

Report to Area Plans South Sub-Committee

Date of meeting: 26 May 2010

Subject: Enforcement of planning conditions



**Epping Forest
District Council**

**Officer contact for further information: Stephan Solon Ext 4018
Democratic services: Rebecca Perrin Ext 4532**

Recommendation(s):

None. This report is for information only.

Background:

At the last meeting of this Sub-Committee Councillor Mrs Pond requested an investigation into the enforceability of a condition imposed on the grant of planning permission for the mixed use of 238 High Road, Loughton for purposes as a shop and a café (Use Classes A1 and A3), ref EPF/2300/09 and a report brought back to the next meeting of the Sub-Committee. Members also requested a report on the enforceability of a similar condition imposed on a planning permission for the use of 122 High Road, Loughton as a restaurant (Use Class A3), ref EPF/0114/10.

Condition 2 of planning permission EPF/2300/09 states:

The footway adjacent to the shopfront shall not be used for stationing tables, chairs, outdoor heaters, planters or other furniture.

The stated reason for the condition is:

To safeguard the vitality and viability of the Loughton High Road town centre and in the interests of the visual amenities of the locality.

Condition 2 of planning permission EPF/0114/10 states:

The footway adjacent to the shopfront and the public paved area on the north east boundary of the site shall not be used for stationing tables, chairs, outdoor heaters, planters or other furniture.

The stated reason for the condition is:

In the interests of the visual amenities of the locality and to ensure the paved area remains in public use.

Allegations have been made that the conditions have been breached and planning enforcement investigations carried out.

The investigation into the alleged breach of condition 2 of planning permission EPF/0114/10 found none of the areas outside the shop were being used for stationing tables and chairs etc.

The investigation into the alleged breach of condition 2 of planning permission EPF/2300/09 found tables and chairs were being stationed on an area of private forecourt adjacent to the shopfront. The Planning Enforcement Team are concerned that the use of the word footway in the condition may have the effect of making the condition unenforceable in relation to the area of private forecourt because "footway" is defined in the Highways Act 1980 as a part of the highway and a private forecourt is not necessarily part of the highway. Consequently, at the last meeting of this Sub-Committee Members expressed concern that the conditions may not be adequately enforceable. This report addresses those concerns.

Report Detail:

Section 66 of the Highways Act 1980 states "footway" means a way comprised in a highway which also comprises a carriageway, being a way over which the public have a right of way on foot only. A private forecourt may or may not be dedicated as part of a highway. The definition given in the Highways Act is only relevant to matters governed by the Highways Act.

The word "footway" is not unique to the Highways legislation and also has an ordinary meaning as a path for pedestrians only.

All planning permissions given by the District Council are given under the Town and Country Planning Act 1990. Section 336 of the 1990 Act defines footpath and highway in the same terms as they are defined in the Highways Act 1980. It does not give any definition for a footway.

Since the Town and Country Planning Act 1990 does not define "footway" and since planning permissions EPF/2300/09 and EPF/0114/10 were clearly given under the 1990 Act, the definition of footway in the Highways Act should not be applied to the word "footway" in condition 2 of those permissions. The Highways Act 1980 has nothing to do with those permissions and condition 2 of the permissions is clearly intended to apply to the entire area between the shopfront and adjacent carriageway.

Having regard to the purpose of the conditions, their use of the word "footway" is most appropriately given its ordinary meaning. That meaning does not distinguish between any area of highway or private forecourt between a shop front and carriageway of the adjacent highway.

Conclusion:

The second conditions of planning permissions EPF/2300/09 and EPF/0114/10 do not distinguish between areas of highway and private forecourt. They are clearly intended to apply to the entire area between the shopfront and carriageway of the adjacent highway. The effect of the conditions is that no part of that area can be lawfully used for the stationing of tables and chairs, etc, without planning permission. Since no such planning permission exists any breach of those conditions is capable of being enforced against by the District Council. The District Councils Planning Enforcement Team is now taking steps to verify and, if necessary, secure compliance with the requirements of the conditions.