

<b>TITLE</b>	: BURY'S PLANNING ENFORCEMENT SERVICE
<b>TO / ON</b>	: PLANNING CONTROL COMMITTEE 02 SEPTEMBER 2003
<b>FROM</b>	: Borough Planning & Economic Development Officer
<b>STATUS</b>	: FOR PUBLICATION

**1.0 TYPE OF DECISION**

1.1 What type of decision is to be taken:-

EXECUTIVE DECISION		COUNCIL DECISION	
Key	Non Key	YES	

1.2 If a key decision, has it been included in the Forward Plan

Inclusion in Forward Plan	(Yes or No)	Date of Plan	
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**2.0 SUMMARY**

This report advises the Committee about current issues in planning enforcement, and describes the way in which the service is expecting to adapt.

**3.0 OPTIONS AND RECOMMENDED OPTIONS (with reasons)**

The Committee is recommended to note the report.

**4.0 THIS REPORT HAS THE FOLLOWING IMPLICATIONS**

**Corporate Aims**

Improving transport and the environment.

**Policy Framework**

Unitary Development Plan – enforcement powers are one of the ways by which the UDP is implemented.

**Statement by Monitoring Officer**

**Statement by Director of Finance & E-Government**

**Human Resource IT/Land and Property Implications**

**Wards/Area Boards affected**

All

**Scrutiny Panel's Interest**

N/A

**Consultations**

None

**Call-in**

## Briefings

Executive Members/ Chair		Chief Executive	
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### 5.0 INTRODUCTION

5.1 In recent years, Bury's Planning Enforcement service has had increasing difficulty in coping with the demands upon it. This is not unique to Bury, and is a problem shared with many local planning authorities. Legislative processes have become more complex at a time when public expectations about service are increasing. Enforcement matters are gaining a higher profile even though it is an area of work that is discretionary and has no national performance indicators. Nevertheless, it is necessary to look again about how the service is provided, because a failing enforcement service undermines the whole planning process, and also undermines peoples' sense of fairness about the way local communities are run.

### 6.0 BACKGROUND

6.1 The following quotations from government publications and planning journals give a flavour of the situation nationally:

"Enforcement is the weakest link in the planning chain";

"The planning enforcement process is complex, cumbersome, difficult and expensive";

"Enforcement is, without doubt, the most difficult part of the planning system to administer";

"The enforcement process is bedevilled by a myriad technicalities and pitfalls";

"The complexity of the enforcement process is exacerbated by the lowly esteem in which the enforcement system – and those who staff it – are often held";

"There is no point in making brilliant decisions if what is actually built is inconsistent with them".

### 7.0 AN OVERVIEW OF ENFORCEMENT POWERS

7.1 The main types of planning enforcement controls are:

a traditional Enforcement Notice – slow to take effect, and with long delays for appeals,

a Breach of Condition Notice – no right of appeal but the fines are very low (£1,000 max).

a Stop Notice – quick and effective, but only usable in limited circumstances. Heavy compensation to pay if the Council gets the details wrong.

Injunctions – a possible solution where all else fails. An expensive solution.

None is ideal and Bury, like most authorities, tries to negotiate compromises wherever possible.

7.2 There are other planning enforcement powers under related legislation involving:

Listed Buildings and Conservation Areas  
Advertisements  
Damaged Land  
Tree Protection.

7.3 Although a physical work or activity may need planning permission, the Planning Enforcement Officers may not be the most appropriate enforcement body. Other departments may have an involvement in the case and their enforcement powers may be more appropriate or more effective:

Licensing	Highways
Environmental Health	Property Services
Trading Standards	

7.4 Also, there may be statutory bodies outside the Council sector which would take precedence in enforcement:

Police  
Environment Agency  
Greater Manchester Waste Regulation Authority.

7.5 Planning Enforcement action can only be taken in the first 4 years after a breach of control in the case of building/engineering operations or conversions to a dwelling. The time period is 10 years in the case of a change of use or not complying with a planning condition. (In practice, it can be very difficult to determine the true start date of a breach of control).

7.6 The enforcement process is extremely complex, both in terms of the law and in terms of procedures. There are many opportunities for making mistakes, which take time to rectify. In addition, there are greater controls over surveillance and investigation following the Human Rights Act, PACE (Police and Criminal Evidence Act) and RIPA (Regulation of Investigation Powers Act).

