

CHANGE OF SCHEME OF DELEGATION WITH RESPECT OF ADVERT AND PLANNING CONTRAVENTION NOTICE PROSECUTIONS

(Case Officer- Philip Stanley)

Summary

The prosecution of individuals / companies in respect of breaches of planning control is time consuming and resource intensive. However, in cases where all other avenues for planning enforcement action have been exhausted, commencing prosecution proceedings is often the final option to ensure compliance with the requirements of a Notice or to send a strong message to repeat offenders. A strong planning regime requires a robust enforcement element. Without an adequate and proportionate deterrent the planning process will be undermined.

In respect of prosecution proceedings in respect of breaches of advertisement controls and failure to respond to a Planning Contravention Notice, the level of punishment (upon a successful prosecution) is limited to a fine. These are generally low level cases that have conflicting demands where there is the need to act promptly, but not to use staff resources in a way that is disproportionate to the harm caused by the breach in planning controls.

As such it is recommended that the authority to prosecute in respect of the above are delegated to the Assistant Director (Planning, Development & Regeneration), Group Manager (Development Management & Planning), Team Leader (Specialist Services), or Team Leader (Planning Casework).

Purpose of Report

To recommend Council to amend Part 3, section 2.3 of the Council's Constitution, relating to the delegation of powers and functions to Officers from the Development Control Committee.

More specifically authority is sought to amend sub-section 2.3.4 and 2.3.44 (enforcement of planning control) to allow the delegation to Officers the power to commence prosecution proceedings in respect of advert and planning contravention notice breaches.

Breaches of advertisement controls

Background

An advertisement is a poster, placard, a fascia sign, a projecting signs, pole signs, canopy signs, models and devices, advance signs and directional signs, estate agents boards, captive balloon advertisements (not balloons in flight), flag advertisements, price displays, traffic signs and place name signs. Memorials and railway signals are not advertisements.

The standard conditions in the regulations for all advertisements is that they are kept clean and tidy and in a safe condition. They must have the permission of the site owner including the Council on highway land. They must not block the view of road, rail, waterway or aircraft signs and they must not be so permanent that they cannot be removed if required.

The definitive rules relating to advertisements are complex and contained within the Town and Country Planning (Control of Advertisements Regulations 1992) (as amended). In brief there are three different groups of outdoor advertisement covered by the regulations:

1. Advertisements which are deliberately excluded from control. Adverts in enclosed sites like a sports stadium, adverts displayed on a moving vehicle, and national flags are three examples that would fall into this group.
2. Advertisements which have 'deemed consent' meaning an application is not needed provided certain rules and limitations are complied with. There are 14 Classes of adverts that fall within this group.
3. Advertisements for which an application is always needed, i.e. they need express consent.

What are the Offences?

Adverts and fly-posts that have been displayed without the required advertisement consent have committed a criminal offence.

Under s.224 of the Town & Country Planning Act and Reg.30 of the Control of Adverts Regulations 2007 prosecution can be brought against either the owner/occupier of land on which it is displayed or the person whose goods/trade/activity are advertised by the advertisement.

In accordance with s.224 (3) any person found guilty of an offence will be liable on summary conviction to a fine not exceeding level 4 on the standard scale (presently £2,500) and, in the case of a continuing offence, £250 each day during which the offence continues after conviction.

The only defences available at trial are that the advertisement was displayed without the owner/occupier's knowledge, or that s/he took all reasonable steps to prevent display or secure the removal of the advertisement. Even the threat of prosecution can be a useful tactic whilst other processes run their course. Larger corporate advertising companies in particular, cannot afford the reputational risk of convictions. It should be noted that all it takes to make out an offence is a photograph of one illegal advertisement on one day.

Considerations

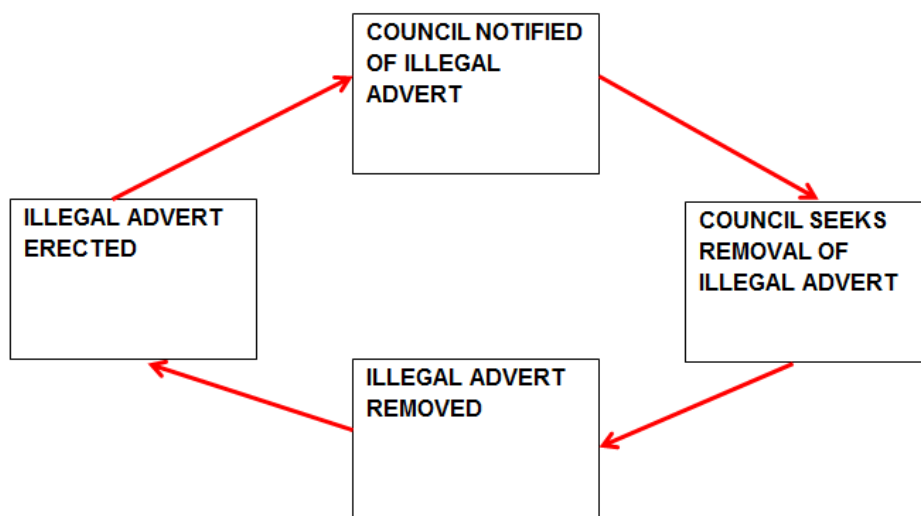
The illegal siting of advertisements, such as banners and Estate Agent Boards, is an on-going problem for this Council, with breaches being brought to our attention by both members of the public and Councillors. Similarly certain areas of the Borough's Town Centres, are periodically subject to fly-posting.

