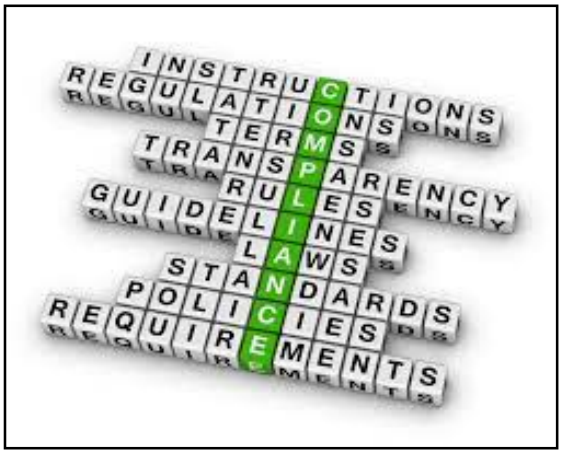
A REVIEW INTO TEST VALLEY BOROUGH COUNCIL'S PLANNING ENFORCEMENT



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Section One

Foreword

We have run our architectural practice in Andover for more than 40 years, so have a fairly good understanding of the area in which we operate, including counties across Southern England.

Over the years, and probably the last 15 years or so we have witnessed a marked change in practices, procedures and quality in the planning, building and enforcement departments. A lot of the changes are a natural progression based on progress, or the lack of it at times. However, even taking this into account there are a number of very concerning operation 'matters' that are going terribly wrong in our view.

This report set out our thoughts, opinions, effectiveness and fairness of the Local Authorities planning enforcement policy, procedures, practices and operations within this particular department.

It is the intention of this document (Section One) to set out 'good practice' in regard to the consideration of enforcement, and how the LPA's existing Local Enforcement Plan 2019, 'measures up' to these good working practices, and procedures.

At the end of this review we will make a number of observations and recommendations to be implemented into the LPA's new and updated Planning Enforcement Plan moving forward.

Successful planning relies on three essential areas of work by our local authorities: visionary plan-making which sets out the policies and proposals for the area; efficient and effective development management, which applies to those local and national policies in the determination of planning applications; and well-resourced and effective enforcement. These three aspects go hand-in-hand.

To achieve great development, planning relies on the energy and imagination of planners, decision-makers, developers, designers and investors. Each of these contributes to bringing ideas through the system to delivery – but without enforcement, our places, our environment and our quality of life would all be the poorer. At its heart, the planning system relies on trust and our enforcers provide the backbone of this trust. Trust that those who flout our planning laws (and often other laws at the same time) will be brought to account; trust that those who strive for high quality will not be undermined by those who would deliver ill-planned and ill-designed development; and trust that the high quality schemes that achieve planning permission will be delivered with that same quality that planning will deliver what is promised.

Introduction

Parliament has given Local Planning Authorities (LPA's) the primary responsibility for taking whatever enforcement action they consider necessary in the public interest in their area. Enforcement action is discretionary, however a LPA's duty to investigate an alleged breach of planning control is not. As set out within the National

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Planning Policy Framework, LPA's should consider publishing a Local Enforcement Plan to manage enforcement proactively, in a way that is appropriate to their area. NAPE strongly advocates for the adoption of Local Enforcement Plans which will assist LPA's in the prioritisation, consideration and determination of enforcement cases.

Enforcement action is intended to be remedial rather than punitive and should always be commensurate with the breach of planning control to which it relates. All enforcement cases should be investigated properly, and the following key questions answered:

- Is there development?
- Is there a breach?
- Can the breach be resolved through negotiation?
- Is the breach causing harm?
- Is enforcement expedient?
- Any decisions made should be accompanied by a report addressing all of the issues and kept on file.

Requests for Information

Before serving an enforcement notice, the LPA must take steps to ensure, as far as possible, that all available and relevant information has been obtained. There are three tools available to gather such information:

Notice served under Section 171C Town and Country Planning Act 1990

The LPA may serve a Planning Contravention Notice (PCN), instructing the recipient to provide requested information about activities on land for enforcement purposes.

The notice may be served on the owner or occupier of the land or on a person who has any interest in the land. It may also be served on any person carrying out operations on or using the land for any purpose (regardless of their interest in the land). The notice must contain the following:

- A description of the land to which it refers, referenced by a red edged site plan
- Details of the alleged breach
- What is required (i.e. the questions)
- The time for compliance (i.e. 21 days)
- A warning regarding non-compliance and providing false information
- Additional information regarding further action and compensation in respect of a stop notice.

Sections 171 C(2) & C(3) set out the type of information that can be obtained via a PCN. The LPA can also ask other questions it considers necessary. Such questions should be kept clear and straightforward, requiring simple specific responses (wherever possible) relating to the breach of planning control. A PCN cannot be used speculatively.