7.7 After an Enforcement Notice is served, it does not take effect for 28 days. There is then another 28 days to comply (about 2 months in total). The Notice is suspended if a retrospective planning application is then made (perhaps another 2 or 3 months). The applicant then has a right of appeal (perhaps another 6 months). If the appeal is dismissed, only then does the Enforcement Notice come back into play – nearly a year after it was first served. In addition to that, there may well have been months of investigation and negotiation before the Enforcement Notice was served. If the Enforcement Notice is not complied with, the matter goes to the Magistrates Court which has its own time delays. From start to finish, and with matters going well, 12 months would be the minimum time span that could be reasonably expected. More than 18 months is not at all unusual. As a result, there

is a great incentive for Enforcement Officers to negotiate a compromise, which can be much quicker.

7.8 PPG18 about Planning Enforcement says that:

Enforcement action should be preceded by attempts to negotiate a solution.

Be sympathetic where unauthorised development by small business and the self-employed has taken place in good faith.

Be sympathetic when householders have been confused by Permitted Development rights.

7.9 A local planning authority is not bound to take any enforcement action at all. It is a discretionary power not a duty. However, failure to take action could lead to an Ombudsman complaint about maladministration.

7.10 It is possible to under-enforce and not require a full return to the original situation. PPG18 advises that 100% compliance should not be sought if it would be unduly oppressive on the perpetrator to do so. It is necessary to consider whether the environmental gain for a complainant would warrant the additional pain to the perpetrator. This means that the test when considering an enforcement matter or a retrospective application is not the same as when considering a normal planning application which has been made before works start. For instance, a normal application for a domestic extension might be refused if it extended too far into the back garden. However, if it was a retrospective application, the Committee would have to consider whether the benefits of demolishing part of the extension would outweigh the huge financial costs to the perpetrator. Is the gain from demolishing 3ft off an overlarge and unauthorised extension worth the £20,000 it would cost the perpetrator?

7.11 Magistrates Courts do not see many planning cases and are often not experienced in dealing with them. There is a tendency for them not to see planning breaches as serious compared with the normal criminal matters they deal with. Sometimes, there can also be sympathy with the alleged perpetrator. These can be seen as someone trying to earn a living but harassed by Town Hall bureaucrats. Although fines of £20,000 can be imposed, in practice they are often very low and do not reflect the profitability of a breach of control.

**8.0 GENERAL ISSUES ABOUT ENFORCEMENT**

8.1 If it appears that planning permission might be granted for some unauthorised activity (perhaps with conditions), then the proper course of action (recommended in PPG 18) is to ask for a retrospective application in order to regularise matters. A retrospective application is often the successful outcome of enforcement action.

8.2 A retrospective application cannot be refused as punishment for having started work without consent. Equally, enforcement cannot be used as a reprisal against someone, just because they have failed to apply for planning permission. It can only be done if it is probable that planning permission would have been refused. Taking enforcement action without proper reason is likely to lead to an award of costs against the Council.

- 8.3 A breach of planning control is not, in itself, an offence. It only becomes an offence if the person fails to comply with a valid Enforcement Notice. The unauthorised activity can continue until the Enforcement Notice is validated, after retrospective planning applications and/or appeals have been heard.
- 8.4 Breaches can take place at unsocial hours e.g. restaurants that should close at 11.30pm remaining open until the early hours. Repeated visits will be needed to show that there is a pattern of late opening. In a small enforcement team, the extra hours of surveillance can raise issues of work-life balance. Also the Time Off In Lieu that is generated means that daytime working is subsequently lost.
- 8.5 Enforcement action must be based on evidence that is clear and unambiguous to the local planning authority. It is not possible to rely on complainant's unsubstantiated allegations or assertions. However, complainants can be extremely helpful by providing background information, diaries of activity, old photographs etc, subject to them complying with recent legislation about surveillance.
- 8.6 The facts uncovered during an investigation may be sufficient to convince the complainant, but not sufficient to withstand cross-examination in Court. For instance, someone may be doing a low level of commercial car repairs in a domestic garage. This may be entirely obvious to neighbours. Nevertheless, it could be difficult to disprove the defence's claims that it was a hobby activity or that visitors were not friends or family.
- 8.7 Intermittent uses are especially problematic e.g. motorbike racing on farmland. Such a use can take place on 14 days a year without planning permission. As a result, there is a need to keep surveillance over a long period in order to identify the 15<sup>th</sup> occasion.
- 8.8 Incremental development is also difficult to deal with. Activities can start small and grow over the years, or there can be a gradual accretion of building works. A development can start innocuously but then intensify to such a level that it is a problem. It can be difficult to judge when the activity started, and how long it has been going at a scale that needs planning permission.
- 8.9 Enforcement work can be confrontational. People seem more willing to resist approaches from enforcement officers. Abuse is common, threats are not unusual. It is often unwise for an Enforcement Officer to meet alone with alleged miscreants (or complainants) in order to avoid intimidation or misunderstandings.

