

# Strengthening of Planning Enforcement

Report by Head of Planning Applications Group to the Regulation Committee on 25<sup>th</sup> January 2011

Summary: Representations to the Coalition Government for the Strengthening of Planning Enforcement Controls

Recommendation: To endorse the content of the report and to support the various initiatives for seeking new enhanced planning enforcement powers.

Local Member: N/A

Unrestricted

## Background

1. I reported to the last Meeting on the Localism agenda of the Coalition Government, as background to potential changes to planning enforcement. I also informed Members of a joint letter by the Leaders and Chief Executives of the Kent Districts sent to Greg Clark MP, Minister of State for Decentralisation, expressing concern over the inadequacies of the planning control regime. The Leader of Kent County Council was a further signatory.

## Meeting with DCLG

2. In response to the letter, District and County officers were invited to meet with representatives from DCLG to expand upon our concerns. We did so, stressing that the issues that the County Council is predominantly concerned with differ from those of the District Councils. Our concerns principally relate to serious environmental damage to the landscape caused by unregulated waste management. That not only causes unacceptable environmental and amenity harm but also creates an un-level playing field between those operating within and outside of planning law. This Authority has to tackle on a regular basis what can only be described as 'organised waste crime'. That in turn is part of an apparent 'black market' in waste.

### *Key Points*

3. I raised the following key problems and suggested solutions with the DCLG Officers:
  - Designated landscapes and habitats should be protected from '*Landscape Vandalism*', by direct criminal prosecution.
  - Stop Notices should be free from compensation in the case at least of irreversible damage to protected landscapes. A new '*Landscape Protection Notice*' would be even better.
  - Planning Regulations should be re-drafted to prevent 'B2 Industrial Uses' (i.e. manufacturing type permissions and lawful uses) being used for heavy-duty recycling of demolition waste, free of normal County Council planning controls.

## Strengthening of Planning Enforcement

- District Councils should be required to consult the County Council on any proposed scheme such as golf courses which offer 'disguised' opportunities (often unjustified) for large scale land disposal of development spoil and soils.
  - Environmental Courts or modified Magistrates Courts need to be introduced to cover the enforcement demands of large scale County waste cases.
4. I left a briefing document with them and I attach at Appendix 1 to this report an executive summary for Members further information.

### *The County Council perspective*

5. Unauthorised waste handling at a County strategic level is highly lucrative and an immensely demanding problem to resolve. We have an unmatched track record in meeting such challenges but the odds are stacked in the contraveners favour. Appeals are used as delaying tactics and compensation provisions still attach to Stop Notices - our most draconian power. Those are now almost unusable, since serving them can place very significant levels of public money at risk from even technical reversals in Court.
6. We are currently disadvantaged in the worst and most pressing cases by an out-dated planning enforcement system and overly constrained powers. Those fail to offer immediate prosecution, triggering instead a process of planning scrutiny and appeals, lasting 2 years or more. Only if all appeals are won, does court action become an option. Even then in our experience, the Magistrates system seems unable to cope in its current form with the complexity and urgency of such cases.
7. Given the shortcomings of the current system of County planning enforcement, we are consigned in the worst cases to seek injunctive means of control. That is less than ideal since injunctions are difficult to secure, given the high evidential bar and overall are an expensive option. We have to resort to that power however, given undue restraints on the use of Stop Notices.
8. All of these points were powerfully impressed upon the DCLG officials, who showed sympathy for the issues raised. They confirmed that to introduce them would require both primary and secondary legislation.

### **The Localism Bill**

9. The Localism Bill has since emerged and addressees some but not all of the frustrations raised across the planning enforcement field. It centres on district council requirements, with little if any provisions for County Councils. The Bill will have had its Second Reading (17<sup>th</sup> January 2011) by the time of the Meeting. In attempting to use all channels to promote the County Council's enforcement cause, I have two further avenues to report.

## Strengthening of Planning Enforcement

### The Chairman's Initiative

10. The Chairman of this Committee Mike Harrison, on receiving a briefing from me on the above, kindly offered to broker a meeting with Greg Clark MP, enabling our views on the enforcement element of the Bill, to be made directly to him and his advisers. That is in hand. The Chairman has enlisted the support of the Deputy Leader of the Council, Alex King in this endeavour.

### Submission to the National Association for Planning Enforcement (NAPE)

11. NAPE is the enforcement arm of the Royal Town Planning Institute. An attempt is being made by the Association to enter a collective view on the enforcement parts of the Localism Bill before its Second Reading. That will be from the perspective of frontline enforcement staff. A view has been entered at officer level, in discussion with the Chairman Mike Harrison.