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It must be apparent to the LPA that there has been a breach of planning control before this notice can be served. However, at this preliminary information gathering stage, there need not be definitive proof on all aspects of the alleged breach, including the "planning unit", or whether the activity is subordinate or ancillary to the principal land use purpose.

A PCN cannot be used to obtain information in relation to suspected planning control breaches of listed buildings, conservation areas, hazardous substances, or protected trees.

Notice served under Section 330 Town and Country Planning Act 1990

A Section 330 notice can be served on the occupier of any premises and any person who, either directly or indirectly, receives rent in respect of that premises. The notice must specify the time by which the person(s) served must respond - i.e. at least 21 days after the date the notice was served.

As can be seen from Section 330(2), the range of questions which can be asked through this notice is limited. Consequently, the notice is only useful to ascertain current land use and ownership details. Failure to comply with a notice served under Section 330 is an offence, as is knowingly making any misstatements in respect of it. The penalties on summary conviction are currently £1000 & £5000 respectively. If all that is required is information regarding the ownership of land, enforcement officers may find it more useful to serve a Requisition for Information.

Requisition for Information

Section 16 of the Local Government (Miscellaneous Provisions) Act 1976 enables a LPA to obtain information for the purpose of exercising its powers under the Town and Country Planning Act 1990. If the LPA "considers that it ought to have information connected with any land" it may serve a requisition on any of the following:

a) the occupier of the land; and

b) any person who has an interest in the land either as freeholder, mortgagee or lessee, or who directly or indirectly receives rent for the land; and

c) any person who, in pursuance of an agreement between himself and a person interested in the land, is authorised to manage the land or to arrange for the letting of it

A requisition can therefore be served on a bank or building society etc.

The requisition must specify "the land and the function and enactment conferring the function". The requisition must also specify the period by which the recipient must provide the LPA with the following information (at least 14 days commencing from the day the notice was served): …the nature of his interest in the land and the name and address of each person whom the recipient of the notice believes is the occupier of the land and of each person whom he believes is, as respects the land, such a person as is mentioned in the provisions of paragraphs (b) and (c) above.

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Surveillance

Any surveillance undertaken by planning enforcement officers should be overt.

The LPA's focus should therefore be to ensure that overt surveillance does not inadvertently become covert. Surveillance is covert if, and only if, it is carried out in a manner calculated to ensure that any persons who are subject to the surveillance are unaware that it is, or may be, taking place.

Section 2: Site visits and entry

Planning enforcement officers are expected, in the course of their duties, to visit building sites, derelict buildings and wasteland. However, officer safety is vital during site visits and employers must know exactly where they are in case of an emergency, particularly since most enforcement officers work by themselves without close or direct supervision (i.e. they are 'lone workers'). All LPA's should maintain a database of individuals who are classed as dangerous or vulnerable. This should be reviewed prior to any visit to ensure that officers are not going alone to a site which requires back up. If an officer has to visit a site that is known to be dangerous, then they should take all necessary precautions, including visiting the site with at least one other work colleague.

If any persons encountered whilst on a site visit become aggressive, it is good practice to walk away from the situation and return to the office. Officers must not, at any time, risk their personal safety unnecessarily. When returning to the office, officers must ensure that the incident is reported in order that required steps can be taken when revisiting the site in the future.

Prior to undertaking a site visit, planning enforcement officers should complete a booking out record setting out:

- Where they are going
- Who they are with
- Expected time of arrival on site
- Duration of the site visit
- Expected time of return to the office (or expected time to report-in via telephone if not returning to the office).

If visiting more than one site, the record should be put in order of the sites the officer is visiting; earliest to latest. If for whatever reason an officer is delayed on-site, then the officer should contact the office to keep them informed of the new expected time of return to the office. Somebody in the office should have access to the booking out record so that contact can be made with an officer who has not returned or reported in as expected ascertain the reason for any delay. An officer who uses their own car for site visits has a distinct advantage, in that all equipment and clothing required for site safety can be kept permanently to hand. There is no definitive list of equipment, as roles vary, but most enforcement officers will be expected, in the course of their duties, to visit a variety of sites. Below is a list of equipment that should be a basic requirement when undertaking site visits:

- Mobile telephone
- Safety shoes/boots

- Hard hat
- High visibility jacket
- Waterproofs

Rights of entry

Planning enforcement officers are given extensive powers to enter land for enforcement purposes under Section 196 of the Town and Country Planning Act 1990.

Section 196A of the Act gives any person, duly authorised in writing by a LPA, the right to enter any land at any reasonable hour provided there are reasonable grounds for believing that entrance is required to "ascertain whether there is or has been any breach of planning control on the land or any other land".

24 hours' notice must be given to the occupier of any building used as a dwellinghouse before admission to the premises can be obtained.

In the majority of occasions, officers will not need to utilise their powers of entry under the Act. Officers should always, however, be in a position to produce a power of entry card if requested. The power of entry card should be provided by the LPA and must be duly signed by an authorised person. It must include a photograph of the officer, and detail their power of entry.

