

Development Control Committee – 24th April 2006

Report of the Director of the Urban Environment

Enforcement Service between 1st October 2005 and 31st March 2006

Purpose of Report

- 1 To inform Committee of the work undertaken by the planning enforcement team over the period 1st October 2005 – 31st March 2006.

Background

- 2 The role of the planning enforcement team is to regulate planning issues within the Borough of Dudley. This will involve an investigation into alleged breaches of the Town and Country Planning Act of 1990 and the Town and Country Planning (Control of Advertisement) Regulations of 1992. Wherever possible it is advised by Planning Policy Guidance Note.18 'Enforcing Planning Control' that any enforcement action undertaken shall be reasonable and proportionate to the breach.
- 3 Only as a last resort and where it is deemed absolutely necessary should formal enforcement action be instigated. Formal enforcement action is considered to be the service of an enforcement notice and/or the instigation of prosecution proceedings.

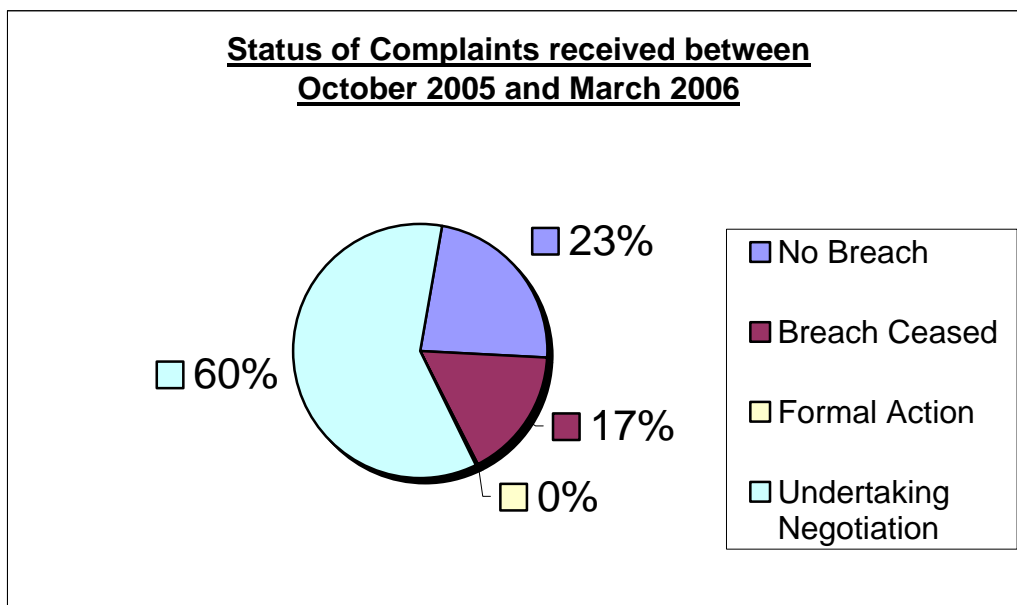
Performance and Workload

- 4 In the period between 1st October 2005 and 31st March 2006 the enforcement team received requests for services which resulted in 212 cases regarding planning issues being investigated. In comparison to the same period last year, which resulted in 174 cases. The breakdown of these cases is as follows:

STAGES MONTHS	ONGOING INVESTIGATION / NEGOTIATION	FORMAL ACTION TAKEN	CASE CLOSED	TOTAL
OCTOBER 2005	16	0	28	44
NOVEMBER 2005	15	0	14	29
DECEMBER 2005	16	1	13	40
JANUARY 2006	27	0	16	43
FEBRUARY 2006	21	0	9	30
MARCH 2006	32	0	4	23
TOTAL	127	1	84	212

This is accurate as of 5th April 2005.

- 5 The chart below shows how each of the 212 cases which have been investigated are progressing.



