopy, rear conservatory, external wall mounted air conditioning units, external extractor duct and front signage – Refused

EPF/2131/12 - Proposed outside seating at front and retention of front canopy, rear conservatory, external wall mounted air conditioning units, external extractor duct and front signage (Revised Application) - Refused

EPF/1234/13 - Retrospective advertisement consent for canopy, fascia sign and projecting sign – Concurrent application

Policies Applied:

Epping Forest District Local Plan and Alterations

CP2 – Protecting the Quality of the Rural and Built Environment

DBE3 – Design in Urban Areas

DBE9 – Loss of Amenity

RP5A – Development likely to Cause a Nuisance

The above policies form part of the Council's 1998 Local Plan. Following the publication of the NPPF, policies from this plan (which was adopted pre-2004) are to be afforded due weight where they are consistent with the Framework. The above policies are broadly consistent with the NPPF and therefore are afforded full weight.

Summary of Representations:

THEYDON BOIS PARISH COUNCIL – Objection – We note that this application does not include the extractor fan/ducting to the side elevation which amongst other features remains the subject of outstanding Enforcement Notices.

As previously stated we have no objection to the canopy. However, we regret but we cannot see that anything has materially changed in relation to the other offending issues and thus the objections which we voiced in relation to application numbers EPF/0737/12, 0820/12 and 2131/12 remain essentially unchanged.

Our objections to the original application number EPF/0737/12 are repeated below for ease of reference. **[NB: This reference relates to a different site and these comments were made in relation to EPF/0820/12]**

TBPC Comments on EPF/0737/12

'Recommendation: Strong Objection

When permission was originally given for a change of use on these premises from A1 to A3, it was a marginal decision given after careful consideration of the proposed plan for the restaurant. Regrettably, the restaurant has not been developed according to that plan. The change in the position of the kitchen has resulted in the external extractor duct being positioned on the side elevation of the building as opposed to the rear. This is unacceptable and has a direct impact on

the amenity of the neighbouring apartments which overlook the premises. Residents in these apartments have complained about the food cooking smells which are being emitted.

We are also strongly opposed to the proposed outside seating at the front of the premises. This will have a detrimental impact on the neighbouring residential properties due to potential noise. The nature of the buildings in Forest Drive being tall on both sides of the road tends to funnel and amplify any noise. Although the Belgique has seats outside their property on the opposite side of the road, these premises close at 5.30pm whereas the restaurant opens at 5.30pm and closes at 11pm.

The internally illuminated signage at the front of the property is also at odds with the other retail units in Forest Drive. This Council has consistently opposed internally illuminated signs in this part commercial part residential area of the Village and this policy has been respected by the other retail outlets. An internally illuminated sign was recently refused permission on the Bull Public House, which is close to the property in question, as it was deemed to be out of character in this part of the Village.

With regard to the rear conservatory, this is currently being used for storage and it is proposed that this will continue to be its main purpose. We do not believe that a conservatory is a suitable structure for storage in a commercial building.

Finally, on a more positive note we see no reason why the front canopy cannot be retained.'

NEIGHBOURS

33 neighbours were consulted and the following responses were received:

11B FOREST DRIVE – Objection – loss of parking area to rear, concern with noise from extractor fan (not part of this application)

5 THE HEIGHTS – Objection – matter has been ongoing for two years, concern with noise and appearance of extraction unit (not part of this application), plans did not originally show a conservatory, issues of parking due to restaurant use

THE HEIGHTS RESIDENTS ASSOCIATION – Objection – appearance and noise from extraction duct (not part of this application)

2 THE HEIGHTS – Objection – noise of air conditioning units

Issues and Considerations:

The main issues that arise with this application are considered to be the following:

- Design Issues
- Impact on Neighbouring Amenity

Design Issues

The conservatory is rather domestic in appearance for a commercial property, and an unusual choice of addition for storage purposes, however it is to the rear of the site within a service yard and is not considered so out of keeping within the surrounding area (which includes rear domestic gardens) to justify a refusal.

The air conditioning units are rather utilitarian; however they are again located to the rear of the property within the service yard and therefore in this location are considered acceptable and are standard in appearance.

Amenity

The conservatory may be acceptable in terms of amenity but only if used for storage as stated and a condition can be applied should the application be approved to ensure it's end use. Without a condition ensuring that the conservatory can only be used for storage purposes, the conservatory may have a potential impact on neighbouring amenity if used for customers to dine in, as is very close to the rear gardens of the properties in Buxton Road and adjacent to 'The Heights'.

The Council's Environmental Health team were consulted on this application, and although previously the Environmental Health team have objected to the applications, this has only been on the basis of the extractor duct to the side (not part of this application) and the Environmental Health team have no comment to make on this current application. The air conditioning units are therefore not considered detrimental to surrounding amenity.

Comments on Representations Received

The extraction duct is not part of this application and it is understood that this will be applied for under a separate application. The canopy and signage are part of the concurrent application EPF/1234/13 and therefore being dealt with separately. The reference to the outside seating area within the Parish Council Comments has been removed from the description. This is because planning permission is not required for this element, as the area to the front in question is within the ownership of the restaurant and therefore outside seating would be an ancillary use not requiring planning permission.

Conclusion:

This retrospective application is, given the above, considered acceptable development and approval subject to conditions is recommended.

Should you wish to discuss the contents of this report item please use the following contact details by 2pm on the day of the meeting at the latest:

***Planning Application Case Officer: Marie-Claire Tovey
Direct Line Telephone Number: 01992 564371***

or if no direct contact can be made please email: contactplanning@eppingforestdc.gov.uk



Epping Forest District Council

Area Planning Sub-Committee East



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Agenda Item Number:	6 & 7
Application Number:	EPF/0981/13 and EPF/1284/13
Site Name:	13 Forest Drive, Theydon Bois CM16 7EX
Scale of Plot:	1/1250

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Report to District Development Control Committee

Date of meeting: 16 October 2013



**Epping Forest
District Council**

Subject: Planning Application EPF/0735/13 – Land at 40a Hainault Road, Chigwell - Change of use from vacant former agricultural land to use for car parking ancillary to the use of Victory Hall and works to construct car park including lowering of land levels and removal of trees.

**Officer contact for further information: Stephan Solon Ext 4018
Committee Secretary: Simon Hill Ext 4249**

Recommendation:

That the Committee considers the Officer recommendation to grant planning permission for the change of use of the land for car parking in association with Victory Hall and approves the submitted layout of 17 car parking spaces subject to the following conditions:-

- 1 The development hereby permitted must be begun not later than the expiration of three years beginning with the date of this notice.**

Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990 (as amended).

- 2 Before the commencement of the development, or of any works on the site, and concurrently with the detailed design plans, a tree survey shall be submitted to the Local Planning Authority. The survey shall contain relevant details on all trees on or adjacent to the site, and with a stem diameter of 100mm or greater, to include the following:**

- (a) Reference number, species, location, girth or stem diameter, and accurately planned crown spread.**
- (b) An assessment of condition, and value.**
- (c) Existing ground levels, including contours where appropriate, adjacent to trees, where nearby changes in level, or excavations, are proposed.**
- (d) Trees to be removed in conjunction with the proposed development shall be clearly marked as such on a plan.**

Reason:- To comply with the duties indicated in Section 197 of the Town and Country Planning Act 1990, and to enable proper consideration to be given to the impact of the proposed development on existing trees, so as to safeguard and enhance the visual amenities of the area and to ensure a

satisfactory appearance to the development.

- 3** The development, including site clearance, must not commence until a tree protection plan, to include all the relevant details of tree protection has been submitted to the Local Planning Authority and approved in writing.

The statement must include a plan showing the area to be protected and fencing in accordance with the relevant British Standard (Trees in Relation to Construction- Recommendations; BS.5837:2012). It must also specify any other means needed to ensure that all of the trees to be retained will not be harmed during the development, including by damage to their root system, directly or indirectly.

The statement must explain how the protection will be implemented, including responsibility for site supervision, control and liaison with the LPA.

The trees must be protected in accordance with the agreed statement throughout the period of development, unless the Local Planning Authority has given its prior written consent to any variation.

Reason:- To comply with the duties indicated in Section 197 of the Town & Country Planning Act 1990 so as to ensure that the amenity value of the existing tree is potentially maintained by the provision of an adequate replacement tree.

- 4** The parking area shown on the approved plan shall be constructed as shown on the approved plan EPL_20 rev. D (unless otherwise agreed in writing) and shall be retained free of obstruction for parking in association with Victory Hall and other public buildings on the adjacent site thereafter

Reason:- In the interests of highway safety.

- 5** All material excavated from the below ground works hereby approved shall be removed from the site unless otherwise agreed in writing by the Local Planning Authority.

Reason: In order to control any alteration to levels or spreading of material not indicated on the approved plans in the interests of amenity and the protection of natural features.

Report detail:

Description of Site:

1. The application site comprises land immediately south of Victory Hall, Hainault Road. That land comprises a hard surfaced area adjacent to the hall, the vehicular access to the site and a linear row of trees some 15m high

on an embankment. The embankment rises to land rear of 40a Hainault Road that separates Victory Hall from 30 and 40a Hainault Road. The land is an uncultivated open field. A narrow strip of the field on the boundary with Victory Hall is included in the application site.

2. The land part of the field together with the remainder of the field and open land to the east is within the Green Belt while the remainder of the site together with land to the north and west is outside of it. The locality is not included within a Conservation Area and no trees on the site or adjacent to it are preserved.

Description of Proposal:

3. Change of use of vacant former agricultural land to use for car parking ancillary to the use of Victory Hall and works to construct car park including lowering of land levels and removal of trees.
4. The proposal would achieve a 17 space car park that would serve Victory Hall. The parking spaces would be set on the southern site boundary some 8m from the site boundary with Hainault Road. A 1.7m high retaining wall would be constructed on the southern site boundary.

Relevant History:

- EPF/0247/09 Erection of 5 bedroom detached house. Pending decision. On 9/06/2009 DDCC resolved to give planning permission subject to the completion of a S106 agreement to secure the provision of additional car parking space for Victory Hall. The S106 agreement was not completed by 5/04/2011 when DDCC requested the application be reported back to it if the agreement was not completed by June 2011. The agreement was not completed and the application reported back on 14/12/2011 when DDCC resolved that planning permission should be given subject to a similar S106 agreement with more specific heads of terms to achieve the car park. A period of 6 months was given to complete the agreement, however it was not completed. The application will be reported back to DDCC at the meeting following its decision on the current application for the construction of a car park.
- EPF/1767/09 Formation of 17 space car park Approved 2/12/2009 by DDCC. Not implemented and consent lapsed 2/12/2012

Policies Applied:

The NPPF provides the primary policy context for assessing this application.