In some cases officers may find that although they have the right to enter land to investigate alleged breaches of planning control, individuals may refuse entry and obstruct access. Officers should not engage in arguments on site. Instead, officers can use their powers under Section 196B of the Act to obtain a warrant from the local Magistrates' Court.

If a warrant is obtained, this will authorise entry on one occasion only which must be undertaken at a reasonable hour within one month from the date of issue of the warrant. Only the officer who obtained the warrant can execute that warrant. A copy of the warrant should be left with the owner or occupier of the land. If they are not present, a copy of the warrant should be clearly displayed on the land.

A warrant is normally obtained if entry to the land has been refused, or if a refusal is anticipated. It is therefore advisable when executing the warrant, to contact the local police and ask them to attend to deal with any potential breach of the peace.

If any person wilfully obstructs an officer in the exercise of their rights of entry, then they are guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Establishing breaches & expediency

Development defined

The starting point for determination as to whether something constitutes "development" (and is therefore subject to planning control) is Section 55(1) of the

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Town and Country Planning Act 1990, which sets out that "development" means: 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. Section 55(1A) states that "building operations" includes

a) demolition of buildings;
b) rebuilding;
c) structural alterations of or additions to buildings; and
d) other operations normally undertaken by a person carrying on business as a builder.

The Act also specifies what does not constitute development such as:

a) the carrying out for the maintenance, improvement or other alteration of any building of works which

    i. affect only the interior of the building, or

    ii. do not materially affect the external appearance of the building.

The term 'material change of use' is not defined in the Act. However, two instances of what constitutes a material change of use are given, these being the use of a previously single dwellinghouse as two or more dwellinghouses and the deposit of refuse or waste material on land. In some instances, determining what constitutes a material change of use is not straight forward but should always be judged as a matter of fact and degree taking into account the individual merits of the case. When assessing the materiality of a change of use two things should be considered:

- any change in the character of the use itself, including the land where it is located
- the effects of the change upon neighbouring uses and the locality.

Always bear in mind that for a change to be material, the new use must be substantially different from the preceding use. Some operations or uses may be considered as 'de minimis', meaning that they are so minor as to have no legal consequence. Again, determining whether something is de minimis is a matter of fact and degree.

Permitted Development

General Permitted Development Order

We don't intend to set out the GDO in its full version at this point, suffice to say we are referring to:-

Town and Country Planning (General Permitted Development) (England) Order 2015, and the Procedures are set out in the Town and Country Planning (Development Management Procedure) (England) Order 2015.

The GPDO has the effect of granting planning permission for those classes of development described as permitted development within Schedule 2, subject to various exclusions set out in the Order.

When considering enforcement action, it should not be forgotten that permitted development rights may be granted by means other than by the GPDO.

Expediency

Section 172(1) of the Town and Country Planning Act 1990 sets out that a LPA can issue an enforcement notice where:

a) there has been a breach of planning control; and

b) it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations.

In relation to Section 172(1)(b) above, expediency applies equally to decisions not to take enforcement action or to underenforce.

Forming the judgement that it would not be expedient to take action requires as much care and argument as deciding to take action. Expediency, along with determining that something is de minimis, is not a route to reduce the workload of enforcement officers or to avoid making difficult decisions.

Public opinion can bring pressure to take enforcement action. In particular, where a development has been granted consent following objections from local residents, it is to be expected that they will police the development. Care must be taken in such cases to ensure that expediency remains a planning decision and is not influenced by public opinion. In addition, care must also be taken to ensure that the issues that were raised and dealt with during the planning application (and appeals) process, are not allowed to be resurrected.

Further pressure can be brought by threats to involve the Ombudsman, a local councillor or MP. Notwithstanding the nature or the extent of complaints, expediency is still a matter for the LPA and if it decides to exercise its discretion and take no action, its reasons for doing so should be explained in detail to all complainants.

An adopted local enforcement plan can also assist in such circumstances, (for example) the types of breaches on which a LPA will concentrate its resources, including that breaches which do not cause planning related harm are unlikely to be enforced against. Complainants can then be directed to this document.

Enforcement Notices

The power to issue an Enforcement Notice is given by Section 172(1) of the Town and Country Planning Act 1990, which states that the LPA may issue a notice if they consider it expedient to do so. A breach of planning control (Section 171A(1)) may only relate to either:

a) carrying out development without the required planning permission; or

b) failing to comply with any condition or limitation subject to which planning permission has been granted.

The notice must be properly authorised by the appropriate LPA Officer or Committee. The person or Committee responsible for authorising enforcement action will be set out in the Council's constitution.

Content of an Enforcement Notice

> "does the notice tell [the person on whom it is served] fairly what he has done wrong and what he must do to remedy it?"

