

Public Document Pack


SUMMONS

MEETING OF THE COUNCIL

Wednesday 24 February 2016

Council Chamber - Civic Centre

You are hereby summoned to a meeting of the Dacorum Borough Council in the County of Hertfordshire to be held in the Council Chamber - Civic Centre on Wednesday 24 February 2016 at 7.30 pm to transact the business set out below.



**SALLY MARSHALL
CHIEF EXECUTIVE**

TO ALL MEMBERS OF THE COUNCIL

**Contact: Jim Doyle ext 2222
 Louise Collins ext 2633**

AGENDA

1. MINUTES

To confirm the minutes of the meeting of Council on 20 January 2016

2. DECLARATIONS OF INTEREST

To receive any declarations of interest

3. PUBLIC PARTICIPATION

To consider questions (if any) by members of the public of which the appropriate notice has been given to the Assistant Director (Chief Executive's Unit).

4. ANNOUNCEMENTS

To receive announcements and business brought forward by the Mayor, the Leader of the Council, Member's of the Cabinet, Group Leaders or the Chief Executive.

4.1 By the Mayor:

4.2 By the Chief Executive:

4.3 By the Group Leaders: Any apologies for absence

4.4 Leader of the Council and Members of the Cabinet:

Councillor Williams	Leader of the Council
Councillor Mrs Griffiths	Housing
Councillor Harden	Residents & Corporate Services
Councillor G Sutton	Planning and Regeneration
Councillor Marshall	Environment, Sustainability and Regulatory
Services	
Councillor Elliot	Finance & Resources

5. QUESTIONS

To consider questions (if any) by members of the Council of which the appropriate notice has been given to the Assistant Director (Chief Executive's Unit).

6. BUSINESS FROM THE LAST COUNCIL MEETING

To consider any business referred from the previous meeting

7. CABINET REFERRALS (Pages 5 - 12)

To consider the following referrals from Cabinet:

7.1 CA/017/16	9 February 2016	Budget and Council Tax Setting
7.2 CA/018/16	9 February 2016	Senior Officer Pay Policy
7.3 CA/021/16	9 February 2016	Corporate Plan 2015-2020

8. OVERVIEW AND SCRUTINY REFERRALS

None.

9. CHANGES TO COMMITTEE MEMBERSHIP

To appoint Councillor Fisher to the Standards Committee.

10. CHANGE TO COMMITTEE DATES

To consider the following changes to the Committee Dates:

1. Development Control

Due to arrangements at the Civic Centre for the PCC Elections, the meeting of the Development Control Committee on Thursday 28 April 2016 will be held at Grovehill Community Centre, Henry Wells Square, Aycliffe Drive, Hemel Hempstead, HP2 6BJ.

2. Strategic Planning and Environment Overview and Scrutiny Committee

To add an additional meeting for Tuesday 12th April 2016 at 7.30pm

11. APPOINTMENT TO THE STANDARDS COMMITTEE

Report to follow

12. CHANGE OF SCHEME OF DELEGATION IN RESPECT OF ADVERT AND PLANNING CONTRAVENTION NOTICE PROSECUTIONS (Pages 13 - 19)

13. EXCLUSION OF THE PUBLIC

EXCLUSION OF THE PUBLIC

To consider passing a resolution in the following terms:

That, under section 100A(4) of the Local Government Act 1972, the public be excluded during the item in Part II of the Agenda for this meeting, because it is likely, in view of the nature of the business to be transacted, that if members of the public were present during this item there would be disclosure to them of exempt information relating to the financial and business affairs of the Council or of any particular person,

Local Government Act 1972, Part VA, Schedule 12A, Part 1 paragraph 3.

- 14. APPENDIX B - PART 2 MINUTES OF THE COUNCIL MEETING 20 JANUARY 2016**
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ITEM 7 – REFERRALS FROM CABINET

9 February 2016

7.1 CA/017/16 BUDGET AND COUNCIL TAX SETTING

Decision

Resolved to recommend:

General Fund Revenue Estimate

- a) a Dacorum Borough Council General Fund Council Tax requirement of £10.218m, and of £10.908m for the combined Borough Council and Parish Councils' requirement for 2016/17;
 - b) an increase of 2.78% in Council Tax for Dacorum Borough Council;
 - c) the base estimates for 2016/17, as shown in Supplementary Appendix A1,* and the indicative budget forecasts for 2016/17 – 2019-20, as shown in Supplementary Appendix A2;
 - d) the forecast balances of the Revenue Reserves as shown in the Supplementary Appendix J, and approve paragraphs 10-20 of the Cabinet report as the updated Reserves Strategy.
- a) approve increases in Fees and Charges for 2016/17 as set out in Appendices C3, D3, and E3
 - b) approve and adopt the Treasury Management Strategy for 2016/17, attached at Appendix K;
 - c) approve and adopt the Treasury Management Principles and Practices for 2016/17, attached at Appendix L;
 - d) note that this budget paper, when approved by Council, will form part of the Medium Term Financial Strategy

Four Year Settlement

- e) delegate approval to the Corporate Director (Finance & Operations) in consultation with Budget Review Group to decide on whether to accept Government's offer of a four-year finance settlement.