The following Local Plan and Alterations policies, which are found to be consistent with the NPPF, are relevant:

CP2	Quality of Rural and Built Environment
GB2A	Development in the Green Belt
GB7A	Conspicuous Development
DBE1	Design of New Buildings
LL10	Provision for Landscape Retention
LL11	Landscaping Schemes
ST4	Road Safety

Consultation Carried Out and Summary of Representations Received

NEIGHBOURS:

Number of neighbours consulted. 10

Site notice posted: No, not required

Responses received: One response received from the occupant of 30 Hainault Road raising objection to the proposal as follows:

“Firstly, the planning application refers to land which is situated on the Metropolitan Green Belt. As such, this does not comply with your Council's planning policy regarding the Restriction of Dwellings in the Metropolitan Green Belt. In addition, this land in question is located next to a commercial property, which I believe also, does not comply with your Council's planning policy.

Secondly, this is a large piece of land which is currently a natural habitat for many birds and other wildlife. If this planning application is to be approved, it will not only destroy the land but also a natural habitat, possibly leading to migration.

Thirdly, Hainault Road is already quite a busy road. Given previous occasions where road works were stationed here (only a few metres away from the turn off road to Station Road); this already demonstrated the potential high level of traffic and increased risk of traffic congestion. Should the building works commence on this land and increased car parking facility permitted on this land, we would undoubtedly see more traffic along Hainault Road due to various contractors working on this site; restricting the flow of traffic for others who regularly pass through this route.”

CHIGWELL PARISH COUNCIL: “The Council **OBJECTS** to this application as this application cannot be assessed as it is linked to the original application where DDC gave permission for the house, and a car park. It is critical that this application goes before DDC which gave the original permissions”

Main Issues and Considerations:

5. The development was previously given planning permission in 2009 but was not implemented. That consent has lapsed and the applicant now seeks a further consent to carry out the development. The development is required to facilitate the erection of a house on land to the south since the Council has resolved to approve the house subject to a S106 agreement to secure the provision of the proposed car park. Authority to complete the S106 agreement has expired therefore the proposed house will be the subject of a subsequent report to Committee following the decision on this application. The decision on this application will affect the terms of that report. The applicant for the car park is also the applicant proposing the house. He confirms it is his intention to take steps to complete the S106 agreement should planning permission be given for the car park.
6. Since the original planning permission was given the planning policy context has changed following the publication of the National Planning Policy Framework, which replaced previously relevant national planning policy statements. The provisions of the NPPF as they relate to this development are not materially different and relevant Local Plan and Alteration policies are consistent with those of the NPPF. Accordingly, there has been no material change in planning policy relevant to this proposed development.

7. The application site is partially within the Green Belt. It would serve a need for additional car parking for a community facility and would have a very limited impact on openness. The need for the car parking, which can only be provided on this land, has previously been found to be a very special circumstance that outweighs any harm that may be caused to the Green Belt and any other planning interest.
8. The loss of trees that have an amenity value is a matter that has been given consideration by the Council's Tree and Landscape Team. The Team previously considered whether their amenity value is such that they would merit a TPO and found no justification in those terms. Moreover, the proposal makes provision for an Ash tree close to the boundary with Hainault Road and makes adequate provision for further landscaping. Accordingly, the Team raises no objection but recommends the imposition of conditions requiring the removal of excavated material and implementation of a hard and soft landscaping scheme.
9. The retaining wall would only be seen within the site and cars using the parking area would generally be screened from view by a combination of changes in land levels and landscaping. Although no details of the external finish of the retaining wall have been submitted, they can be secured through the condition requiring a landscaping scheme.
10. The matter of consequence for highway safety has been considered by the Highway Authority who has found the proposal would not cause harm to the safe and free flow of traffic.
11. The consequence for wildlife habitat has been considered in relation to adopted local plan policy. Such policy relates to sites that are designated as being of importance. Since this site is not such a site, adopted nature conservation policy does not apply to this site. Consideration to whether a protected species survey is necessary at this site has also been given. No such survey was previously required and since there has been no material change in circumstances since permission was given for the proposal in 2009 there is no basis for taking a different view now.

Conclusion:

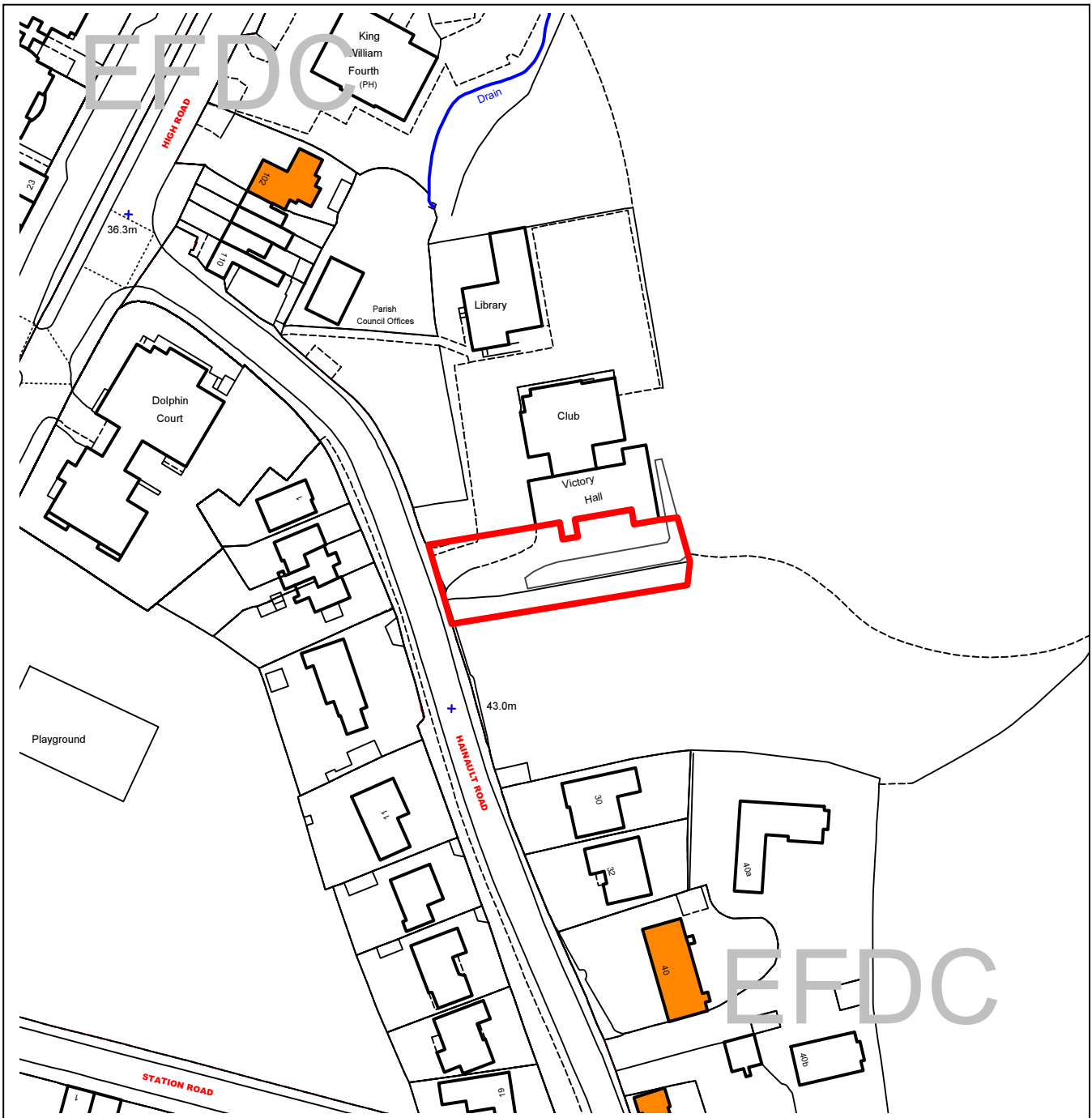
12. In light of the above appraisal, it is considered that there are exceptional circumstances for allowing this development within the Green Belt. It is considered that the proposed development would have an acceptable appearance and the Ash tree to the front of the site could be retained to soften the appearance of the additional parking within the street scene. There would be no adverse highway issues arising from the proposed development. Screening of the proposed development on the adjacent site could be reinforced using conditions attached to that planning permission. Accordingly, it is considered that the proposed development would be acceptable. It is, therefore, recommended that planning permission be granted.

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Epping Forest District Council

District Development Control Committee



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Agenda Item Number:	
Application Number:	EPF/1767/09 and EPF/0735/13
Site Name:	40A Hainault Road, Chigwell, IG7 6QX
Scale of Plot:	1/2500

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Report to District Development Control Committee

Date of meeting: 16 October 2013

Subject: Local Enforcement Plan



**Epping Forest
District Council**

Officer contact for further information: Jeremy Godden, Principal Planning Officer (Enforcement) x 4498

Committee Secretary: S Hill Ext 4249

Recommendation(s):

That the Committee formally adopts the attached Local Enforcement Plan (LEP) in conformity with the suggestion for such a plan contained within the National Planning Policy Framework.

1. Report Detail

1.1 (Director of Planning and Economic Development) As part of the new localism agenda the Government has introduced the National Planning Policy Framework as planning guidance.

1.2 Regarding the planning enforcement function, Section 207 of the Framework states, *"Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so"*.

1.3 This would fit in with the stance this Council adopts in enforcement investigation and action. Epping Forest District Council supports sustainable development in the right locations but also wants to take tough action to deal with inappropriate and harmful development. Whilst the production of a LEP is not compulsory, it is recognized as an action target in the Planning and Economic Development Business Plan 2013-14 and the Panel are being presented with a draft Local Enforcement Plan (LEP) to meet this requirement. The adoption of such a LEP would help to safeguard against enforcement actions being open to challenge from parties enforced against on the basis that the Council has not formally adopted such a such a plan.

1.4 A number of Councils around the country have already introduced such a document and this is expected to gather momentum over the next 12 months. Epping Forest will be in the forefront of adopting a LEP.

1.5 This LEP firstly sets out first all our vision for planning enforcement. Whilst it is a discretionary power of the Council to take enforcement action, the LEP states our vision of readiness to take effective enforcement action when it is justifiable. The community's confidence of the planning process is quickly undermined if unauthorised development is allowed to proceed without any apparent attempt by the Council to intervene. It sets out the principles of good enforcement and investigation,

explaining what will be investigated and what will not, and outlines the council's general discretionary powers with regard to planning enforcement. As far as the law allows, we will take account of the circumstances of the case and the attitude of the operator when considering the expediency of taking action.

