

**WYRE FOREST DISTRICT COUNCIL**

**CABINET**  
**24<sup>th</sup> April 2008**

**Amendment to Pro-Active Enforcement Policy and Scheme of Delegation**

<b>OPEN</b>	
<b>COMMUNITY STRATEGY THEME:</b>	A Better Environment
<b>CORPORATE PLAN THEME:</b>	Delivering Quality Services
<b>KEY PRIORITY:</b>	Best Practice
<b>CABINET MEMBER:</b>	Councillor Stephen Clee
<b>RESPONSIBLE OFFICER:</b>	Head of Planning, Health and Environment
<b>CONTACT OFFICER:</b>	Helen Watson Extension 2515 Helen.Watson@wyreforestdc.gov.uk
<b>APPENDICES</b>	Amended Scheme of Delegation Amended Pro-Active Enforcement Policy

**1. PURPOSE OF REPORT**

1.1 This report seeks Members' approval to amend the existing Scheme of Delegation for:

- Determining applications for Certificates of Lawful Existing Development and Certificates of Lawful Proposed Development.
- Correction of conditions following approval of the Development Control Committee.
- Closing certain enforcement cases and

Also for associated amendments to:

- Development Control Practice Note 13 – Public Speaking at Development Control Committee
- The existing Pro-Active Enforcement Policy

**2. RECOMMENDATION**

**The Cabinet is asked to RECOMMEND to Council that the following are adopted**

**2.1 - The Scheme of Delegation, as set out at Appendix 1 to this report and**

- **The Revised Pro-Active Enforcement Policy as set out in Appendix 2 of this report.**

**The Cabinet is asked to RECOMMEND to Council that:**

- 2.2 Authority is given to the Head of Planning, Health and Environment to amend Development Control Practice Note 13 – Public Speaking at Development Control Committee in accordance with paragraphs 4.1 to 4.3 of this report.**

### **3. BACKGROUND**

- 3.1 The report seeks approval for two amendments in respect of the existing scheme of delegation. Firstly to clarify the existing Scheme of Delegation in relation to requests by a third party to speak at the Planning (DC) Committee in respect of the determination of applications for Certificates of Lawful Existing Development and Lawful Proposed Development. Secondly to enable corrections and amendments to Conditions where the need arises after the application has been considered by Planning (Development Control) Committee..
- 3.2 In addition this report seeks to amend the procedure for closing enforcement cases where there is a breach of planning control, but it is not considered expedient or in the public interest to take formal enforcement action.
- 3.3 The Council's Pro-Active Enforcement Policy was first introduced in 1995 when members wished to move towards a more pro-active approach to enforcement. The policy has been reviewed a number of times since and was last updated in summer 2006.
- 3.4 The proposed revisions to the Pro-Active Enforcement Policy were considered by the Planning (Enforcement) Committee at their meeting on 3<sup>rd</sup> April at which time they resolved to support the amendments. The delegation proposals were considered by Planning (Development Control) Committee at their meeting on 8<sup>th</sup> April 2008 at which time they are resolved to support the amendments.

### **4. KEY ISSUES**

#### **Scheme of Delegation**

- 4.1 Under the existing scheme of delegation where a third party has registered to speak on an application the application needs to be reported to the Planning (Development Control) Committee. Members may also call for a matter to be referred to Committee. There is no distinction under the existing scheme of delegation between different types of applications.
- 4.2 This report seeks to clarify the arrangements for applications for Certificates of Lawful Existing Development and Lawful Proposed Development which are determined by the Council's Head of Legal and Democratic Services and not Development Control Officers. These applications are determined based either on the facts within the evidence submitted with the application or on a strict interpretation of the Town &

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Country Planning (General Permitted Development) Order 1995 and not on their development merits.

Although comments from Parish Councils and third parties may assist in providing supporting evidence or counter evidence for Certificates of Lawful Existing Development the final decision is still a legal judgement based on the information supplied.

- 4.3 These applications are not reported to Planning (Development Control) Committee.
- 4.4 It is therefore proposed that the existing scheme of delegation is amended to allow all applications for Certificates of Lawful Existing Development and Lawful Proposed Development to be determined under delegated powers, regardless of whether any representations have been received. This reinstates the position that existed before the Scheme of Delegations was amended in 2007 and provides clarity to members of the public who sometimes do not understand the difference between an application for a certificate and other applications for development.

### **Conditions**

- 4.5 Occasionally, following the Planning (Development Control) Committee it comes to light that, an error in the drafting of a condition has happened or that an essential condition has been inadvertently omitted. Currently there is no formal procedure for officers to correct such errors before the decision is issued.
- 4.6 To rectify this it is proposed that the scheme of delegation is amended to allow such corrections to be undertaken by the Head of Planning, Health and Environment or his representative, in consultation with the Chairman (or Vice Chairman in his absence) of the Planning (Development Control) Committee as long as the intentions of Members of Planning (Development Control) Committee are not undermined in so doing and the principle of the development remains unaffected, otherwise the application will be reported back to Planning (Development Control) Committee for them to consider the changes to or additional conditions.