The statutory requirements for enforcement notices are listed in Section 173 of the Act. They include the following:

- The Breach – Ensure the breach is described fully and accurately so the recipient knows exactly what it is. If a mixed use is alleged, ensure all elements that make up the breach are included (remember Section 173(11)). Refer to plans or other documents to assist with identification of the breach and its location within the planning unit.

- Reasons – State what the relevant immunity period is. Set out why the unauthorised development causes harm and is contrary to planning policy. Make clear whether the notice is seeking to remedy the breach or to remedy any injury to amenity caused by the breach (s173(4)) (and make sure it is the former).

- Specify the requirements – The steps required to remedy the breach must be clearly specified. Precision is important because criminal liability is at stake. vague or ambiguous requirement could result in the notice being rejected as invalid. A Material Change of Use notice may lawfully require removal of integral operational development even if immune or not development . The requirements of a notice must relate to the breach. The express requirements of an enforcement notice should not be drafted in such a way as to abrogate pre-existing rights, including but not limited to existing use rights.

- Date it takes effect – This must be more than twenty eight days following service, and the notice must specify a calendar date on which it takes effect. An appeal, if made, must be made before the notice takes effect. If made on the date it takes effect it will be turned away by the Planning Inspectorate. Ensure that ample time is left for the notice to arrive if serving by post.

- Time for compliance – Commences on the day the notice takes effect. Different times may be specified for different requirements. The time can be extended even after the notice takes effect in accordance with Section 173A.

- Additional Information – Every copy of an enforcement notice must also be accompanied by an explanatory note explaining:

- that there is a right of appeal to the Secretary of State

- that an appeal must be received by the Secretary of State, in writing, before the date on which the Notice takes effect

- the grounds on which the appeal may be made

- Relevant fees for any appeal

- A list of those served with the notice.

Service of an Enforcement Notice

Section 172(2) of the Act sets out that an enforcement notice must be served:

a) on the owner and on the occupier [even if they don't have the right to be there] of the land to which it relates; and

b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.

Section 188 Register (Enforcement Register)

Every District Planning Authority (DPA) and the council of every metropolitan district or London Borough must keep an Enforcement Register. Details of all enforcement notices, stop notices, enforcement orders and breach of condition notices issued in respect of land in their area must be entered in the register. Every entry must be made within fourteen days of the occurrence to which it relates. The details required to be entered are stipulated by the DMPO.

If a County Planning Authority (CPA) issues an enforcement notice, a stop notice or a breach of condition notice, it shall supply the relevant information listed above to the DPA to enable that Authority's register to be brought up to date. This information must also be entered into the register within fourteen days of the occurrence. So, although the CPA has fourteen days in which to supply the information, it must do so in time to allow the DPA to enter it into the register within the stipulated fourteen days.

The register must be available for inspection by the public at all reasonable hours and indexed to allow a person to trace any entry by reference to the address of the land to which the notice relates. It is important to ensure the register is updated as soon as possible and is kept up to date if a notice is withdrawn or quashed or, in the case of an Enforcement Order, is rescinded or expires. Section 215 Notices and PCN's are not required to be entered into the Section 188 register.

Appeals

Who can appeal?

Section 174 Town and Country Planning Act 1990 lists those who may appeal. They are:

- a person who has an interest in the land; or
- a relevant occupier

Grounds of appeal

An appeal may be made to a Planning Inspector on one of the grounds set out in Section 174 Town and Country Planning Act 1990.

These are:

Ground (a)

> Planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged

In effect then, this is a planning application for the matters stated in the notice, or part of them. There is no power to grant permission for a different scheme. A fee (double the normal planning application fee) must be paid in order to run this ground of appeal. The permission will be considered on the basis of the policies before the inspector.

Ground (b)

> That [the matters stated in the notice] have not occurred This is the ground under which matters of fact relating to the allegation (including its description of the breach) will be challenged. Examples might be that an alleged dwelling is in fact a store room, or that stationing of a residential caravan was in fact construction of a building, or that the alleged change of use did not take place or was misdescribed.

Ground (c)

> That [the matters stated in the notice] (if they occurred) do not constitute a breach of planning control This ground might include claims that the matters alleged do not constitute development, or that they are within the appellant's permitted development rights. It is common for ground (c) appeals to involve hidden ground (b) appeals.

Ground (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 [the matters stated in the notice] It is too late if enforcement action may not be brought due to the time limits in Section 171B.

Ground (e)

> That copies of the enforcement notice were not served as required by Section 172 There is power under Section 176(5) to discount failed service if neither the appellant nor the person not served have been substantially prejudiced. Where there is prejudice, the notice must be quashed.

Ground (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.

Ground (g)

> That any period specified in the notice in accordance with Section 173(9) falls short of what should reasonably be allowed There is no tariff of reasonable periods but factors might include the need to evict occupiers or the need to specify and tender work. The need to raise finance is not usually accepted as a factor.