1.6 The Plan in the second section, sets out the priorities for responses to complaints and clarifies the timescales for response by enforcement officers. This document also sets out the council's approach to handling other planning related enforcement matters, as well as make clear those powers available to us in legislation and how we will use them.

1.7 The Planning Enforcement Team receives a high number of allegations of breaches of planning control every year. It would be impossible to investigate and pursue all of these allegations with equal priority. Resources are limited, and it is essential to use them to the maximum effect. Therefore the LEP makes clear what is and what is not a breach of planning control and where it is clearly a breach, then each case is prioritised according to the seriousness of the alleged breach and the degree of harm being caused; the priority is determined by the Principal Planning Officer (Enforcement) and subsequently reviewed after the initial site visit. A category A is a most serious breach that requires urgent attention and is defined as such in paragraph 2.8 of the LEP.

1.8 The third section explains the investigation process and that in fact whilst we will investigate all complaints, many will not involve development or uses that require planning permission. On the other hand, where a breach of planning control is established then a decision has to be taken on whether it is or is not expedient to take enforcement action. Our enforcement officers will only encourage an owner or developer to make a retrospective application if they consider that they may be granted planning permission for the development. It is generally regarded by the Courts as unreasonable for a council to issue an enforcement notice solely to remedy the absence of a valid planning permission if there is no significant planning objection to the breach of planning control. Retrospective planning application should therefore be judged on its planning merits, taking account of all material planning considerations.

1.9 The powers to take formal enforcement action are detailed in section four. Briefly the options are as follows:

a) Enforcement Notice:

This is the usual method of remedying unauthorised development and there is a right of appeal against the notice. The recipient must take the specified steps set out in the notice within a set time period. Failure to comply with the notice is a criminal offence.

b) Breach of Condition Notice:

The notice can be used where conditions imposed on a planning permission have not been complied with.

c) Stop Notice:

The notice can be used in conjunction with an enforcement notice where the breach of planning control is causing irreparable and immediate significant harm. Where Stop Notices are issued, the council may be liable to pay compensation if it is later decided that such a notice was not appropriate.

d) Temporary Stop Notice:

These take effect immediately from the moment they are issued, and last for up to 28 days. A temporary Stop Notice would be only be issued where it is appropriate that the activity or development should cease immediately to safeguard the amenity of the area.

e) Section 215 Notice:

This notice can be used in relation to untidy land or buildings when the condition of the land or buildings adversely affects the amenity of an area.

f) Direct Action:

The council may enter land and take the necessary action to secure compliance when enforcement notices are in effect. The council will seek to recover all cost associated with carrying out works. This is only used in extreme cases where resources allow.

g) Injunction:

This involves seeking an order from the court preventing an activity or operation taking place.

1.10 Sections 5 and 6 of the LEP outline other special powers available to the Council in respect of adverts, trees and hedgerows and right of entry onto land and buildings.

1.11 Please note this process is **NOT** linked in any way with the proposed new Local Plan and is a stand alone document which can be adopted separately.

2.0 Reason for decision:

2.1 The National Planning Policy Framework (NPPF) recommends that local planning authorities publish a local enforcement plan to manage enforcement proactively and in a way that is appropriate to their area. This Local Enforcement Plan sets out priorities for investigation, explains what will be investigated and what will not, and outlines the council's general discretionary powers with regard to planning enforcement. The Plan sets out the priorities for responses to complaints and clarifies the timescales for response by enforcement officers. This document also sets out the council's approach to handling other planning related enforcement matters. It therefore is a robust plan that is recommended to be adopted.

Background papers:

Town and Country Planning Act 1990 (as Amended)

Planning (Listed Building and Conservation Areas) Act 1990 (as Amended)

The Town and Country Planning (use Classes) order 1987 (as amended)

The Town and Country Planning General Permitted Development Order 1995 (as amended)

Planning and Compensation Act 1991

Planning and Compulsory Purchase Act 2004

The Town and Country Planning (Control of Advertisement) Regulations (England) 2007

Circular 10 /97 - Enforcing Planning Control

Consultation undertaken:

All Parish and Town Council have been consulted electronically on this proposal.

Other County and District Council departments have been consulted. No responses have been received from Parish and Town Councils, and one comment from Environmental Health received regarding phraseology. .

The Local Enforcement Plan was placed before the Planning Services Scrutiny Panel on 10 September 2013. They endorsed the LEP and recommended its adoption to the District Development Control Committee.

Epping Forest District Council

Planning & Economic Development

Local Enforcement Plan

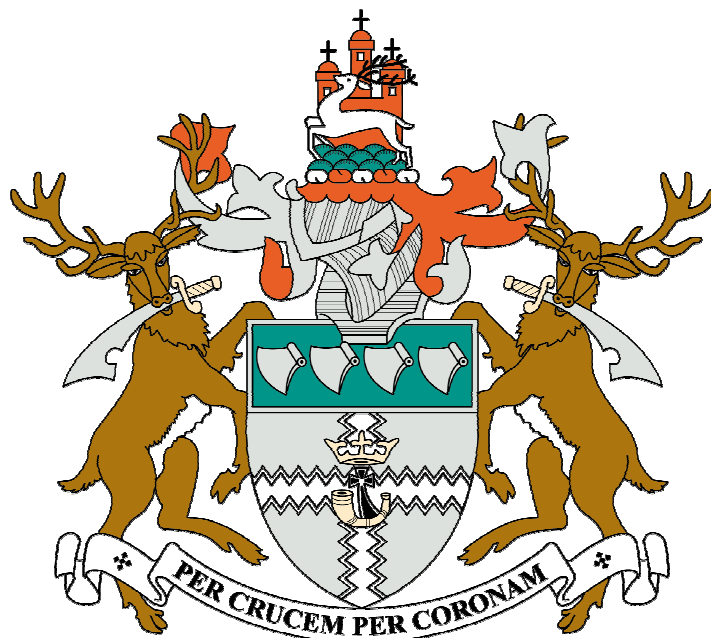


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1. Introduction

Our vision for planning enforcement

- 1.1 The planning system operates to regulate development and the use of land in the community's interest having regard to the development plan and other material planning considerations. The effective and proper enforcement of planning control is essential to community confidence in the planning system. It is important that the local environment is protected, as are the interests of residents, visitors and businesses of the District from the harmful effects of unauthorised development.
- 1.2 The Council has a duty to investigate alleged breaches of planning control and has powers to remedy proven breaches. We view breaches of planning control very seriously. It is our policy to exercise powers appropriately, proportionately and rigorously so that development takes place in accordance with the appropriate legislation or the planning conditions and limitations imposed on any planning permission through the development control process.
- 1.3 However, the planning enforcement system does not exist to simply punish those responsible for a breach of planning control. It is an important principle of the planning system that the use of formal planning enforcement action is a discretionary power of the Council.
- 1.4 The integrity of the development control process depends on the Council's readiness to take effective enforcement action when it is justifiable. The community's confidence of the planning process is quickly undermined if unauthorised development is allowed to proceed without any apparent attempt by the Council to intervene.
- 1.5 The purpose of this document is to set out the Council's specific plan for the enforcement of planning control. This policy will ensure that Councillors and Officers, external agencies and the community are aware of our general approach to planning enforcement.

Principles of Good Enforcement

- 1.6 Proportionality – Officers will consider the full range of powers when conducting investigations (this includes appropriate negotiations and retrospective planning applications) and where appropriate take immediate action.
- 1.7 We will minimise the costs of compliance by ensuring that any action we require is proportionate to the breach. As far as the law allows, we will take account of the circumstances of the case and the attitude of the operator when considering the expediency of taking action.
- 1.8 Where practicable we will take particular care to work with small businesses and voluntary and community organisations so that they can meet their legal obligations without unnecessary expense.

- 1.9 Normally we will prosecute individuals or organisations who do not comply with any formal notice served on them, and when appropriate will take direct action, having regard to degree of harm and public safety.
- 1.10 Consistency – We will carry out our duties in a fair, equitable and consistent manner. While staff are expected to exercise judgement in individual cases, we have arrangements in place to promote consistency including effective arrangements for liaison with other authorities and enforcement bodies.
- 1.11 We will consider each individual matter on its merits. There will be a consistent approach to enforcement action against breaches of similar nature and circumstance.
- 1.12 Standards – We will draw up clear standards, setting out the level of service and performance that customers can expect to receive in this plan. We will review performance regularly.
- 1.13 The enforcement plan will be subject to review at least every three years, but the plan may be reviewed on a more regular basis if circumstances dictate. The plan will be available on our web site.
- 1.14 Openness – Information and advice will be provided in plain language on the rules that we apply and we will publish this as widely as possible.
- 1.15 We will discuss general issues, specific compliance failures or other problems with anyone with an interest with our service, subject to it not being covered by privacy and data protection policies.
- 1.16 Helpfulness – We believe that prevention is better than cure and that we should work with customers to advise and assist with compliance.
- 1.17 Officers will provide a courteous, prompt and efficient service and emails/letters will provide a contact point and telephone number for customers to contact when seeking advice and information.
- 1.18 We will ensure that services are effectively co-ordinated to minimise unnecessary overlaps and time delays.
- 1.19 Officers will not tolerate abusive language or behaviour either in person or in correspondence.
- 1.20 Complaints about the service – We will provide well publicised, effective and timely complaints procedures easily accessible to business, the public, employees and consumer groups. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely time-scales involved.

2 Breaches of planning control

Legislative background

- 2.1 The primary legislation for planning enforcement is set out in Part VII of the Town and Country Planning Act 1990, which includes amendments set out in the Planning and Compensation Act 1991 and the Planning and Compulsory Purchase Act 2004. Hereafter these are collectively referred to as the Town and Country Planning Act (as amended).
- 2.2 The Town and Country Planning Act (as amended) sets out that planning permission is required for development. Section 55 defines development as:
- “the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.”
- 2.3 A breach of planning control is defined at Section 171A as “the carrying out of a development without the required planning permission, or failing to comply with any condition or limitation subject to which planning permission has been granted”.

What is a breach of planning control?