Capital Programme

- f) approve the revised Capital Programme for 2015/16, and for 2016/17 to 2020/21, as detailed in Appendix I;
- g) approve the financing proposals in Appendix I subject to an annual review of the financing options by the Corporate Director (Finance & Operations), in consultation with the Portfolio Holder for Finance and Resources, during the preparation of the Statement of Accounts.

Housing Revenue Account (HRA)

- h) reduce dwelling rents by 1% in accordance with government legislation, resulting in an average rent of £105.19 per week (based on 52 weeks);
- i) approve the HRA estimate for 2016/17 as shown in Appendix F.

Terms & Conditions

- j) approve the continued application of a living wage supplement for all affected employees, in accordance with the rates of the Living Wage Foundation, for 2016/17 (to be reviewed annually thereafter).

Statement by Chief Finance Officer

- k) approve the statement by the Chief Finance Officer regarding the robustness of the budget estimates and level of reserves as set out in Appendix M.

(* Appendices can be found in the reports considered at Cabinet.)

Reason for Decision

To present to Cabinet budget proposals for recommendation to Council in relation to:

- Revenue and Capital Expenditure together with the potential use of reserves
- The setting of the Council Tax for 2016/17
- The Treasury Management Strategy 2016/17
- The level of fees and charges for 2016/17
- Advice to Councillors on the robustness of the Budget proposals and adequacy of balances and reserves as required by the Local Government Act 2003

Monitoring Officer:

Under the Council's Constitution it is the responsibility of Cabinet to draw up firm proposals for the Budget, having regard to the responses to the consultation, and to present those proposals to full Council for approval. Once full Council has approved the Budget it is the responsibility of Cabinet to implement it.

S.151 Officer:

Comments contained in body of report to Cabinet. Chief Finance Officer Statement contained in Appendix M of the report.

Implications

Financial & Value for Money

Contained within the body of the report

Risk Implications

Budget Risk Assessment completed within report (Appendix M)

Corporate Objectives

All of the Council's corporate objectives are reflected in the Budget proposals.

Advice

The Corporate Director for Finance and Operations explained that following issue of the Final Local Government Finance Settlement on 8 February 2016, supplementary recommendations were therefore being recommended to Cabinet. Each recommendation listed in the supplementary report to Cabinet supersedes the recommendations of the same letter within the original Cabinet Report. All other recommendations in the Cabinet Report remain extant and are not superseded by the supplementary recommendations.

In addition he added that on 17 December 2015, the Provisional Local Government Finance Settlement for 2016/17 was announced. The Provisional Settlement formed the basis for the Council's draft 2016/17 budget, which was scrutinised by Joint Overview & Scrutiny on 2 February 2016, and was subsequently published within the current Cabinet Report.

On 8 February 2016, the *Final* Local Government Finance Settlement for 2016/17 was announced, which contained a number of significant amendments from the provisional Settlement.

He noted that there could still be amendments required regarding the reduction in council rents and therefore a further paper to Cabinet may be required in February to be considered at a meeting immediately prior to Full Council.

The Chief Executive asked where the council would stand if the Bill was not an Act by the time the rent rates needed to be approved.

The Corporate Director for Finance and Operations said the council would be kept up to date with the options to be considered.

The Portfolio Holder for Housing felt that if the Bill was not an Act by the 1st April 2016, then the proposals should not be implemented until the following year.

The Leader of the Council noted that the council was caught out with this a few years ago and had to act on the rent rates retrospectively, which was a very long and complicated process.

The Portfolio Holder for Environmental, Sustainability & Regulatory Services said that the council had to give a certain amount of weeks' notice to its tenants about what their rent would be for the next financial year.

The Corporate Director for Finance and Operations said that Full Council will be asked to approve a 'best guess' rate which the tenants will be billed for. The council would have to act accordingly if this rate was subsequently amended.

The Leader of the Council said that there could be difficult challenges and decisions over the next few years to bridge the £4.2 mil gap.

Voting

None.

Decision:

Resolved to recommend:

- (1) to adopt the Pay Policy for 2016/17 as set out in appendix 1 to the Cabinet report.
- (2) That any amendments to the Pay Policy throughout the financial year 2016/2017 which are required as a result of legislative changes can be approved by the Chief Executive in conjunction with the Council's Monitoring Officer .