In dealing with these breaches of planning controls Planning Enforcement has to take into account competing demands.

On the one hand there is the need to act promptly. Usually the illegal advert is causing visual harm and is also often a distraction to motorists (the advert being displayed in a prominent position in the roadside) and is therefore a danger to highway safety. Furthermore, every day the illegal advert is left in situ the business / advertiser benefits from this illegal activity and would therefore be encouraged to repeat this activity in the future.

On the other hand the Council's Local Enforcement Plan states that cases involving the illegal display of advertisements are the lowest priority (priority 3). This takes into account the limited resources of the planning enforcement function and the need to deal with potentially irreversible breaches first (priority 1 cases such as works to a listed building or a preserved tree) and matters having a serious adverse impact to third parties second (priority 2 cases such as an unauthorised extension).

In respect of advertisements the planning enforcement team has historically had an approach whereby the breach was either dealt with directly (such as Officers removing fly-posting) or by contacting the advertiser asking them to remove their banner or estate agent board within a prescribed period (usually 48 hours). While this approach is almost always successful in securing the removal of the illegal adverts, it does not break the following vicious circle:



It has been demonstrated by the fact that the problem of illegal advertisements persists that simply dealing with the signs, banners, boards, etc. themselves is insufficient to prevent some individuals / businesses from re-offending.

It is appreciated that the Council has signed up to be 'open for business' and that there are circumstances where an error has been made (for example, a board company may not have followed an Estate Agent's clear instructions). As such it is considered appropriate to take a proportionate response. This involves looking at the business concerned and their recent history in terms of planning enforcement. Overall, the response of planning enforcement is determined by the number of breaches recorded against that business in a three year period:

- 1 breach – deal with breach / send out advisory letter.
- 2 breaches – invite the individual into the Council for an informal discussion / send out final warning letter.
- 3 breaches – potentially invite for a PACE interview / issue Caution or Prosecute.
- 4 breaches – commence prosecution proceedings.

The above approach ensures that individuals and businesses are treated in a consistent manner. However, it also necessitates that the Council ultimately 'shows its teeth' in dealing with repeat offenders.

As such the Council has recently taken the step to commence prosecution proceedings and in the last six months the Council has successfully prosecuted The Manor Gym (for the prolonged display of a large banner on the side gable of a residential property) and SureSale (for persistent breaches of the regulations relating to the display of estate agent boards). The Council is also in the process of taking a second estate agent (Sterling) to the Magistrates Court for continually displaying estate agent boards on land that is not for sale or for rent.

However, in order to commence prosecution proceedings, the Officers at present need Members approval in accordance with the Scheme of Delegation within the Council's Constitution. This involves the preparation of a Part II report, the preparation of a presentation for Members and Officer attendance at Development Control Committee, as well as the administrative functions of keeping the offender and complainant informed of the Council's actions. It is considered that this work is disproportionate to the seriousness of the matter (priority 3) and the level of punishment that the Courts could decide to give (a relatively small fine). Furthermore, this work runs counter to the need for the Council to act promptly in dealing with breaches of advertisement control, due to the inherent three-weekly cycle of committee dates. It should also be borne in mind that the Council has a six-month period in which to seek prosecution of advertisement breaches and therefore a delay in starting this process could result in the Council no longer being able to take action against an offence.

Finally, it must be noted that research undertaken one month ago by East Herts District Council revealed that six local authorities already had delegated powers in respect of prosecuting for breaches of the advertisement regulations. The three local authorities that do not have delegated powers are East Herts (who are likely to change their Scheme of Delegation as part of their work in creating their Local Enforcement Plan), St. Albans (who provided no response) and Dacorum.

Conclusion

A balance needs to be struck between the need for Officers to act promptly when dealing with breaches of the advertisement regulations, the need to send out the right message regarding a robust enforcement function, and also the need to use Officers' limited resources in a manner that is proportionate to the maximum penalty that can be given for the offence.

The delegation to Officers to commence prosecution proceedings in respect of advertisement offences under Section 224 of the Town and Country Planning Act 1990 would enable Officers to deal with continued breaches of the advertisement regulations in a more timely, efficient and proportionate way.