- 2.4 The majority of planning enforcement investigations therefore involve one of the following alleged breaches:
- development (either operational or a material change in use of land) has taken place without planning permission
 - development has not been carried out in accordance with an approved planning permission
 - failure to comply with a condition or legal agreement attached to a planning permission.
- 2.5 Other matters which also fall under the scope of planning control are:
- demolition taking place in conservation areas, without conservation consent, when it is required
 - works carried out to a listed building which affect the historic character or setting, without listed building consent being granted
 - removal of, or works carried out, to protected trees and hedgerows without consent being granted or proper notification given
 - advertisements, which require consent under the advertisement regulations, which are displayed without express consent
 - failure to comply with the requirements of a planning notice, e.g. enforcement, discontinuance, stop notice, breach of condition notice, or other statutory notice
- 2.6 The basic principle of planning law is that it is **not an offence to carry out works without planning permission** (with certain exceptions for Listed Buildings and Trees). Whilst such development is unauthorised, councils must consider the expediency of taking formal action. This is important to remember as members of the public often refer to illegal development or works. This is

incorrect as development may well be unauthorised. It will not be illegal unless a statutory notice has first been issued and the owner or occupier has failed to comply.

What is not a breach of planning control?

2.7 We often receive complaints regarding matters that are not breaches of planning control. Often this is where other legislation covers and controls the matter. The following are examples of what we cannot become involved in through our planning enforcement service:

- neighbour nuisance/boundary and land ownership disputes – these are civil matters that the Council can not get involved in. Further advice on these matters should be obtained from a solicitor or the Citizens Advice Bureau
- use of/development on the highway, footway or verge that is covered by highway legislation – please contact Essex County Council on 0845 6037631
- dangerous structures – please contact our Building Control section on 01992 564141
- any matter covered by other substantive legislation such as fly tipping, noise and smell – Please contact our Environmental Health Section on 01992 564497

Priorities

2.8 To make the most effective use of resources, all reports of suspected breaches of planning control will be investigated and progressed in accordance with the priority rating below. This is not an exhaustive list.

Category A - implies a severe and/or urgent case requiring immediate attention. This would include harmful works to a listed building or new physical development which would present a serious danger to members of the public; a Gypsy, Roma or Traveller incursion; works to a tree subject to legal protection; and works to a protected hedgerow. A site visit should be carried out within 7 working hours.

Category B - covers all other cases that are a less severe and/or less urgent case requiring prompt attention, and a site visit should be carried out within 14 working days.

2.9 Individual cases may be re-prioritised as the investigation progresses and as new evidence comes to light.

3 Investigation of suspected breaches of planning control

Receipt of complaint

- 3.1 To start a planning enforcement investigation, complaints from the community should normally be made in the following ways:
- by email at contactdcenf@eppingforestdc.gov.uk
 - filling out the standard form on our web site
 - over the phone on 01992 564527
 - by letter to the Planning Enforcement Section, Epping Forest District Council, High Street, Epping, Essex CM16 4BZ
 - or in person at the planning reception area at the Council Offices, opening hours are 0900 – 1300 Monday to Friday
- 3.2 When a complaint is received it is recorded on our database so it is important that we have the following information:
- name and contact details of complainant, including email address
 - full address of the alleged breach of planning control
 - nature of the breach and the harm it may be causing
- 3.3 All enforcement complaints are logged onto our computer system with a unique reference number so that each complaint can be monitored and the complainant updated on progress.
- 3.4 To avoid the unnecessary use of resources, hampering of investigations and dealing with malicious complaints, anonymous reports of suspected breaches of planning control will not be taken.
- 3.5 Confidentiality is vital; a complaint's identity will not be revealed to any third party.

Time frame for site visit

- 3.6 A site visit will be required in most cases to establish whether or not a breach of planning control has occurred. Most initial site visits will be unannounced so as not to alert persons on site that a complaint has been made, which would give them an opportunity to hide or cease breaches of planning control.
- 3.7 Although there will need to be some research around the case prior to a site visit the initial site visit (where necessary) will be conducted within the following timescales.
- Category A – within 7 working hours
 - Category B – within 14 days

We will aim to meet these timescales in all cases investigated to ensure cases progress without undue delay from the outset.

- 3.8 These targets allow officers to carry out the required level of research before visiting a site. If carrying out the initial site visit within these time frames is problematic on a specific case the officer will notify the complainant.

- 3.9 On completion of the initial site visit, the findings will be assessed and a view taken as to how the investigation will proceed. This may include taking legal advice about the case.

If no breach of planning control is established

- 3.10 A significant number of investigations are closed as there is no breach of planning control established. This can occur for a number of reasons, for example:

- there is no evidence of the allegation
- development has taken place but planning permission is not required, usually as it benefits from planning permission granted under the Town and Country Planning (General Permitted Development) Order 1995 (as amended)
- the development already benefits from planning permission granted by the Council

- 3.11 It may also be the case that whilst a technical breach of planning control has been found the breach is so minor that it has no or very little impact on amenity, for example a domestic television aerial. Such a breach would be considered de-minimus in planning terms and no formal action could be taken in this respect.

- 3.12 Where this is the case the person reporting the suspected breach of control will be notified either verbally or in writing within 10 working days of the initial site visit that no further action will be taken. The complainant will be provided with an explanation of our reason(s).

- 3.13 When we receive a complaint, the case officer will check to see if the issue constitutes a breach of planning control and that legislation allows us to take action. Each case is judged on its individual merits. There are some cases where it would not be expedient for the Council to take enforcement action for example:

- the complainant believes there is breach of planning, but in fact is covered under permitted development legislation, therefore no action is required
- there may be cases where development has taken place but it is clear following an assessment, that retrospective planning permission or a certificate of lawfulness is likely to be granted. Should applications be made, enforcement action will not be taken. However if applications are not made following negotiations with the owner/occupier then the matter will not be pursued to formal enforcement.
- where a fence is, for example, 2.1 metres high, not adjacent to the highway and the visual amenity and the character of the area is unaffected – the Council would need to decide if this could be considered to be de minimis and not be expedient to pursue enforcement action. In these cases we will advise the owner/occupier of the land/building of this saying that a note will be placed on the land charge record
- when there has been a change of use for a building or a breach of condition has taken place over 10 years ago the Council is unable to take action as there are time limits set out in planning legislation (either four or 10 years)

3.14 Criteria that would be used to determine a course of action include:

- whether planning permission required?
- what impact would the breach have on the visual amenity and character of the area affected, for example would it be minimal or significant?
- are the works permitted by planning legislation for example permitted development?
- is the breach contrary to any established planning policies?
- has there been a material change of use?

Where further investigation is required

3.15 There are cases where the initial site visit does not provide sufficient evidence to prove whether a breach of planning control has taken place. Examples of these can include:

- business operated from home and whether this constitutes a material change of use. This will often depend on the level of intensity and this may not be immediately apparent from the initial site visit
- alleged breaches of working hours conditions. If the operator denies the activity further investigations will be required
- building works are taking place but the owner claims it is to repair a previously existing structure. The officer will need to establish what, if anything, previously existed

3.16 Further investigation may involve additional site visits, documentary research, seeking advice from other services or agencies, seeking information from the person reporting the suspected breach of control, or the owner or other persons responsible for the land or building.

3.17 In some cases, we may ask the person reporting the suspected breach for further details. If the person reporting the suspected breach of planning control is unwilling to assist, this may result in the Council not being able to pursue the investigation due to insufficient evidence.

3.18 We will also consider serving a Planning Contravention Notice to obtain information relating to the suspected breach. Drafting such a notice correctly can take time. Equally a person on whom it is served has 21 days to respond. Therefore it may be several weeks until the appropriate evidence can be collected.

Where there is a breach of planning control

3.19 Where a breach of planning control is established, the first step is to consider whether it would be expedient to take formal enforcement action. Expediency is a test of whether the unauthorised activities are causing serious harm having regard to the Development Plan policies and other material planning considerations. The planning enforcement officer investigating the case will consider this in conjunction with the principal planning enforcement officer. The outcome of this consideration will generally inform the course of the investigation. Taking formal enforcement action is only one option with other courses open to the Council. Most planning enforcement investigations will involve one of the following courses of action.

Retrospective planning applications

- 3.20 Where officers consider that planning permission is likely to be granted for an unauthorised development, or that the imposition of conditions could reduce the harm to amenity, a retrospective planning application will be requested for the development. Section 73A of the Town and Country Planning Act (as amended) sets out the provisions for dealing with retrospective applications.
- 3.21 In determining retrospective planning applications the Council can not refuse an application simply because the development has already been carried out. Many breaches of planning control occur because the applicant simply did not realise permission was required. A retrospective planning application enables the Council to regularise acceptable development without arbitrarily penalising the applicant. We receive between 130 and 160 retrospective applications per year out of approximately 2500 applications. This demonstrates the important role retrospective applications play in resolving breaches.
- 3.22 Generally we will not seek a retrospective planning application if we feel the development is unacceptable. However, there are cases where it is initially unclear as to whether a development is acceptable in planning terms. An example is where a development is in the early stages of construction. In these cases an application may be necessary to obtain full details of the intended development. Once this information is received it would allow for a full assessment of the planning merits. We cannot refuse to deal with a retrospective planning application, even if it is felt that there is no merit in such an application, unless it falls within the conditions laid out in para 3.23 below.
- 3.23 The recent Localism Act 2011 has introduced an additional power to the Council in respect of retrospective planning applications **where an enforcement notice has already been issued** after 06 April 2012. Section 70C to the Town and Country Planning Act (as amended) now specifies:
- ‘a local planning authority in England may decline to determine an application for planning permission for the development of any land if granting planning permission for the development would involve granting, whether in relation to the whole or any part of the land to which a pre-existing enforcement notice relates, planning permission in respect of the whole or any part of the matters specified in the enforcement notice as constituting a breach of planning control.’
- 3.24 We will use these powers where appropriate to prevent delays in cases where enforcement action is being taken. However, we will also have regard to each specific case and consider whether granting permission for part of the development would result in an acceptable resolution.

Not expedient to pursue formal action

- 3.25 While it is clearly unsatisfactory for anyone to carry out development without first obtaining the required planning permission, an enforcement notice should not be issued solely to regularise development which is acceptable on its planning merits, but for which permission has not been sought. In such circumstances the Council will seek to persuade an owner or occupier to seek permission. This could include using a planning contravention notice. However, it is generally regarded by the Courts as unreasonable for a council to issue an enforcement notice solely to remedy the absence of a valid planning permission if there is no significant planning objection to the breach of planning control. See paragraphs 3.13 and 3.14 above

and paragraphs 3.27 below for further information.