- 17% of cases have been resolved through negotiation, sometimes involving the instigation of formal action;
- 1 case received in the period is currently the subject of formal enforcement action. This means that an enforcement notice has been served.
- In 23% of cases, investigation found that no breach had occurred;
- In 49% of the cases, a breach is found to have occurred and officers are negotiating a resolution. This negotiation is carried out in line with the national guidance outlined in paragraphs 2 and 3 of this report. This often means that time is being given for the breach to be rectified without the necessity to formalise the action.

- 6 Of the 212 cases which have or are being investigated, 84 of these cases have been resolved and subsequently closed. Of the 84 cases which have been

closed, 49 of these were found not to be breaches of planning control. In each of these cases however an investigation would have to have been undertaken to ascertain that no breach had occurred.

Formal Enforcement Action

7 Circular 10/97 'Enforcing Planning Control' states that:

'The power (in the amended section 172 of the Town and Country Planning Act 1990 ("the 1990 Act")) to issue an enforcement notice is discretionary. A notice requires remedial steps to be taken within a specified time-limit. It should only be used where the LPA are satisfied that there has been a breach of planning control and it is expedient to issue a notice, having regard to the provisions of the development plan and to any other material considerations.'

8 Having regard for the above advice 9 enforcement notices have been served during the period in question. These are identified in the table below. Upon the expiry of the compliance dates of these notices prosecutions may be necessary to achieve compliance with the requirements of the notice.

SITE ADDRESS	TYPE OF NOTICE	BREACH	DATE SERVED	RESULT
29 GARLAND CRESCENT, HALESOWEN	ENFORCEMENT	2 STOREY SIDE EXTENSION	03/10/05	APPEAL SUBMITTED, HEARING HELD IN APRIL 2006, AWAITING DECISION
TOMLINS USED CARS, BIRMINGHAM NEW ROAD, DUDLEY	BREACH OF CONDITIONS	BREACH OF PLANNING APPLICATION	03/10/05	AWAITING COMPLIANCE
THE BULL'S HEAD PUBLIC HOUSE, PENNETT ROAD, BRIERLEY HILL	ENFORCEMENT	CARS DISPLAYED FOR SALE ON CAR PARK	17/10/05	AWAITING COMPLIANCE
LAND AT ALISON DRIVE, NORTON	ENFORCEMENT	BUNGALOW	25/11/05	LOST APPEAL AGAINST PLANNING REFUSAL AND WITHDREW ENFORCEMENT NOTICE – COSTS CLAIMED BY APPELLANT
UNIT 2, OLD BUSH TRADING ESTATE, OLD	ENFORCEMENT	TAXI OFFICE	12/12/05	APPEAL SUBMITTED

BUSH STREET, BRIERLEY HILL				
6 BIRCHGATE, STOURBRIDGE	ENFORCEMENT	EXTENSION	12/12/05	AWAITING COMPLIANCE
MANOR ABBEY FARM, MANOR LANE, HALESOWEN	ENFORCEMENT	FLOOD BARRIER CAGES (GABIONS)	23/12/05	AWAITING IANCE
McDONALDS, KENT STREET, UPPER GORNAL	ENFORCEMENT	ATM	30/01/06	APPEAL SUBMITTED
30 CASTLE HILL, DUDLEY	ENFORCEMENT	TAXI BASE	31/01/06	APPEAL TED

- 9 Members will also be aware of the enforcement matter with regard to the land on the corner of Victoria Street and Dudley Road, Brierley Hill. This matter was resolved without the need to serve an enforcement notice. The details of that case were reported in full to the Development Control Committee on 21st March 2006.

Appeals Against Enforcement Notices

- 10 All Enforcement notices are subject to appeal. In the past six months four enforcement notice appeals have been determined. These are shown in the table below. All of these appeals were dealt with under the written representations procedure. No decisions have yet been received.