Breaches of the requirements in respect of Planning Contravention Notices

What is a Planning Contravention Notice (PCN)?

Planning Contravention Notices are a useful tool planning enforcement officers can use at the early stages of a planning enforcement investigation. It is a means of

obtaining information about an alleged breach of planning control; it also has the benefit of giving a clear warning that further action is being considered. The PCN will usually set out a list of questions about the site/development.

A planning contravention notice may only be served when it appears to the local planning authority that a breach of planning control may have occurred and they want to find out more information before deciding what if any enforcement action to take. It should not be used to undertake an investigative trawl just to satisfy the local planning authority about what activities are taking place on a parcel of land.

This is a discretionary procedure – the local planning authority need not serve a planning contravention notice before considering whether it is expedient to issue an enforcement notice or to take any other appropriate enforcement action.

It should be noted that a PCN is not available for use where there are suspected breaches of listed building or conservation area control, hazardous substances control or control of protected trees. This is because breaches in these matters are an Offence under the Act and therefore the offender has a right to silence.

What are the offences?

There is no right to silence with regards to a PCN. A failure to complete or return the PCN within 21 days is an offence under Section 171D (1) of the Town and Country Planning Act 1990. In accordance with sub-section (5) it shall be a defence for a person charged with this offence to prove that he had a reasonable excuse for failing to comply with the requirements of the PCN. A person found guilty of an offence of not complying with the requirements of the PCN is liable on summary conviction to a fine not exceeding level 3 on the standard scale (presently, therefore, a maximum fine of £1,000).

The provision of false or misleading information on the notice which he knows to be false or misleading is a further offence under Section 171D (5) of the Town and Country Planning Act 1990. A person found guilty of this offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale (presently, therefore, a maximum fine of £5,000).

Considerations

The Planning Enforcement team regularly use the power to serve a PCN where they suspect that there has been a breach of planning controls. The answers being sought provide Planning Enforcement with the information they need to make an informed decision on what is the most appropriate course of enforcement action.

For example, without knowing the ownership details of the land, or those who have an interest in the land, then it is possible for the Council to incorrectly serve an Enforcement Notice. Equally, the basis for serving the Enforcement Notice can be undermined if information is provided at the appeal of an Enforcement Notice stage, when that information should have been provided within a PCN response.

Therefore, the failure of an individual to respond to a PCN causes Planning Enforcement with some difficulties in deciding what steps to take next.

It must also be noted that the failure of the Council to deal with non-return of a PCN has an impact on the external reputation of the Council and its planning enforcement functions. An authority will be known as one that does not prosecute for PCN

offences and this has the knock-on effect of encouraging even more recipients of PCNs not to provide the answers Planning Enforcement are seeking.

In 2014 Planning Enforcement served 27 PCNs out of which nearly 20% (5) were not returned. In 2015 Planning Enforcement have served 23 PCNs out of which over 26% (6) have not been returned.

In addition to the above it is worth emphasising the Officer time spent chasing PCN responses. In several of the cases referred to in 2014 and 2015 a response to the PCN was received some considerable time after the deadline for a response and after staff resources had been spent repeating requests for a response to the PCN. Importantly, this slows down the speed in which Planning Enforcement can deal with a breach of planning control.

At this stage Planning Enforcement has not chosen the option of prosecuting for non-return of a PCN. In part this is due to the additional hours and resources that would be required in preparing a Part II report seeking Members' authorisation to commence prosecution proceedings. If there were a policy in place seeking to prosecute for non-return of the PCN, this would have necessitated 11 additional Part II reports since the beginning of 2014 for matters where the maximum penalty upon a successful prosecution is £1,000.

Conclusion

A balance needs to be struck between the need for Officers to receive the required site and development information regarding a breach of planning control, the need to send out the right message regarding a robust enforcement function, and the need to use Officers' limited resources in a manner that is proportionate to the maximum penalty that can be given for the offence.

The delegation to Officers to commence prosecution proceedings in respect of an offence under Section 171D (1) of the Town and Country Planning Act 1990 would enable Officers to deal with the failure to receive a response to a PCN in a more timely, efficient and proportionate way.

Quarterly Report for Members

It is proposed as part of this change to the Council's Scheme of Delegation that a Quarterly Report is prepared for Members that outlines all cases that have gone to prosecution. This Report would inform Members of what stage these cases are at and what progress has been made.

Recommendation

Authority is therefore sought to amend Part 3, section 2.3 of the Council's Constitution, relating to the delegation of powers and functions to Officers from the Development Control Committee.

More specifically authority is sought to amend sub-section 2.3.4 and 2.3.44 (enforcement of planning control) to allow the delegation to Officers the power to commence prosecution proceedings in respect of advertisement and planning contravention notice breaches.