- 3.26 Where this is considered to be the case the officer will produce an expediency report to clearly setting out that no planning harm is caused by the development. As part of this process a planning contravention notice may be served to ensure we have all relevant information. Where officers conclude that it is not expedient to take action the case will be closed in accordance with the scheme of delegated powers as set out in the Council's Constitution.
- 3.27 Another criteria of expediency is to ensure that any action is proportionate to the breach. We investigate many technical breaches of planning control. Common examples of these include the construction of a fence or the construction of an out building in a residential curtilage slightly higher than allowed under permitted development regulations. In these cases it would clearly not be proportionate to require the removal of an entire building or fence where a slightly lower structure could be constructed without permission. As such the expediency test for taking action would not be met. We will work with owners to regularise or remedy the works but ultimately it is highly unlikely that formal action could be warranted in the case of a technical breach of planning control.

Negotiation

- 3.28 Where it is considered that the breach of planning control is unacceptable, officers will initially attempt to negotiate a solution without recourse to formal enforcement action, unless the breach is causing irreparable harm to amenity. Negotiations may involve the reduction or cessation of an unauthorised use or activity, or the modification or removal of unauthorised operational development.
- 3.29 In carrying out negotiations officers will have regard to the specific circumstances of the individual case. For example where there is an unauthorised business activity officers will consider whether relocation is possible and if so will seek to put a reasonable timescale in place.
- 3.30 Where initial attempts at negotiation fail, formal action will be considered to prevent a protracted process. We will also consider using temporary stop notices to prevent the breach becoming more severe.
- 3.31 Where we are unable to negotiate an acceptable solution within a reasonable timescale, or it is clear at the outset that the breach is not capable of being remedied through negotiation, we will proceed with formal enforcement action where it is expedient to do so.

4. Taking formal enforcement action

- 4.1 Once the decision to take formal action has been made we will tell the complainant either verbally or in writing/email within 10 working days from the date on which the decision to take action was made. We will consider the full range of powers available to ensure the most proportionate and expedient resolution. We will also consider whether any other public authority is better able to take remedial action. For example Essex County Council or the Environment Agency.
- 4.2 A full planning enforcement toolkit is available to officers when taking formal action, the use of these can vary depending on the nature of the breach and the level of harm caused.

Powers available

Enforcement notice

- 4.3 Section 172 of The Town and Country Planning Act (as amended) allows the service of an enforcement notice where unauthorised operational development or a change of use has taken place and it is considered expedient to do so. We are required to serve enforcement notices on the owner, occupier and any other person with an interest in the land which is materially affected by the notice.
- 4.4 An enforcement notice shall specify the steps which we require to be taken, or the activities which we require to cease, in order to achieve, wholly or partly, any of the following purposes:
- remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or
 - remedying any injury to amenity which has been caused by the breach.
- 4.5 The notice will specify time periods for compliance for each of the steps from the date on which the notice comes into effect. A notice comes into effect after a minimum period of 28 days following service. There is a statutory right of appeal against the notice during this period to the Planning Inspectorate. Once the Planning Inspectorate has received a valid appeal, the enforcement notice has no effect until the appeal has been determined.
- 4.6 There are seven grounds of appeal against an enforcement notice. Any appeal may include one or all of these grounds:
- (a) that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged
 - (b) that those matters have not occurred
 - (c) that those matters (if they occurred) do 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 any breach of planning control which may be constituted by those matters
 - (e) that copies of the enforcement notice were not served as required by section 172

- (f) that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach
- (g) that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed.

4.7 Given these rights of appeal it is important that all relevant matters are taken into account before serving an enforcement notice. This includes being clear in respect of; the specific breach of planning control; the steps required to remedy the breach; and the time required for compliance. An enforcement report will be produced by officers specifically to consider these issues. As with an appeal against a planning application costs can be applied for in cases where the other party has acted unreasonably.

4.8 If the breach of planning control relates to a listed building, or unauthorised demolition within a conservation area, we will consider the expediency of serving a listed building enforcement notice or a conservation area enforcement notice and where appropriate, commence a prosecution in the Courts. The enforcement notice will specify the reason(s) for its service, the steps required to remedy the breach, the date that it takes effect and the time period for compliance.

4.9 All enforcement notices are placed on the Council's enforcement register which is available to view on the Council's website at <http://planpub.eppingforestdc.gov.uk/AnitelM.websearch/Home.aspx>

Planning Contravention Notice (PCN)

4.10 Section 171C of the Town and Country Planning Act (as amended) provides the power to issue a PCN. This can be served on the owner or occupier of the land in question or a person who is carrying out operations in, on, over or under the land or is using it for any purpose and where a suspected breach of planning is believed to exist. The PCN will require the recipient to provide the information requested within 21 days relating to the breach of planning control alleged. Failure to comply with any aspect of the PCN is an offence for which the recipient can be prosecuted with the maximum fine of £1,000. To knowingly provide false information on a PCN can result in a fine of up to £5,000.

4.11 A PCN will be served in most cases as a precursor to an enforcement notice to ensure all relevant information has been obtained.

Other requisition for information notices

4.12 Under section 16 of the Local Government (Miscellaneous Provisions) Act 1976 the Council can require the recipient of a requisition for information notice to supply in writing details of their interest in a property and provide details of anyone else having an interest in the property. A reply must be supplied within 14 days. A person who fails to comply with the requirements of a notice or makes a false statement in a reply is guilty of an offence punishable by a fine of up to £5,000.

4.13 Under section 330 of the Town and Country Planning Act 1990 the Council can require the recipient to state in writing the nature of their interest in a property and to state in writing the name and address of any other person known to them as having an interest in the property, as a freeholder, mortgagee, lessee or otherwise. Failure

to return the form or to provide a miss statement is an offence punishable by a fine up to £1,000.

Breach of Condition Notice (BCN)

- 4.14 Section 187A of the Town and Country Planning Act (as amended) provides the power to serve a Breach of Condition Notice (BCN) where a planning condition has not been complied with. Consideration should be given to the type of condition and the steps required to secure compliance with the condition. Once issued the notice does not take effect for 28 days. There is no appeal against a BCN and therefore can offer a more expedient course of action than issuing an enforcement notice. The failure to comply with the notice is dealt with by a prosecution in the Magistrates Court. The maximum fine has recently been increased to a level 4 fine (£2,500). The BCN is ideal for matters where the steps to be taken are relatively simple and can be readily achieved.
- 4.15 Where the breach of planning control relates to non-compliance with a condition on a planning permission or a limitation on a deemed planning permission has been exceeded, we will consider the expediency of serving a BCN. The breach of condition notice will specify the steps required to comply with the condition(s) or limitation(s), the date that it takes effect and the time period for compliance.

Stop Notice

- 4.16 Section 183 of the Town and Country Planning Act (as amended) provides for the service of a stop notice. A stop notice must be served at the same time or after the service of an enforcement notice. We will consider serving a stop notice where urgent action is necessary to bring about a cessation of a relevant activity before the expiry of the period of compliance of the related enforcement notice.
- 4.17 The stop notice must refer to the enforcement notice, specify the activity or activities that are required to cease and the date that it takes effect. Failure to comply with the notice is an offence. The maximum fine on summary conviction is £20,000.
- 4.18 The Council must consider the use of stop notices carefully as they carry with them significant statutory compensation provisions.

Temporary Stop Notice (TSN)

- 4.19 Section 171E of the Town and Country Planning Act (as amended) provides councils with the power to serve a TSN. A TSN which can be issued without the need to issue an enforcement notice and is designed to halt breaches of planning control for a period of up to 28 days.
- 4.20 Whilst TSNs also carry some compensation provisions these are significantly lower than with a stop notice and therefore the risk to the Council is reduced.
- 4.21 All stop notices are placed on the Council's enforcement register.

Section 215 Notice

- 4.22 In cases where the amenity of an area is adversely affected by the condition of land or buildings, we will consider serving a notice under Section 215 of the Town and Country Planning Act (as amended). The notice will specify the steps required to be

taken to remedy the condition of the land or buildings, the time period within which the steps must be taken and the date that it takes effect.

- 4.23 A section 215 notice takes effect after 28 days service during which time an appeal can be made in the Magistrates Court.

Time limits for taking formal action

- 4.24 Section 171B of the Town and Country Planning Act (as amended) sets out time limits for taking enforcement action. The Council cannot serve a notice after four years where the breach of planning control involves building operations, for example extensions to dwellings, new buildings and laying hard standings; or the change of use of any building to a single dwelling house, from the commencement of the breach. Other unauthorised changes of use and breaches of conditions are subject to a 10 year time limit.
- 4.25 After these periods the Council cannot take action and the use becomes lawful. The landowner can apply for a Certificate of Lawful Existing Use or Development (CLEUD) after this period and if the evidence is clear regularise the situation.
- 4.26 Serving an enforcement notice in respect of a particular development stops the clock in relation to these time limits. Therefore where the Council feel a breach may be close to the relevant time limit it may seek to take urgent enforcement action to prevent a lawful development situation.
- 4.27 The Localism Act has introduced a new enforcement power in relation to time limits. This allows councils the possibility to take action against concealed breaches of planning control even after the usual time limit for enforcement has expired (see above).
- 4.28 The Council can, within six months of a breach coming to their attention, apply to the magistrate's court for a planning enforcement order. A planning enforcement order would give us one year to then take enforcement action. In agreeing to a planning enforcement order, the court need only be satisfied, on the balance of probabilities, that the apparent breach, or any of the matters constituting the apparent breach, has (to any extent) been deliberately concealed by any person or persons. In other words:
- concealment of only part of the breach is sufficient to render it all open to enforcement
 - the deliberate concealment could be to an almost negligible extent
 - the concealment may be by anyone – it could have been by a past owner, it could even have been by a third party.

Failure to comply with formal notices

- 4.29 Where a notice has been served and has not been complied with there are three main options available to the Council to pursue to attempt to resolve the breach.

Prosecution

- 4.30 We will consider commencing a prosecution in the Courts against any person who has failed to comply with the requirement(s) of any of the following notices where the date for compliance has passed and the requirements have not been complied with:

- enforcement notice
- listed building enforcement notice, conservation area enforcement notice
- planning contravention notice
- breach of condition notice
- section 215 notice
- stop notice

4.31 Cases involving unauthorised works carried out to a Listed Building and unauthorised demolition in a Conservation Area also constitutes an offence in their own rights. We will consider whether it would be expedient to prosecute for these works rather than issuing a notice on a case by case basis.

4.32 Before commencing any legal proceedings we need to be satisfied that there is sufficient evidence to offer a realistic prospect of conviction and that the legal proceedings are in the public interest. We will take advice from the Councils Legal Section and from Independent Counsel where required to ensure that we act correctly.