Planning Inspectorate procedure

Information in regard to planning appeals either for planning decisions or enforcement purposes, is something outside the scope and purposes of this particular document.

Immunity

Section 171B sets out the time limits for taking enforcement action. These are:

- the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land – **four years from substantial completion.**

- the change of use of any building to use as a single dwellinghouse – **four years from the date of the breach.**

- any other breach of planning control – **10 years from the date of the breach.**

These limits are construed strictly against the appellant. Considerable care must be exercised by appellants seeking to rely on them. Points for LPA's to consider include:

- Substantial completion is not always clear and is a matter of fact and degree. A building is complete when it is complete for the purposes for which it was intended. Where a building has been built in stages, each stage may open a new chapter in its planning history; if lawfulness of a previous stage has not been accrued and demonstrated, this will restart the clock.

- Construction of a building as a dwellinghouse is not a change of use; the time limit in such cases is 10 years. Conversion to something other than a dwellinghouse (e.g. a mixed use) is not within Section 171B(2). However, conversion to a number of dwellinghouses (eg flats) may be within Section 171B(2) as a "building" includes parts of a building.

- Section 171B(3) is the catch all limit. If not squarely within (1) or (2), the limit in (3) applies.

Listed Building Enforcement Notices

Planning (Listed Building and Conservation Areas) Act 1990

The system of Listed Building Enforcement Notices (LBEN's) is similar to that for enforcement notices under the Town and Country Planning Act 1990, although there are some material differences, arising from the focus on heritage considerations. A further distinction is that immediate criminal liability can arise for certain works to listed buildings (in addition to criminal liability for failure to comply with the requirements of a LBEN). Because of the immediate criminal liability attaching to certain works to listed buildings, there is no equivalent regime within the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBA) to the stop notice/temporary stop notice regime.

LPA's may issue a LBEN where:

- It appears to them that unauthorised works have been (or are being) executed to a listed building; and
- That those unauthorised works are:
- for the demolition of a listed building.
- for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest; or
- in relation to a listed building under a listed building consent which fail to comply with any condition attached to that consent.

In addition, it must be expedient to issue the LBEN having regard to the effect of the works on the character of the building as one of special architectural or historic interest. This involves balancing the advantages and disadvantages of issuing an LBEN, having regard to the provisions of the development plan and any other material planning consideration.

There is no limitation period on the issuing of a LBEN. A current owner may therefore be susceptible to enforcement action by way of a LBEN in respect of historic unauthorised works undertaken by a previous owner or occupier. Liability for breach of an extant LBEN rests with the owner at the relevant time of the breach.

Advertisement enforcement

Town and Country Planning (Control of Advertisements) (England) Regulations 2007 & Town and Country Planning (Control of Advertisements) Regulations 1992

Section 220 of the Town and Country Planning Act 1990 provides for control of advertisements to be governed by regulations discrete from the Act. Advertisement control in the hands of planning authorities extends to restricting or regulating the display of advertisements as appears expedient in the interests of amenity or public

safety (Section 220(1) of the Act). Planning permission is not required for advertisements which comply with the relevant regulations (Section 222 of the Act).

In England the relevant regulations are the Town and Country Planning (Control of Advertisement) (England) Regulations 2007 (the 2007 Regs). "Advertisement" is a defined term within the Act at Section 336(1):

> *any word, letter, model, sign, placard, board, notice, awning, blind, device or representation, whether illuminated or not, in the nature of, and employed wholly or partly for the purposes of, advertisement, announcement or direction, and (without prejudice to the previous provisions of this definition), includes any hoarding or similar structure used, or adapted for use, for the display of advertisements, and references to the display of advertisements shall be construed accordingly*

Various classes of advertisements are excluded from operation of the Regulations. These are defined at Schedule 1 to the 2007 Regs (Classes A to I). A variety of forms of advertisements benefit from deemed consent – there is no need to obtain an express grant of consent, however consent may be removed by direction or a discontinuance notice. The classes of advertisement, which benefit from deemed consent (and any conditions or limitations applied to the same) are set out at Schedule 6 to the 2007 Regs (Classes 1 to 17).

Advertisements which are neither excluded from the operation of the regulations, nor which benefit from deemed consent, require an express grant of consent. An express grant of consent is ordinarily for a period of five years unless some other period is specified in the grant. Express grants of consent may also be made subject to conditions by the planning authority.

Enforcement of Advertising Controls - Discontinuance Notices

In relation to advertisements displayed with deemed consent, a planning authority may serve a discontinuance notice.

In England, Regulation 8 of the 2007 Regs requires only that a discontinuance notice be served on "the advertiser" however this is defined in Regulation 2 of the 2007 Regs as:

> "advertiser", in relation to an advertisement, means— (a) the owner of the site on which the advertisement is displayed; (b) the occupier of the site, if different; and (c) any other person who undertakes or maintains the display of the advertisement; and any reference in these Regulations to the person displaying an advertisement shall be construed as a reference to the advertiser.