#### *Summary of the Draft Enforcement Provisions of the Localism Bill*

12. Chapter 5 of the Localism Bill relates to planning enforcement. In summary, it states that:

*"Chapter 5 allows local authorities in England to decline to determine retrospective planning applications where enforcement action is being taken. It also allows authorities to apply to a Magistrate's Court to enable enforcement action after statutory time limits have been exceeded, where there is evidence of deliberate deception and it increases some penalties and adjusts certain time limits with respect to enforcement. Finally, it provides powers relating to unauthorised adverts and the defacement of premises".*

#### *Comments on the Bill as drafted*

13. We advised that we would not wish to demur from any of these draft provisions. We went onto say that:

*"..... addressing some of the unfair aspects of retrospective planning permission is welcome. There needs to be a level playing field for applicants. Jumping the gun to gain advantage over law abiding developers, or seeking to side-step the planning system altogether, acquiescing only when caught, is unjust. The ability to challenge immunity from enforcement action in cases of deception is similarly welcome. The cause célèbre here is of course the case where a developer built a house within a barn, only revealing it when the time limit for action had expired. We support this new draft provision but we have reservations on the capacity of the Magistrates Courts to cope with the extra workload and to accord it due priority. We further support, any increase in penalties, along with adjustments to time limits in the Local Authority's favour. The new advert powers are intended for district councils so we shall refrain from commenting on that aspect".*

#### *Provisions missing from the Bill*

## Strengthening of Planning Enforcement

14. Those were our points on the enforcement section of the Bill, as drafted. However, more crucially we needed to point out what we considered to be missing from the Bill itself. In general, County Council planning enforcement needs are under-represented. To assist NAPE in drawing this out, we attached a mirror document to that submitted to DCLG (see paragraphs 3 and 4 above and appended executive summary). I shall report on any feedback received from NAPE at the Meeting.

### Conclusion

15. In conclusion, I can assure the Committee that every means at our disposal is being used to further the planning enforcement interests of this Authority and comparable County Councils. We have two 'live' channels of communication open with the Coalition Government at the moment i.e. the Chairman's direct initiative (see paragraph 10) and the indirect submission of our views through the auspices of The RTPI / NAPE. Both draw from the same base document, which has sought in turn to distil the experience of officers and the debate and input of Members of this Committee into a coherent '*shopping-list*' for new enforcement powers.
16. A review of planning enforcement tools and processes is long overdue, with a number of previous Governments recognising the need for change and undertaking consultation exercises. Unfortunately for various reasons they did not result in legislative changes. It is hoped that this sustained officer and Member pressure which builds upon earlier responses to Government consultations and our first hand experience will eventually bear fruit in this instance.

### Recommendation

17. I recommend that MEMBERS:

- (i) ENDORSE the content of this report and
- (ii) SUPPORT our current lobbying of the Coalition Government in the pursuit of enhanced planning enforcement powers.

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Background Documents: see heading

# Strengthening of Planning Enforcement

## Item 8 Appendix 1

### Summary of waste planning enforcement problems and suggested solutions

#### **Problem 1:**

- Nationally protected landscape areas and internationally recognised ecosystems are vulnerable to organised waste crime and irreversible damage.
- Breach of planning regulation powers are inadequate to meet this challenge.

#### **Solutions:**

- Criminalisation of waste breaches in these areas.
- Creation of a new offence of '*Landscape (Ecological) Vandalism*'.
- Direct access to prosecution powers, using existing precedents.

#### **Problem 2:**

- Enforcement Notices (ENs) are dependent on Stop Notices (SNs) in stopping determined breaches.
- Stop Notices are not free-standing and are constrained by compensation concerns.

#### **Solutions:**

- New power – '*Landscape Protection Notice*', on TPO format.
- Non-appealable and offering permanent protection of areas of land.
- Re-vamping of existing EN and SNs.
- Free-standing SNs with no time-constraint or penalty for removal.
- Removable of the risk of compensation.

#### **Problem 3:**

- Use of B2 Industrial Use sites (particularly CLUEDs) for crushing and screening without further planning permission from the County Council.
- Encouraged by ambiguous description within overall definition of B2.
- High impact waste type uses are developing without appropriate control.

#### **Solutions:**

- Drafting amendments to the planning 'Use Classes Order'.
- Options are to extend the Northern Ireland template and / or clarify / redraw the terms of B2 Industrial Uses.

## Strengthening of Planning Enforcement

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### **Problem 4:**

- Public regulatory effort is often fragmented.
- 'Misleading / disguised' waste land-raising applications are bypassing the County Council.
- Strategic quantities of potential restoration materials are being lost to district permitted schemes.
- EA Exemption regime is lax and over-lenient.

### ***Solutions:***

- Statutory requirement for districts to consult County Councils on bulk material schemes and B2 Industrial CLUED and planning applications.
- Unused powers by other bodies within a case, defaulting to the County Council or its agents.
- EA Exemptions to require prior planning permission, or lawful equivalent.

### **Problem 5:**

- Heavy demands on Magistrates Courts, 'crowd-out' waste planning cases.
- Planning waste breaches are under-estimated in their urgency and impact.

### ***Solutions:***

- Introduction of 'Environmental Courts' to pool cases and expertise.
- Specialist training for Magistrates.

Planning Applications Group  
Kent County Council  
December 2010