Direct Action

4.33 Where any steps required by an enforcement notice or section 215 notice have not been taken within the compliance period (other than the discontinuance of the use of land), we will consider whether it is expedient to exercise our powers under section 178 of the Town and Country Planning Act (as amended) to:

- enter the land and take the steps to remedy the harm; and
- recover from the person who is then the owner of the land any expenses reasonably incurred by them in doing so.

4.34 In most cases the Council will seek to prosecute the failure to comply with a notice before seeking to initiate direct action.

Injunction

4.35 Where an enforcement notice has not been complied with and, because of the special circumstances of the case, either direct action or prosecution would not be an effective remedy, we will consider applying to the Court for an Injunction under section 187B of the Town and Country Planning Act (as amended).

4.36 An injunction can also be applied for where there is clear evidence that a breach of planning control is anticipated but has not actually occurred. Such action will only be considered if the breach, actual or anticipated, is particularly serious and is causing or likely to cause exceptional harm.

5. Special Controls

Advertisements

- 5.1 Unlike most spheres of planning control the display of advertisements without consent is a criminal offence. Therefore we have the power to initiate prosecutions without the need to issue a notice. Where it has been considered that an advertisement should be removed an offender will normally be given one written opportunity to remove the advertisement voluntarily. Failure to do so will normally result in further action being taken without further correspondence.
- 5.2 Section 225 of the Town and Country Planning Act (as amended) provides powers to remove or obliterate posters and placards. We will consider using these powers as appropriate as an alternative or in conjunction with prosecution action.
- 5.3 The recent Localism Act has introduced several new provisions in respect of dealing with advertisements. These are Removal Notices, Action Notices and the powers to remedy the defacement of property. Each provision includes rights of appeal to the Magistrates Court.

Removal notices

- 5.4 This provides the power to seek removal of any structure used to display an advertisement. Where the notice is not complied with we may undertake the works in default and recover the expenses for doing so.

Action notices

- 5.5 Where there is a persistent problem with unauthorised advertisements an action notice can be issued specifying measures to prevent or reduce the frequency of the display of advertisements on the surface. Again where the notice is not complied with we may undertake the works in default and recover the expenses for doing so.

Power to remedy defacement of premises

- 5.6 Where a sign has been placed on a surface that is readily visible from somewhere the public have access, and is considered by us to be detrimental to the amenity of the area or offensive, a notice may be issued requiring the removal or obliteration of the sign. As with the above provisions failure to comply with the notice will allow us to undertake the works in default and recover costs (costs can not be recovered where the sign is on a flat or house or within the curtilage of a house)

Trees and Hedgerows

- 5.7 The lead section for all Tree and Hedgerow investigations is the Landscape Section who can be contacted on 01992 564452. Enforcement provides investigative support to their investigations where appropriate.
- 5.8 Legislation protects trees which are the subject of Tree Preservation Orders (TPOs) or are within a Conservation Area from felling or other works unless appropriate consent is first obtained. As with advertisements such works are an offence and therefore prosecution can be sought without the requirement to issue a notice. However, such action would not remedy the harm caused.

- 5.9 Section 207 of the Town and Country Planning Act (as amended) provides for a replacement notice to be issued. This will require an appropriate replacement tree to be planted where a tree covered by a TPO has been removed.

6. Other powers

Entry onto land

- 6.1 Under the provisions of Section 196A, B and C of the Town and Country Planning Act (as amended) officers have the right of entry onto land and buildings land when pursuing effective planning control for the following purposes:
- (a) to ascertain whether there is or has been any breach of planning control on the land or any other land;
 - (b) to determine whether any of the powers conferred on a local planning authority should be exercised in relation to the land or any other land;
 - (c) to determine how any such power should be exercised in relation to the land or any other land;
 - (d) to ascertain whether there has been compliance with any requirement imposed as a result of any such power having been exercised in relation to the land or any other land;
- and to determine whether an enforcement notice should be served on that or any other land.
- 6.2 Twenty four hours notice in writing must be given for the need to access to a residential building if entry is refused. If access is still denied, or the matter is urgent, a warrant can be applied for from the Magistrates Court. Officers will exercise these powers where appropriate particularly where their use is essential to the collection of evidence relating to an alleged breach of planning control. An obstruction of these powers is an offence which is subject to prosecution.
- 6.3 Section 324 of the of the Town and Country Planning Act (as amended) gives officers general powers of entry to sites to:
- To undertake surveys in connection with;
- a) Statutory plans;
 - b) Applications for planning permission;
 - c) Applications for consents under Tree Preservation Orders; and
 - d) Applications under Advertisement Regulations.
- 6.4 Similar Powers of entry exist for Listed Buildings, hedgerows, trees and advertisements.

7. Legislation/guidance

- Town and Country Planning Act 1990 – This forms the current primary legislation
- The Planning and Compensation Act 1991 and the Planning and Compulsory Purchase Act 2004 – these two Acts are secondary legislations which amend and add to the provisions of the Town and Country Planning Act 1990. Where specific sections from these Acts are referenced in the enforcement plan they are collectively referred to as the Town and Country Planning Act (as amended)
- Planning (Listed Buildings and Conservation Areas) Act 1990
- Localism Act 2011
- National Planning Policy Framework (NPPF)
- Circular 3/09 – Cost awards in appeals and other planning proceedings
- Circular 1/95 - Use of conditions in planning permission
- Circular 10/97 - Enforcing Planning Control
- The Town and Country Planning (Development Management Procedure) (England) Order 2010
- The Town and Country Planning (General Permitted Development) Order 1995 (as amended)
- The Town and Country Planning (Use Classes) Order 1995 (as amended)
- The Town and Country Planning (Control of Advertisements) (England) Regulations 2007
- Regulation of Investigatory Powers Act 2000
- Police and Criminal Evidence Act 1984

Report to District Development Control Committee

Date of meeting: 16 October 2013



**Epping Forest
District Council**

Subject: Scheme of Officer Delegation for Development Control Functions -
Proposed Changes

Officer contact for further information: N Richardson Ext 4110
Committee Secretary: S Hill Ext 4249

Recommendation(s):

That a report be submitted to Council recommending:

- (1) Approval of the changes to officer delegation in respect of Council Development Control Functions as set out in Appendix 1 to this report (changes underlined); and
- (2) The consequential amendment of the Constitution.

Report Detail

1. Background

- 1.1 The Government has recently introduced a number of mainly temporary changes to permitted development rights aimed at deregulating the planning system and stimulating the economy.
- 1.2 A number of the changes involve the introduction of a prior approval process, allowing the Council to assess the impact of the development. As with other current prior approval regimes, unless a decision is made within the prescribed time period, the applicant will be able to proceed with the development.
- 1.3 The Director of Planning and Economic Development currently has delegated authority to determine whether or not prior approval of details is required for demolition, telecommunications equipment and agricultural / forestry buildings and operations and to approve or refuse such submitted details.
- 1.4 The Committee are asked to agree to extend the scheme of delegation to allow the Director of Planning and Economic Development to determine all prior approval applications types submitted following the recent changes to permitted development rights through the introduction of The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013. This will include a permanent change to the delegation agreement in respect of prior approval applications relating to change of use permanently to a state-funded school and change of use to agricultural buildings; but only a temporary change to the scheme of delegation for a period of three years in

relation to prior approval applications for single storey rear house extensions and changes of use from offices to residential. The attached Appendix 1 show the additions which are underlined in Schedule 1 of the Development Control Functions.

2. Prior Approval for Single Storey Rear House Extensions

- 2.1 In respect of the house extensions, Members will note that the authority only has 42 days to determine the application, otherwise it is automatically permitted. The authority can however only consider the merits of the application in respect of amenity impact (overshadowing, overbearing and privacy) loss of where an objection has been raised and only then an objection by an adjoining neighbour within a statutory 21 days of being consulted. The process advocates a 'light touch' in respect of the level of information which is required to be submitted with an application. Members however will be aware that currently more than four objections are required to trigger a house extension planning application to be reported to a planning committee where the recommendation is for approval, so in effect these extensions are not normally decided at Committee. Given also committee meetings are on a four week cycle with a 12 day lead in time, in each case where a decision is not made within the prescribed period of time, the consent is deemed to have been granted. Therefore, there is a significant risk that many of these applications if they were reported to committee, may simply gain consent by default.
- 2.2 Dealing with decisions on these prior approval applications can only therefore be dealt with under powers delegated to the Director of Planning and Economic Development (see additional item 9 in the attached Appendix 1).

3. Other Prior Approvals Being Introduced

- 3.1 The remaining prior approval applications can only be considered on the basis of those matters referred to within the relevant statutory instruction, they are :-

Class J – Change of use of B1a (Offices) to C3 (Dwellinghouse). Matters as follows:-

1. Transport and highway impacts of the development
2. Flood Risk
3. Contamination

Class K – Change of use from B1 (Business), C1 (hotels), C2 (residential institutions), C2A (secure residential institutions) and D2 (assembly and leisure) to a State funded school:-

1. Transport and highway impacts
2. Noise impacts of the development
3. Contamination

Class M – Change of use from agriculture building (between 150 – 500 square metres) to a flexible use falling either within Class A1(shops), A2 (financial and professional services), A3 (restaurants and cafes), B1 (business), B8 (storage and distribution), Class C1 (hotels) or D2 (assembly and leisure):-

1. Transport and highway impacts
2. Noise impacts of the development
3. Contamination

4. Flood Risk

- 3.2 As in the case of the single storey householder extension prior approval process, the validation requirements simply require minimal information to be submitted, it is only once an application has been received will it be possible to consider whether there are implications in respect of the issues outlined above. The LPA will have to ensure that additional information that is necessary is received and assessed during the 56 day period. Therefore, as much of this information is likely to be provided in technical reports, the Authority will need to ensure that a sufficient period of time is provided to enable the applicant to submit the information as well as seeking to ensure that Officers will have sufficient time to make an assessment of the proposal. Failure to make a decision will result in consent given in default.
- 3.3 Due to nature of the changes to the process set down nationally, the basis upon which these applications would be considered is on a specialised technical basis in respect of the impact of the proposal. No other matters can be taken into consideration, for example design or suitability of the building for the use.
- 3.4 Officers have considered whether it would be possible to factor in a committee process into these Class J, K and M applications, and have concluded that even with the ability to call emergency meetings; in many cases there would simply be insufficient time to enable this to take place. Despite all best endeavours with the time and resources available, officers already struggle to report current planning applications to a committee date within 56 days of applications being received, so consent is likely to be again reached by default.
- 3.5 In addition to the proposed changes to the scheme of delegation, which are appended to this report, the weekly list of development applications have been amended to ensure that these types of applications can be readily identified. The parish and town council's have already been notified of this amendment. They are not however able to make any objections to the householder prior approval applications, as the legislation is clear that objections can only be taken into consideration where they are raised by an adjoining premises. Comments though can be made to Classes J, K and M prior approval applications, but as stated above, only those relating to the technical matters above. The proposed changes to the scheme of delegation in respect of these three classes are shown at additional items 5, 10 and 11 in the attached appendix 1.
- 3.6 It is important to acknowledge that in the event that a scheme was to benefit by gaining consent by default this may expose the authority for claims by aggrieved parties of maladministration. This would be due to the authorities' failure to follow its own procedures. The proposed changes to the scheme of delegation would safeguard against this.
- 3.7 Finally, two small changes have also been made (i) to item 1(e) in appendix 1, deleting any reference to conservation area consents, as these are now obsolete from 1 October 2013; and (ii) to Appendix 1 section (f) to reflect that the four week call in period begins from the publication of the application in the weekly list rather than the Members Bulletin.