Section Two

As we have mentioned, all of the above sets out an understanding of good practice, procedures and polices for any local authority planning enforcement department.

Currently Test Valley Borough Council operate within and comply with their Local Enforcement Plan dated 2019.

This document extends over some 13 pages, and gives general guidance in terms of planning enforcement. This document is out of date, and unfit for purpose in regard to the aspects of any potential enforcement action, and how the LPA considers potential breaches of planning are dealt with on a daily basis.

Like planning in general terms, any LPA's planning enforcement should be clearly understood, transparent with clear and concise procedures, evidence gathering, and reporting. It should provide a detailed and precise understanding of why and how the LPA comes to any particular decision it may or may not take. In the situation where the LPA does not take action, their non actions should be explained in detail, and assessed against a predetermined set of criteria.

This criterium should be set out, in a series of measured test. For example:-

The words of 'expedience' and 'in the public interest' 'commensurate' 'seriousness of the breach' 'harm caused' or 'harm that it may cause'. These are words that are referred to in the current enforcement plan. There are no explanation, as to what is meant by these words and statements.

What level, or degree of test is being used by the LPA when considering enforcement or non enforcement action. There is no guidance on how these decisions are being made. Now, this may be very intentional, as it would allow any LPA to make decisions that are far removed from the most basic planning law and planning acts.

We know from personal experience that, (we can provide case evidence) there have been and still are situations that the LPA are making decisions on planning enforcement based on political aspirations, and political conflict.

Enforcement reports (Expediency Reports)

I'm afraid that this particular subject matter requires a whole policy document on its own. The LPA's quality and thoroughness is frankly shocking in every degree. There is no standardisation across the enforcement department, officers rely on their own individual understanding on what should be included, and what material considerations should be given to any particular investigation.

The expediency report should refer to and commentate on any and all collective parties involved with any potential planning breach. These may include (not exhaustive) Design and Conservation, Highways, Planning Officers, Planning Policy, Representations, Complaints, Local Plan, and the GPDO, to name but a few.

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It is disappointing that a great many expediency reports are very lacking an any informative information in regard to how any decision has been formalized.

We suggest that the format of an expediency report follows a similar format of a planning officer report, and include, information on the site, the proposal/breach, the relevant constraints, the consultation process that had been conducted, the representations (complaints) that had been received and an assessment of the key planning issues. It also included a recommendation that member/s approve or be invited to express their thoughts on the subject matter.

There also needs to be a concise and clear understanding of the words and expressions used in expediency reports as we set out above, namely:-

Discretionary

There is no statutory requirement for the council to take enforcement action against alleged breaches of planning control. Enforcement action is based on planning merit which requires a planning judgement as to whether or not formal action is appropriate. In some cases, the council may decide that enforcement action will not be taken and that an alternative approach is more appropriate (for example a retrospective application, further negotiation, no further action etc).

Expedient/Expediency

When assessing whether formal action should be taken, the council will ensure that the action is reasonable, proportionate and is in the public interest in order to achieve a satisfactory result. The council will consider what the effect of formal action will be and if it will have a meaningful outcome. The term expedient or expediency in planning enforcement relates to the 'planning balance' for taking action, not convenience.

Now, there should be a number of test to which this 'Expediency' should be set against, for example:- Not in any particular order.

- How many complaints have there been?
- The location of the alleged breach.
- Its relationship with a Conservation Area
- The prominence of the breach.
- The actual effect on a listed building for example.
- The duration of the breach.
- When did the first breach occur.
- Departure (the item/matter in breach) from any other published reference document prepared by the authority. For example, the Shop Front Design Guide.

Harm

- When considering the expediency and subsequent proportionality of formal enforcement action, the council give significant regard to the planning harm associated with a breach of planning control.

Planning harm is the collective term used to describe the negative impacts of a development.

Now, what is the collective harm?

Again there should be number of tests, or matters to consider this harm!

In terms of a listed building for example:-

1) Is the harm the actual damage to the fabric of the building.

2) Is the harm related to the wording in the formal 'listing' of the building, or part of another part of a building or structure attached to the listing section of the building.

3) Is the harm, the use of inappropriate materials used in relation to (2) above.

Public Interest

Now, this is probably the most difficult to define. We suspect it has nothing to do with the general public most of the time. The only real exception to this really is when planning conditions must be complied with, as the conditions would make planning proposals acceptable in planning terms.

The only time 'public interest' gets a mention is the provisions of the European Convention on Human Rights Article 1 of the First protocol, Article 8 and Article 14, are relevant when considering enforcement action. There is a clear public interest in enforcing planning law and planning regulation in a proportionate way.

In deciding whether enforcement action is taken, local planning authorities should, where relevant, have regard to the potential impact on the health, housing needs and welfare of those affected by the proposed action, and those who are affected by a breach of planning control.