Reason for Decision

To set the Council's pay policy for the financial year 2016/17, as required by Section 38 of the Localism Act 2011.

Monitoring Officer:

Comments have been incorporated into the report.

S.151 Officer

There are no budgetary pressures arising from the recommendations in this report.

Implications

Equality Implications

The Pay Policy Statement adheres to national guidance on pay equality.

Risk Implications

There needs to be a robust procedure in place to ensure transparency of information and equality in staffing costs and remuneration.

Health & Safety

No implications from this report.

Corporate Objectives

The Council's policies in respect of pay and terms and conditions support all five of the Council's strategic objectives as part of ensuring that services to the community can be delivered to the required standards and with due regard to economy, efficiency and effectiveness

Advice

The Portfolio Holder for Residents & Corporate Services explained that the Senior Officer Pay Policy has been refreshed for 2016/2017 in line with the Localism Act 2011 requirements. The main changes are:

- The amendment to the leadership structure following retirement of the Assistant Director Chief Executive's Unit.
- A section on additional payments for deputising Statutory Officers
- Additional information on election fees

- A note on the possible imposed a cap on 'exit payments' which can be made to public sector employees who leave voluntarily and the implications this may have on the pay policy.

The Chief Executive highlighted that paragraph 11 within the report should be amended to read that 'these changes are proposed to take effect from 1 May and not 1 June'. She added that paragraph 4 of appendix 1 related to section 8.8 of the policy.

The Leader of the Council asked how the new national living wage fitted in the DBC pay scales.

The Corporate Director for Finance and Operations explained that the national living wage would be £8.20 so the council pay scales would reflect this.

The Leader of the Council noted that this would mean that council staff would be on a band 3 at least.

Consultation

Consultation took place with:

- Sally Marshall (Chief Executive)

Voting

None.

7.3 CA/021/16 CORPORATE PLAN 2015-2020

Decision

Resolved to recommend:

- 1. the Corporate Plan 2015 to 2020 for adoption**

Reason for Decision

To seek Cabinet approval for the referral of the Council's new Corporate Plan – 2015 to 2020 to Council for approval

Monitoring Officer:

No further comments to add to the report.

S.151 Officer

There are no direct financial consequences of this report. The Corporate Plan sets out the aims of the Council over the next five years and will help inform the Medium Term Financial Strategy.

- Corporate Management Team
- Dacorum Borough Council Officers

Implications

Financial

The plan sets out the priorities and vision for the organisation over the next five years. As a result it will inform and shape the strategic and financial decision making process of the organisation, including our Medium Term Financial Strategy (MTFS).

Value for Money

A key priority within the plan is 'Delivering an Efficient and Modern Council'.

This will ensure that we focus on achieving the Council's savings and priorities while maintaining quality and protecting frontline services.

Risk Implications

Risk Assessment completed on 18th January

Risk 1

The plan sets out the priorities and vision for the Council over the next five years and frames the operational and financial planning.

Without a clear and considered document, there is a risk that we will start to work in a way that does not meet the expectations and needs of residents or Members.

Risk 2

The lack of a plan would increase uncertainty and makes it difficult for teams focus their attention and resources in the right area.

One of the key elements within a plan is to set out the priorities that the Council needs to address.

Risk 3

The plan also provides a series of key performance indicators enabling us to chart our progress.

Without an effective plan it is possible that we may be working in a way that causes duplication, waste or poor performance.

Corporate Objectives

The Corporate Plan will support all five of the Council's corporate objectives:

1. Clean and safe environment
2. Community capacity
3. Regeneration
4. Dacorum delivers
5. Affordable housing

It sets out the updated priorities for the Council.

Advice

The Leader of the Council said that the Corporate Plan sets out the priorities for the next few years and gives a focal point. The policies are ongoing and therefore the priorities were similar to previous years but do include projects for the future. He added that it would be made available online.

The Portfolio Holder for Housing asked if the council had sold 500 houses as previously it stated we owned 10,500 but now states 10,000. The Chief Executive said the figure better reflected the situation over the 5 years of the plan. She also highlighted that the priority titles had been changed to reflect a more accessible and action-orientated plan.

The Leader of the Council pointed out some minor amendments to the table showing the previous priority titles. The Chief Executive agreed to have these altered.

The Portfolio Holder for Environmental, Sustainability & Regulatory Services referred to the 'About Dacorum' section of the plan and asked if the figures shown for recycling, population and adventure playgrounds were for the calendar year or financial year for 2014. She asked if more current figures were available. It was noted that funding would be received for a specific year; however this plan covered a few years. She felt that the figure for funding shown in pounds and pence would be better shown as a percentage.