### **Pro Active Enforcement Policy**

- 4.7 At present all new enforcement cases requiring enforcement action are reported to the Planning (Enforcement) Committee under the matters for information section of the agenda. This includes ones where no enforcement action is proposed for reasons of expediency. It is then the responsibility of the Local Ward Member(s) to request further details of any particular case.
- 4.8 There is currently no mechanism for enforcement cases, where there is a breach of planning control, to be closed without being first referred to the Planning (Enforcement) Committee.
- 4.9 There are many cases however where the unauthorised development is not causing any harm and as such it is not considered expedient to take enforcement action. In such cases where:
  - a) There is no harm being caused by the development

b) It is not expedient to take enforcement action

It is proposed that the case be closed subject to 21 days prior consultation with the relevant Ward Member(s). During the consultation information would be provided, in confidence, to explain the nature of any breach and why officers do not consider it expedient to pursue enforcement action.

- 4.10 In the event that the Ward Member(s) wishes the decision on whether the case is closed to be considered by the Committee, the matter will be reported to the next available Planning (Enforcement) Committee for consideration.

## **5. FINANCIAL IMPLICATIONS**

- 5.1 There are no financial implications associated with the proposed changes to the Scheme of Delegation, Pro-Active Enforcement Policy or Development Control Practice Note 13.

## **6. LEGAL AND POLICY IMPLICATIONS**

- 6.1 The Town & Country Planning Act 1990 provides that applications for Certificates of Lawful use or development are to be determined based purely on the lawfulness of what is applied for and it is therefore considered appropriate that these be determined within the Legal Services Section.
- 6.2 In terms of legal implications, legislation and appeal decisions/case law determine the matters that the Council should consider when deciding whether enforcement action is appropriate/expedient. The revised enforcement policy aims to reflect this. Whilst there is no legal requirement to have such a policy, it is considered a useful tool for Councillors, officers and members of the public.

## **7. RISK MANAGEMENT**

- 7.1 By allowing officers to make slight amendments to conditions this will minimise the risk of appeals against conditions or applications for judicial review by third parties.
- 7.2 In making decisions as to whether or not to take enforcement action, the Council is exposed not only to the possibility of appeals by those against whom action is taken, but also the possibility of Human Rights claims and/or ombudsman complaints by those aggrieved at a decision not to take action. By having in place and following a clear policy on enforcement, this should minimise the risk of any successful claim against the Council.

## **8. CONCLUSION**

- 8.1 The proposed changes to the way in which enforcement cases may be closed will allow officers to concentrate resources on those cases where the unauthorised development is causing serious harm. It will also avoid the need for committee meetings where there are no significant new cases to report to members.

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8.2 The proposed change to the change of delegation will also provide greater clarity Councillors and Members of the Public.

**9. CONSULTEES**

Head of Legal & Democratic Services

**10. BACKGROUND PAPERS**

PPG18

Cabinet Report – Review of Pro-Active Enforcement Policy – 27 July 2006

Development Control Practice Note 13 – Public Speaking at Planning (Development Control) Committee.

March 2008

Amended Scheme of Delegation:

1. Amend exception 10.

Any application, except applications for certificates of Lawful Existing Development and Proposed Development, where a request by a third party has been made to speak at Planning (DC) Committee, within 21 days of the date of the neighbour notification letter or the site/press notice, and the request accords with the Council's published policy and procedure for speaking at Planning (DC) Committee

2. Add: if required, to update the wording of conditions to planning permissions before the issuing of the decision notice subsequent to the resolution of the Planning (Development Control) Committee. Subject to consultation with the Chairman (or Vice Chairman in his absence) of the Planning (Development Control) Committee and as long as the intentions of Members of Planning (Development Control) Committee are not undermined in so doing and the principle of the development remains unaffected, otherwise the application will be reported back to Planning (Development Control) Committee for them to consider the changes to or the additional condition(s).

3. Under Complaints- breaches of planning control

Add: To close enforcement cases where there has been a breach of planning control but the Head of Planning, in consultation with the Ward Members, considers it is not expedient or in the public interest to take enforcement action.

Updated Pro-Active Enforcement Policy

Under COMPLAINTS (PAGE 13) add new bullet point:

- If a Breach of Planning Control is established, but it is considered that it would not be expedient or in the public interest to pursue enforcement action, following consultation with the Local Members, the case will be close and the complaint notified.

Figure 1 (page 16)

Amend BREACH TO:

- Notify transgressor and complainant of what action taken and proposed
- Request application or cessation of use as appropriate or
- Close case if considered not expedient to pursue enforcement action.

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