## **9.0 COMPARISON WITH OTHER GREATER MANCHESTER AUTHORITIES**

- 9.1 Because there are no Best Value Performance Indicators relating to enforcement, statistics are not available nationally. The Greater Manchester authorities do compile some on an irregular basis. The latest available are for the financial year 2001/2. These indicate that Bury is towards the bottom of the league in terms of the number of complaints received (Table 1). However, it is towards the top of the league for the caseload carried by each enforcement officer (Table 2). Bury has a middle ranking for the number of cases generated per 100,000 population and is most similar to Rochdale and Stockport (Table 3).

**TABLE 1  
NUMBER OF ENFORCEMENT COMPLAINTS 2001/02**

	<b>Number of Complaints</b>	<b>Number of Enforcement Officers</b>
Bolton	833	5
Manchester	726	5
Oldham	656	3
Trafford	645	4
Stockport	555	3
Rochdale	410	2
<b>Bury</b>	<b>366</b>	<b>1.5</b>
Tameside	230	3
Salford	210	2

**TABLE 2  
NUMBER OF ENFORCEMENT COMPLAINTS PER ENFORCEMENT OFFICER  
2001/02**

Trafford	323
<b>Bury</b>	<b>244</b>
Oldham	218
Rochdale	205
Stockport	185
Bolton	167
Manchester	145
Wigan	111
Wigan	111
Salford	105
Tameside	77

**TABLE 3  
NUMBER OF COMPLAINTS PER 100,000 RESIDENTS 2001/02**

Bolton	319
Trafford	306
Oldham	302
<b>Bury</b>	<b>203</b>
Rochdale	200
Stockport	195
Manchester	185
Wigan	147
Tameside	108
Salford	97

## **10.0 BURY'S CURRENT PLANNING ENFORCEMENT SERVICE**

10.1 Since 1999, the number of enforcement complaints received has been relatively stable, at about 350 a year.

10.2 The enforcement establishment is as follows:

1 full time enforcement officer – post vacant but advertised.

half a post – the remaining half is for development control.

10.3 The main tasks of an Enforcement Officer are:

to investigate, record and monitor breaches of planning control, and to report these to the relevant Area Planner.

to work with the Borough Solicitor to progress enforcement matters.

to attend hearings/Magistrates Court etc and to present the Council's planning case.

to personally serve Notices where necessary.

10.4 At present nearly all enforcement work is prompted by queries and complaints from residents and Members, together with observations from Planning and Building Control officers. In other words, it is reactive. What the service is not able to do at the moment is to be proactive. It is not able to actively seek out and do surveys to discover breaches of planning control.

## **11.0 PROPOSALS FOR THE FUTURE**

11.1 A number of proposals are in-hand or in the work programme. These include the following:

The vacant enforcement post has been advertised and interviews will be held in early September.

A second (additional) full time enforcement post is being created, funded from planning applications income.

The Job Description for the two posts has been rewritten to require an increased level of responsibility and training. This has enhanced the salary grading.

The existing half post will specialise only in waste/tipping enforcement, with the rest of the time being devoted to normal development control.

The outmoded computer software is being replaced. The contract is about to be signed for a modern replacement. It will then be possible, for the first time, to produce monitoring information showing the case load of each officer and progress on each case.



Planning Control Committee has already agreed the types of cases it considers to be priorities. This will be kept under review

Enforcement work will only be effective if the Administrative back-up is efficient. Officers recognise that improvements are needed in the Planning Administration section. At the moment a Service Review of Planning Administration is taking place to see if there are better ways of working. Checks are to be made of good practice in other departments at Bury MBC and other local planning authorities.

Enforcement is also reliant on effective legal support. This has been a problem at Bury for several years because we have relied on locums from agencies, rather than permanent staff. Although the quality of the legal advice has always been good, the turnover of legal advisors has been a problem. However, it is now intended to appoint a full-time planning solicitor and a job description is being prepared.

A Service Review of Enforcement is underway at the moment. It is a cross-cutting review and deals with broad enforcement issues relevant to several departments. It is being led by the Borough Environmental Services Officer and covers topics such as record keeping, training, common procedures, sharing information, Health and Safety, etc.

## **12.0 CONCLUSION**

12.1 The current level of the enforcement service falls short of that which officers and Members would like to see. It is also short of that which the public is reasonably entitled to expect. Of course, there will never be a perfect and instant enforcement service. Huge resources and a change in the law would be needed to make that a reality. However, there are very real improvements we are making now, and others we need to introduce in the future. The purpose of this report is to show what the problems are and how we are trying to deal with them.

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***Background documents:***

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