The Leader of the Council explained that the funding figures were an accurate reflection of the council's position and he felt that the figures were more meaningful shown in pounds and pence rather than a percentage. The Assistant Director for Performance and Projects noted that the figures were for 2014/15 and he would therefore look into 2015/16 figures.

The Leader of the council suggested including a footnote on the 'About Dacorum' page along with the others, to explain the dates the figures were obtained.

The Portfolio Holder for Environmental, Sustainability & Regulatory Services disagreed with the wording shown in the 'Looking Forward' section that 'the traditional view of the council as a one-stop provider of services is unrealistic' and felt 'one-stop' should be replaced. It was agreed that 'one stop' would be replaced with 'main'.

The Portfolio Holder for Environmental, Sustainability & Regulatory Services referred to the 'Building strong and vibrant communities' section and asked if indeed 'we' had delivered superfast broadband as it states, as she thought BT did this? The leader of the Council confirmed that BT did indeed lay the cables but DBC paid for it.

The Chief Executive suggested adding a publication date to the document, to illustrate when the figures were obtained. The Portfolio Holder for Planning & Regeneration felt that the picture of the Maylands Business Centre included in the plan was not very relevant to the text on the same page. The Portfolio Holder for Residents & Corporate Services noted that it referred to the text shown on the following page. The Assistant Director for performance and Projects would amend this illustration.

Consultation

Consultation took place with:

- Corporate Management Team
- Dacorum Borough Council Officers

Voting

None.

ITEM 12

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

Referral from the Development Control committee – 17 December 2015

RECOMMENDATIONS:

1. That authority to prosecute in respect of breaches of advertisement controls and failure to respond to a Planning Contravention Notice are delegated to the Assistant Director (Planning, Development & Regeneration), Group Manager (Development Management & Planning), Team Leader (Specialist Services), or Team Leader (Planning Casework).
2. That the following be amended:
 - a) 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; and
 - b) Specifically, sub-sections 2.3.3 and 2.3.4 (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.

MINUTE OF THE DEVELOPMENT CONTROL COMMITTEE – 17 DECEMBER 2015

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

P Stanley introduced the report and explained he was not expecting a decision but was hoping for a discussion from the members to find out their thoughts on the proposal. As this would involve a change to the Council's constitution, the report will need to go to Full Council.

The benefits of delegating authority to officers will allow them to act promptly and shorten the time that companies benefit from illegal adverts. It will also allow resources to be used efficiently and effectively. Furthermore, it will mean less Part 2 reports presented to the committee and will allow officers to spend more time on higher priority cases.

East Herts District Council is looking to delegate authority to officers and they revealed that six local authorities already had delegated powers in respect for prosecuting for breaches of the advertisement regulations.

P Stanley said that the proposal is to submit quarterly reports to the committee to update members on the progress of prosecutions.

Members were happy with the proposal and were happy to support the report when it is submitted to Full Council.

Report to the committee

(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

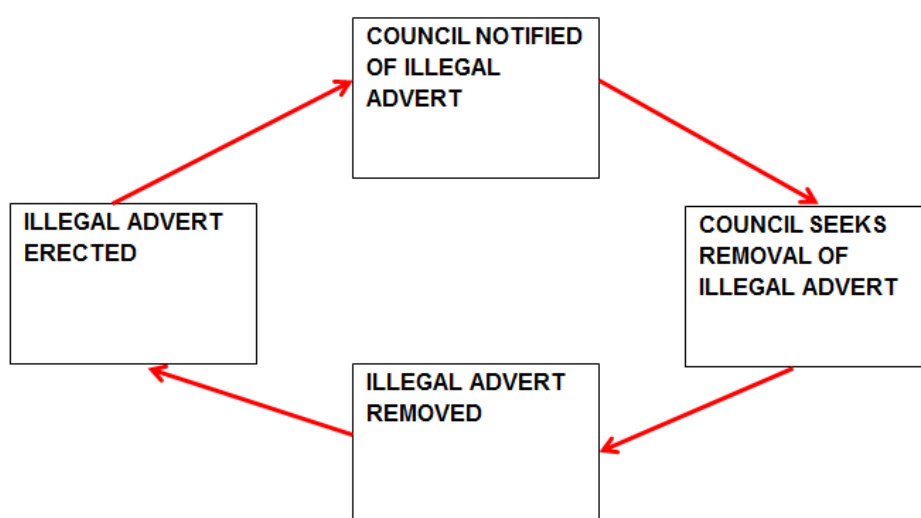
The illegal siting of advertisements, such as banners and Estate Agent Boards, is an on-going problem for this Council, with breaches being brought to our attention by both members of the public and Councillors. Similarly certain areas of the Borough's Town Centres, are periodically subject to fly-posting.

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 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.

Agenda Item 14

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

Document is Restricted