SITE ADDRESS	TYPE OF NOTICE	BREACH	DECISION DATE	RESULT
14 JEWS LANE, UPPER GORNAL	ENFORCEMENT	STORE ROOM	20/12/05	APPEAL ALLOWED AND ENFORCEMENT NOTICE QUASHED
LAND AT ALISON DRIVE, STOURBRIDGE	ENFORCEMENT	BUNGALOW	25/01/06	PLANNING APPEAL ALLOWED AND ENFORCEMENT WITHDRAWN
1 GOSPEL END ROAD, SEDGLEY	ENFORCEMENT	ROLLER SHUTTER	25/01/06	APPEAL DISMISSED AND ENFORCEMENT NOTICE UPHELD
KING EDWARD VII PUBLIC HOUSE, 88 STOURBRIDGE ROAD, HALESOWEN	ENFORCEMENT	EXTENSION	06/02/06	APPEAL DISMISSED AND ENFORCEMENT NOTICE UPHELD

- 11 Members will noted that 50% of appeals have been dismissed and 50% allowed. Following the appeal dismissal, the notice relating to 1 Gospel End Road has been complied with and the King Edward VII Public House is awaiting compliance. Members should also be aware that the appellant has submitted a claim for costs in relation to the Alison Drive following withdrawal of the notice.
- 12 There are currently five other outstanding enforcement appeals which are yet to be determined. These appeals are being conducted under each of the available procedures, which are written representations, informal hearing and public inquiry.
- 13 During the past 6 months two prosecutions have been undertaken. These prosecutions are detailed below. Members will note that both prosecutions resulted in guilty verdicts. Further prosecutions are pending and these will be reported in due course.

SITE ADDRESS	BREACH	DATE	RESULT	PENALTY
AJs, 180 HIGH STREET, LYE, STOURBRIDGE	HOURS OF OPERATION	17/02/06	GUILTY	12 MONTH CONDITIONAL DISCHARGE AND £300 COSTS
71 CAMPBELL STREET, BRIERLEY HILL	STORAGE OF CONTAINER	23/02/06	GUILTY	£5900 FINE AND £240 COSTS

Service Pressures

- 14 Members will note a further increase in requests for service from the corresponding period in 2004/2005. Over the previous six month period the number of ongoing cases has decreased due to the resolution of cases by officers either informally or formally. This has been achieved whilst the team has been subject to a vacancy.
- 15 Another review of the enforcement service will be presented to members in approximately six months.

Finance

- 16 There are no direct financial consequences arising from this report, however the increase in demands on the service will be considered as part of the annual budget process. All existing processes will be reviewed to identify any potential for improving efficiencies within the service. In addition the new work arising from the introduction on 1st June 2005 of Part 8 of the Anti-social Behaviour Act 2003 will be maintained to assess the level of resources required to fulfil this new area of work.
- 17 Costs may be awarded against Local Planning Authorities in public inquiry and hearing cases if in the opinion of an Inspector an authority has acted unreasonably in the service of an enforcement notice. During the past year this situation has not occurred.

Law

- 18 Sections 175 and 177 of the Town and Country Planning Act 1990 contain provisions relating to appeals to the Secretary of State against Enforcement Notices.

Equality Impact

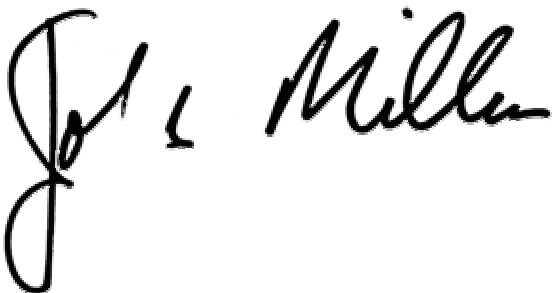
- 19 The proposal contained within this report takes into account the Council's equal opportunities policies and assist with the Council Plan's objective of achieving a fairer society.

Recommendation

- 20 It is proposed that Committee considers the statistics, the implications for the future of the planning enforcement service, and notes the report.

Background documents used in the preparation of this report:-

None.

A handwritten signature in black ink, appearing to read 'John Millar'. The signature is written in a cursive style with a large initial 'J'.

John Millar
Director of the Urban Environment

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