4. Summary

- 4.1 This report seeks Committee's agreement to revise the Scheme of Delegation to allow prior approval applications submitted as a result of the recent changes to permitted development rights to be determined by the Director of Planning and Economic Development.
- 4.2 When the current scheme of delegation was approved by this committee at their meeting of 10 December 2010, at that time it brought the scheme of delegation up to date in line with recent legislative changes. The Committee at the time also agreed that the Director of Planning and Economic Development be authorised to update the schedules of functions, subject to the agreement of the relevant portfolio holder(s) to any substantive changes. Whilst this course of action could have been taken, Officers considered that given this is a substantive change, a Committee approval is appropriate in this case.

Background Papers:

Scheme of Delegation to Officers (Appendix 1)

The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013.

**PLANNING DIRECTORATE – DELEGATION OF
COUNCIL FUNCTIONS**

Schedule 1 – Development Control

Schedule 2 – Forward Planning and Related Functions

DEVELOPMENT CONTROL FUNCTIONS

Function	Principal Relevant Legislation (*see note)	Relevant Details	Exceptions
<p>Care of the Environment</p> <p>District Development Control Committee (Minute 30 – 7.12.10)</p>	<p>Town and Country Planning (Environmental Impact Assessments) (England and Wales) Regulations 1999</p> <p>Planning (Hazardous Substances) Act 1990, Section 36, 36A and 36B</p> <p>Planning (Hazardous Substances) Regulations 1992</p>	<p>To determine the need for and scope of environmental impact assessments required under the Town and Country Planning Acts.</p> <p>To determine applications for hazardous substances consent except those where there are objections from interested parties, which shall be determined by the relevant Area Planning Sub-Committee.</p> <p>To obtain and use necessary powers of entry to the land in relation to the above.</p>	No
<p>Development Control</p> <p>District Development Control Committee (Minute 30 – 7.2.10)</p> <p>Council Minute 29 – 28.6.11</p>	<p>Town and Country Planning Act 1990 Section 70, 70(A), 191-3 etc</p> <p>Planning and Compensation Act 1991, Section 10</p> <p>Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990, Part 1, Reg. 16-19</p> <p>Town and Country Planning (Development Management Procedure) (England) Order 2010, Part 6, Article 35</p> <p>Town and Country Planning (Control of Advertisements) (England) Regulations 2007, Part 3, Reg. 14-15</p>	<p>1. Subject to Appendix A below, which are matters to be determined by Committee, to determine or decline to determine any:</p> <p>(a) planning applications;</p> <p>(b) applications for approval of reserved matters;</p> <p>(c) applications arising from any condition imposed on any consent, permission order or notice;</p> <p>(d) advertisement consents; and</p> <p><u>(e) listed buildings;</u></p> <p>2. To agree the precise wording of additional/revised conditions to be attached to planning permissions, at members' request, and discharge of conditions.</p> <p>3. To determine whether prior approval of the method of any proposed</p>	Yes (See Appendix A to this Schedule)

Function	Principal Relevant Legislation (*see note)	Relevant Details	Exceptions
	<p>Town and Country Planning General Permitted Development Order 1995, Part 6 and Part 31 of Schedule 2 as amended by SI 2008 No. 2362 and <u>SI 2013 No. 1101</u></p> <p><u>Town and Country Planning (Development Management Procedure) (Amendment) (England) Order 2013</u></p>	<p>demolition and any proposed site restoration is required and to give such approval where required except where objections from interested parties are received, which shall be determined by the Area Plans Sub-Committees.</p> <p>4. In relation to telecommunications equipment, to determine, after prior consultation with ward Councillors, whether the prior approval of the Council should be required to the siting and appearance of notified development.</p> <p>5. In relation to agricultural development, to determine whether to require the formal submission of details <u>and in relation to Class M development, to determine applications for prior approval.</u></p> <p>6. To determine applications in relation to certificates of lawful use and development.</p> <p>7. To obtain and use necessary powers of entry to the land in relation to the above.</p> <p>8. To determine or decline to determine any non-material amendments.</p> <p><u>9. To determine applications for prior approval for single storey rear extensions to dwellinghouses.</u></p> <p><u>10. To determine Class J applications for prior approval for change of use from Class B1a offices to Class C3 residential.</u></p> <p><u>11. To determine Class K applications for prior approval for change of use from Class B1, C1, C2, C2a and D2 to State funded school.</u></p>	
<p>Enforcement</p> <p>District Development Control Committee</p>	<p>Town and Country Planning Act 1990 (as amended), Part 7, section 171-190, 196 A, B, C, 198-200 214(A)-(D), 215-219, 220 or 221 and 224, 325, 330</p>	<p>Authority for Director of Planning and Economic Development or Director of Corporate Support Services to:</p> <p>1. Issue Stop Notices, Temporary Stop Notices, Enforcement Notices, Breach of Conditions Notices, Building Preservation Notices, Listed Buildings Enforcement Notices, Planning Contravention Notices, Conservation Area</p>	

Function	Principal Relevant Legislation (*see note)	Relevant Details	Exceptions
(Minute 30 – 7.12.10)	<p>Town and Country Planning (Control of Advertisements) (England) Regulations 2007, Part 5, sections 27 and 30</p> <p>Planning (Listed Buildings and Conservation Areas) Act 1990, Chapter 4, sections 38, 88, 88A and 88B</p> <p>Local Government (Miscellaneous Provisions) Act 1982 (Section 37)</p>	<p>Notices, Discontinuance Notices in respect of advertisements and Section 215-219 Notices for all breaches of planning legislation, in accordance with the Council's adopted enforcement policy.</p> <p>2. Prosecute the unauthorised display of advertisements, unauthorised works to a listed building, and non-compliance where enforcement action has previously been authorised.</p> <p>3. Take appropriate enforcement action, including serving an injunction where the Director of Planning and Economic Development and/or the Director of Corporate Support Services, on their nominee, having regard to the evidence considers the circumstances to require urgent action.</p> <p>4. Investigate if a temporary market has been held in breach of Section 37 of the 1982 Act.</p> <p>5. Vary the requirements for compliance with notices already authorised, including altering the period required for compliance, service of further notices and withdrawal of notices.</p> <p>6. Determine when action is not expedient in relation to breaches of control considered inconsequential or insignificant.</p> <p>7. Obtain and use powers of entry necessary in relation to the above.</p>	
	<p>Town and Country Planning Act 1990 (Section 178) (Council Minute 126 – 23.4.13)</p>	<p>8. To authorise direct action (or re-charge the cost of that action) in pursuit of a valid enforcement notice under Section 178.</p>	<p>Subject to budget provision being available and to local District Councillors being notified</p>

APPENDIX A: MATTERS TO BE DETERMINED BY THE RELEVANT COMMITTEE

- (a) Applications contrary to the provisions of an approved draft Development Plan or Development Plan, and which are recommended for approval;
- (b) Applications contrary to other approved policies of the Council, and which are recommended for approval;
- (c) Applications for major commercial and other developments, (e.g. developments of significant scale and/or of wide concern) and which are recommended for approval;
- (d) Applications for residential development consisting of 5 dwellings or more (unless approval of reserved matters only) and which are recommended for approval);
- (e) The Council's own applications on its land or property which are for disposal;
- (f) Those applications recommended for approval where there are more than two expressions of objections received, material to the planning merits of the proposal to be approved, apart from approvals in respect of householder type developments, telecommunication masts, shop fronts and vehicular crossovers and "other" category developments (changes of use, advertisements, listed building consents, conservation area consents), where more than four expressions of objections material to the planning merits of the proposal to be approved are received;
- (g) Applications recommended for approval contrary to an objection from a local council which are material to the planning merits of the proposal;
- (h) Applications referred by a District Councillor, whose own ward must be within the remit of the relevant Area Plans Sub-Committee and who has firstly notified the relevant Ward Councillors in advance, so long as the referral has been requested in writing to Officers within 4 weeks of that applications notification in the weekly planning list;
- (i) Applications where the recommendation conflicts with a previous resolution of a Committee;
- (j) Applications submitted by or on behalf of a Councillor of the Authority (and/or spouse/partner) or on behalf of a member of staff of Planning and Economic Development (and/or spouse/partner) and also in those cases where a councillor is an objector in a purely personal capacity;
- (k) Any other application which the Director of Planning and Economic Development considers it expedient or appropriate to present to committee for decision (e.g. those raising issues not covered by existing policies, or of significant public interest, or those with a significant impact on the environment);
- (l) An application which would otherwise be refused under delegated powers by the Director of Planning and Economic Development but where there is support from the relevant local council and no other overriding planning consideration necessitates refusal.