So, I would welcome the understanding of the LPA, in why this statement is used so many times for taking or not taking enforcement action.

Test Valley Borough Council Enforcement Plan 2019

As we have commented on, the LPA document is very wanting in a great many areas, and is far to vague in the most part. We have taken a number of the parts of the document (not all) that we consider want amending:-

1.4 This document is intended for all users and providers of the service, including members of the public, interested parties, Town and Parish Councils and Borough Councilors.

Yes, this is correct, however for it to be effective and or a meaningful tool, it needs to be far more informative and concise in terms of a balanced approach and understanding for all to follow.

2.2 The National Planning Policy Framework (NPPF) and National Planning Practice Guidance (NPPG) make it clear that the powers provided by the Act are discretionary and should only be used when it is expedient to do so. Any action taken should be commensurate with the seriousness of the breach of planning control and the harm caused or harm that may be caused:

Yes, but as we have set out above, this needs to be expanded so it is understood that action is 'commensurate' and or 'expedient', not just words to fit the overall narrative of the LPA.

3.1 The Council aims to provide an efficient and effective planning enforcement service within the resources available, whilst treating all of our customers with courtesy, respect and fairness.

Yes, this is applaudable, but neither The National Planning Policy Framework (NPPF) and National Planning Practice Guidance (NPPG), give guidance or allowances for 'within the resources available'. This wording should be removed.

The effectiveness of the LPA due to insufficient resources must not be an excuse for not enforcing planning control effectively, and is not a route to reduce the workload of enforcement officers or to avoid making difficult decisions.

3.3 The Council will, when it is considered appropriate and proportionate to do so, take a robust approach to enforcing against confirmed breaches of planning control.

Yes, but again 'appropriate and 'proportionate' must be set out as to what this means.

6.2 The Government has made it clear through legislation and guidance that the response to an alleged breach of planning control is a matter for the discretion of the local authority. Not every breach of planning control justifies the taking of enforcement action.

Yes, but again the reasoning 'discretion' need to be set out and explained in the Enforcement Plan, otherwise like the other comments above any of this can be politicised or weaponised.

6.5 In exercising planning functions, the Council is required to consider whether enforcement action is in the public interest. At the same time, it is also under an obligation to act consistently with the European Convention on Human Rights (in particular, Article 8 – the Right to Respect for Home, Privacy and Test Valley Borough Council Enforcement Plan 2019 August 2019 Family Life, Article 14 – Prohibition of Discrimination, and Article 1 of the First

Protocol – Right to the Enjoyment of Property). Regard must also be had to the Public Sector Equality Duty as contained in the Equality Act 2010.

6.6 Any one or a combination of these factors may mean that the Council will decide not to take formal action in any particular case where there has been a breach of planning control. It will however take action where a breach causes significant harm.

Yes, this statement is applaudable, but a measure or test needs to be used to equate 'significant harm', like, the location of the breach, is it very visible from a significant position or location within a conservation area, a getaway entrance/route into a town or village, has it a very high prominence. Again these 'throw away words' can be used as an excuse either to do or in the more likely case not to do.

The whole point of an effective Enforcement Plan is that if any decision by a LPA either to do or not do can be directly related back to the Plan. It can't be relied on as just that particular enforcement officer opinion on that particular day or hour.

How to report an alleged breach of planning control

The LPA mechanism for reporting potential breaches of planning control on line works well in terms of ease and the time it takes. However, the online mechanism is very user unfriendly. The online form in itself is ok, but once completed the reporting process only send back a received message containing a reference number, and nothing else in regard to what the reported breach is about, ie, location, or the type of breach.

It would be more than helpful if a copy of the completed 'form' was sent back to the sender for future reference and follow up. We have and continue to submit potential breaches through this medium, and when we get back a response from an enforcement officer, normally via E-mail, we only get (in most cases) the reference number quoted, which when you have multiple live reports it doesn't mean very much. Perhaps a standard layout of reply with all the required information on it would help. Perhaps the reply back from the enforcement officer, the basic information could be populated from the original form itself could it not. The system could be made so much easier to use and to administer by the LPA.

It has come to be point that, future potential breaches will be reported via E-mail instead.

What can you expect if you report an alleged breach of planning control?

We are not going to comment on each and every point under this heading, but, there are a number of things listed here that are not being done on a

regular basis. Checking the planning history, and finding out the details of the landowner are but two.

As we have mentioned above, the LPA needs a standard template/checklist expediency report form so that both sides can see due diligence on what the LPA has committed to do in the Plan.

8.4 We will not re-open a case that has been closed unless there is a significant new piece of information or change on site.

This is itself is a justifiable statement. However, it is a very dangerous one. The statement should be conditional on a Bonafede, true, accurate and meaningful investigation being carried out in the first place. We have had many instances where a half hearted investigation has been carried out, then the decision made by the enforcement office , and case closed! Yes, we know that a stage one and a stage two compliant can be made, but, lets have the job done properly in the first place.

11.2 There is a breach of planning control but not considered expedient to pursue formal action – Just because a breach may exist does not automatically mean that formal action will be taken. Enforcement powers are discretionary and should be used proportionately and so for minor and technical breaches, which cause little or no planning harm, it may be considered expedient not to pursue, ie the breach is too minor to warrant the time and public expense of pursuing further.

This is where the whole system fails. So many times we hear from the LPA that 'its not expedient'. The reason we make this statement is that this statement is rolled out even when there is planning harm. We won't give example here, but, can provide specific instances if required.

11.5 Invitation to submit a retrospective application – In accordance with Government advice, where a breach of planning control is considered to be acceptable in planning terms, the Council would invite the submission of a retrospective planning application for formal consideration by a planning officer.

Again, the LPA is using this statement without any consistency of approach. For example, a breach of advertisement regulations on a structure attached to a building that in itself is recorded in part in a listed description. The LPA invited a listed building application to be submitted to regularise the breach, then only to be told shortly after that such an application would not be supported. Again this is an area where concise, appropriate and consistent advice is not being given. This state of affairs is disappointing to say the least, because the LPA is not referring to its own enforcement plan for a point of reference, yet again.

11.10 Right of Appeal - The recipient of an Enforcement/Listed Building Enforcement Notice has the right to lodge an appeal before the date on which the Notice takes effect (which must be at least 28 days from the date when the notice is served). Appeals are decided by an independent Planning Inspector

and it will take several months, or longer in complex cases, before there is a formal decision. If there is an appeal interested parties will have an opportunity to make representations to the Planning Inspectorate.

The LPA has a real problem here with the specific quality and wording of its Enforcement Notices. A recent case disclosed by the Secretary of State that the wording of a Enforcement Notice was found to be 'seriously lacking in precision'.

How we prioritise complaints

10.1 To make the most effective use of resources, complaints regarding suspected breaches of planning control will be assigned a Priority Rating depending on the nature of the breach and the degree of harm caused. Individual cases may be re-prioritised as the investigation progresses.

This is a subjective list of prioritising, and will naturally be different from LPA to LPA, but, one interesting item that is shown in priority group 3, is satellite dishes. Now, this raises an interesting matter of discussion. The LPA are on record that it will not investigate any alleged breach in regard to dishes being installed on commercial premisses, and or flats. This is a very concerning statement as these premisses do not benefit from the normal permitted development rights. We can only assume here that the LPA will comply with its own Enforcement Plan, unless it is more convenient for it not to.

Enforcement Register

12.1 The Council has a statutory duty to hold and maintain an enforcement register. This records details and basic information about what notices have been issued. The notices contained in the register are:

- *Enforcement Notices*
- *Breach of Condition Notices*
- *Full Stop Notices*
- *Temporary Stop Notices.*

The LPA should also include a statement that it also has a duty to record all notices that are issued by the County Council as well, and to ensure that the register is kept up to date, something that the paragraph 12.1 does not state.

Conclusion

Planning enforcement sits at the heart of the planning system. Without it, planning legislation is meaningless.

The enforcement department within TVBC is fully staffed with 4 enforcement officers, an enforcement manager, and a full time enforcement administration

assistant. A team that should be more than capable of meeting the demands placed upon it.

It is important that the LPA provide a clear understanding of what is currently happening on the ground with planning enforcement, and its service to the public.

The RTPI have carried out a number of studies recently in regarding the structuring of enforcement departments being incorporated with other planning services, this seems to be the overwhelming consensus and adds many benefits to the effectiveness of planning enforcement. The logic of placing enforcement with other planning services was reinforced by the fact that respondents undertake cross service working without the need for formal relationships. Informal relationships allow for flexibility which is necessitated by the variety of work. However, the knowledge sharing with colleagues in planning is more constant and situating it within planning services raises the esteem of the profession.

Many LPA nowadays are purely reactive, are now no more than a complaint driven service. This means that "the level of service for the public at large has certainly deteriorated, to a point that it is now failing the general public, and external planning professions alike. The public has lost faith in the entire system.

We stated at the very beginning of this document that we are not new to the world of planning. For the most part the level on integrity of the LPA has been positive, however, in recent years it has been more than disappointing that we have encountered corruption, slander, incompetence, victimisation, and potential forgery.

These are words and statements that we do dot use lightly, and have more than enough evidence to support each and every one of them.

Where Now

The most single problem within the TVBC LPA enforcement department is one of lack of consistency and approach to enforcement or non enforcement. We are afraid to say that the biggest factors in this are two-fold, who or what you are, and the political motivation for action or non action. This may seem a difficult concept to except, but facts speak for themselves unfortunately.

It will only be when a more transparent and consistent service evolves, will we as planning agents, and the wider public interest be met, and faith in the system be restored.