FORWARD PLANNING AND RELATED FUNCTIONS

Function	Relevant Legislation	Relevant Details	Exceptions
Forward Planning	Town and Country Planning Act 1990 Section 324 and 325	To obtain and exercise powers of entry to undertake surveys in connection with: (1) Statutory Plans (2) Applications for planning permission	No
Buildings	Planning (Listed Buildings and Conservation Areas) Act 1990 Section: 3 (1-8)	To serve Building Preservation Notices in urgent cases, subject to report to and review by the next meeting of District Development Control Committee. To obtain and exercise powers of entry to undertake surveys in connection with: (1) Statutory Plans (2) Applications for Planning Permission	Yes
Dangerous trees on private land	Local Government (Miscellaneous Provisions) Act 1976 Sections: 23 and 24	Discretionary power to take action to make safe trees on private land, including to: (1) Obtain and use necessary Powers of Entry to the land; (2) Serve relevant notices; (3) Respond to appeals; (4) Undertake works directly where necessary; and (5) Recover expenses.	No
Countryside hedgerows	The Hedgerow Regulations 1997 Sections: 5 to 15 incl.	The responsibility to: (1) Regulate the removal of certain hedgerows;	No

Function	Relevant Legislation	Relevant Details	Exceptions
		<ul style="list-style-type: none"> (2) Issue relevant notices, including to require hedgerow replacement; (3) Respond to appeals; (4) Take necessary enforcement or legal action; (5) Obtain and use necessary powers of entry to the land; (6) Surveying land in connection with any hedgerow removal notice; (7) Ascertaining whether any offences have been committed under Regulation 7; and (8) Determination of whether a notice should be served under Regulation 8. 	
High Hedges	Anti-social Behaviour Act 2003 (Part 8) Sections: 68, 69, 70, 74, 75, 77, 79 and 80.	<p>The responsibility to:</p> <ul style="list-style-type: none"> (1) Deal with complaints in relation to the height of domestic hedgerows; (2) Issue, withdraw or relax the requirements or relevant notices; (3) Serve relevant documents regarding notifications; (4) Notify interested parties; (5) Respond to appeals; (6) Take relevant legal or enforcement action, including undertaking works directly and recovering expenses; and (7) Obtain and use powers of entry necessary in relation to (1), (2), (3) and (6). 	No
Protection of trees	Town and County Planning Act 1990 (as amended) Part VIII	The duty and responsibility to:	No

Function	Relevant Legislation	Relevant Details	Exceptions
	Sections: 197, 198, 199, 201, 203, 205, 206, 207, 208, 209, 210, 211, 214, 214A, B, C&D, 324	<p>(1) Take all necessary measures to make Tree Preservation Orders where trees are at risk, and are of significant existing or potential amenity value, or where they are of wider or strategic importance, subject to publication of the details in the Council Bulletin;</p> <p>(2) Amend, confirm, decide not to confirm or revoke such orders (i.e. TPOs) subject to reporting any objections regarding the making of the order to the relevant Area Planning Sub-Committee for this decision;</p> <p>(3) Determine applications for works to preserved trees (other than felling) except as set out below:</p> <p>(i) applications recommended for approval where more than two expressions of objection material to the planning merits of the proposal have been received;</p> <p>(ii) applications recommended for approval contrary to an objection from a local council which are material to the planning merits of the proposal; and</p> <p>(iii) applications which a Councillor representing a ward within the relevant Area Plans Sub-Committee area requests in writing within four weeks of notification in the Council Bulletin should be referred to the appropriate Sub-Committee provided that the member has notified the Ward Councillor in advance;</p> <p>(4) Take any necessary action in respect of claims for compensation;</p> <p>(5) Take action to ensure replacement planting where appropriate, by serving relevant notices, or by undertaking such planting directly and reclaiming the costs, and to publish any decision not to require replacement planting in the Council Bulletin;</p> <p>(6) Respond to appeals;</p> <p>(7) Take legal action in aspect of breaches of Part VIII of the Act where expedient, in conjunction with the Director of Corporate Support Service, including injunctive action and recovery of costs;</p>	

Function	Relevant Legislation	Relevant Details	Exceptions
		<p>(8) Take appropriate action in respect of notification of works to trees in Conservation Areas, including the issue of the Tree Preservation Orders as necessary; and</p> <p>(9) Authorise all expedient measures to gain entry to land in respect of the execution of any of the above, including to:</p> <p>(i) issue a warrant if admission has been refused or if a refusal is reasonably anticipated or if the case is urgent;</p> <p>(ii) to take samples of trees or soil; and</p> <p>(iii) for the authorised person(s) to take with them such other persons as may be necessary.</p>	

- Note: The authorities to undertake the stated functions, as set under the relevant sections shall be taken to be automatically updated to take into account changes, modifications and updating as they occur in the relevant legislation, subject to no new authorities being created. All references are to the legislation as currently amended.

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Report to District Development Control Committee



**Epping Forest
District Council**

Date of meeting: 16 October 2013

Subject: Threat of Special Measures and Refunding Of Planning Fees

Officer contact for further information: Nigel Richardson - Assistant Director (Development) x 4110

Committee Secretary: S Hill Ext 4249

Recommendation(s):

- (1) That the Committee notes the new threat from the Governments "Planning Guarantee" of returning planning fees where planning applications are not decided within 26 weeks from being made valid,**
- (2) That Committee notes the threat of "special measures" in respect of not achieving a timely decision on Major category planning applications and the extent to which such decisions are overturned on appeal,**
- (3) That (1) and (2) are brought to the attention of the three Area Plans sub-committees and Planning Officers in determining planning applications in a timely manner; and**
- (4) That the Assistant Director (Development) encourages applicants, when necessary, to sign up to pre and post application agreements to extend the time period for determination so as to avert the return of planning fees or the Authority falling into "special measures".**

Report

1. Reasons for Proposed Decision:

- 1.1. (Director of Planning and Economic Development) From 1 October 2013, the Government introduced a controversial policy with a requirement for local authorities to refund any planning fees if a council fails to decide an application within 26 weeks from an application being made valid. It does not apply to planning applications already validated before 1 October. This forms part of the government's "planning guarantee" initiative to speed up the delivery of development.
- 1.2. The policy goes further, in that those local planning authorities with 20 per cent or lower major development appeal decisions dismissed or fewer than 30 per cent of major applications decided within 13 weeks over a rolling 2-year period are to be placed in special measures, which would allow an applicant to submit any future major planning applications and its fee direct to the Planning Inspectorate.
- 1.3. The Assistant Director (Development) will need to monitor the turnaround time of planning applications to safeguard against any refund of planning fees or loss of income through designation of special measures. Decision making at planning

committees with a deadline for any signing of section 106 legal agreements will need to be strictly adhered to and therefore it is recommended that this report also be brought to the attention of the planning committees, where there is potential for delays on decision making. Where appropriate and agreed by applicants, agreements into extension of time for planning applications will be used, thereby allowing a longer acceptable time for planning application determination.

2. Other Options for Action:

2.1 This is new planning legislation and there are no other options for action, other than to not take advantage of the extension of time where applicable, which leaves the Council vulnerable to being put into special measures and paying back the planning fee.

3. Report:

- 3.1 The Growth and Infrastructure Act 2013 enables the Secretary of State to designate local authorities that are considered to be performing “poorly” in their determination of major planning applications. Designation will mean that applications for major development (e.g. development of 10 or more dwellinghouses, 1,000 or more square metres of floor space or 1 or more hectares) can be made directly to the Planning Inspectorate, on behalf of the Secretary of State, instead of to the designated local authority.
- 3.2 The performance of local authorities is to be assessed, on a rolling 2-year basis, against both the speed with which applications for major development are dealt and the extent to which such decisions are overturned on appeal. Authorities will be assessed against each aspect independently and so could be designated as “special measures” on the basis of either aspect or both. If 30% or fewer of a planning authority's decisions are made within the statutory determination period (or any agreed extension) or 20% or more of an authority's decisions are overturned on appeal then that authority will be designated because of its poor performance. These thresholds will be kept under review, with the intention of raising them over time to help drive improvements in performance. The planning fee in these cases would also go direct to the Planning Inspectorate.
- 3.3 The Council's performance in terms of determining major applications in 13 weeks over a 2 year period between July 2011 and June 2013 is 55% and therefore well outside the special measures threshold. It is anticipated at the time this report was being finalized and rolling this on for the 2 year period from October 2011 to September 2013, the Council's performance is likely to be about 58%. At this current rate therefore, there would not be a threat of the Council going into special measures, but it needs to be monitored and delays avoided.
- 3.4 Even if a local planning authority is put into special measures, the applicants can continue to apply to a designated local planning authority, instead of the Planning Inspectorate, if they wish to. It is important to note that applications made directly to the Planning Inspectorate forfeit any subsequent right of appeal. Designation can be revoked if the Secretary of State is satisfied that the designated authority has provided adequate evidence of sufficient improvement against its identified weaknesses. It is proposed that designation (and de-designation) should be undertaken once a year.
- 3.5 The “Planning Guarantee” means that all planning application types (not just Majors) should spend no more than 26 weeks with either the local planning authority or, in the

case of appeals, the Planning Inspectorate. While the risk of designation through poor performance should help to deliver the Guarantee, the Government now proposes also to require, as an additional measure, a refund of the planning application fee where any planning application remains undecided after 26 weeks. Applications awaiting a final decision because of the need to sign a Section 106 legal agreements are therefore going to be particularly vulnerable to meet this target, and potentially delays caused because of the late signature of the applicant.

3.6 It does mean that planning and legal officers will be faced with tougher timescales which could have direct financial consequences on Development Control income, particularly if developers are unwilling to sign up to an extension of time for determination on planning applications or hang on to, say the 27th week before signing a section 106 agreement, for example. The area planning committee's meet on a 4-weekly cycle but any planning application requiring a decision at District Development Control Committee takes longer because of the 8-week cycle and in many cases have already been to an area committee meeting beforehand. Members of those committees therefore need to be made aware that deferring a decision from one committee meeting to another (the usual reason being for a Members site visit) should only be done in very exceptional cases and indeed, planning officers will look to encourage any formal Members site visits to be taken before the committee meeting. Planning application officers will also need to be aware of the deadline should any delegated applications approach this deadline, although this is very rare.

3.7 Agreements to extend the time for determination can be made for both major development applications and other applications that would normally be determined within 8 weeks. However, for the overall credibility of the planning system, extensions of time should really be the exception and efforts made to meet the statutory timescale wherever possible. In most cases this additional time will provide an opportunity for matters to be resolved positively so that a proposal can be recommended for consent. If an application is unacceptable in principle or cannot be modified to become acceptable it is likely that it will be determined within the statutory period. Clearly, the advantage of the extension of time, which requires the agreement of the applicant/developer, is that this becomes the new target date and if met, will not count against our performance.

4. Summary:

4.1 This report therefore serves the purpose of bringing to attention the possible financial consequences if there is no extension of time agreement in place if the 26 week target date is not met and secondly, if the time taken to decide Major planning applications in 13 weeks falls below 30% (20% for appeals). The concern though is not just financial, but also a democratic one if committee and delegated planning applications decision making is taken out of consideration by this authority.

4.2 There is a possibility that the terms of reference for District Development Control Committee and Area Plans Sub-Committees may need to be reviewed so that the time taken for reporting planning applications to a meeting, particularly major type applications, can be reduced.

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