



John Silvester Associates

Planning & Management Consultants

WOKINGHAM BC PLANNING ENFORCEMENT SERVICES

AN INDEPENDENT REVIEW

Abstract: The Council demonstrates much good practice; nonetheless, the Council's enforcement service has been found to inadequately cover the essential requirements of an effective proactive service. Key issues to be attended to are communication, performance management and culture change. It has been established that there are a significant number of areas for improvement. As a result policy, practice and procedural changes have been identified and recommendations for action made accordingly.

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Wokingham BC Planning Enforcement Services Independent Review

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Wokingham BC Planning Enforcement Services Independent Review

1 Executive Summary

- 1.1 An independent review of Wokingham BC's planning enforcement service was undertaken by John Silvester Associates Ltd in July and August 2013; comparison of the Council's existing policies, practice and procedures was made against prevailing national policy and recognised good practice of other comparable councils elsewhere. Meetings with staff, elected members, residents and town/parish councils informed the review process.
- 1.2 The Council's enforcement staff are committed and hard working and there is much good practice; however, the Council's enforcement service has been found to inadequately cover the essential requirements of an effective proactive service. Through the review, it has been established that there are a significant number of areas for improvement. As a result policy, practice and procedural changes have been identified and recommendations for action made accordingly.
- 1.3 The Council recognises that planning enforcement is a valuable service; however, it needs to ensure that sufficient resources are made available to enable it to compare favourably with good practice elsewhere, that prosecutions should be sought on each appropriate occasion with successes publicised accordingly, and that communication with residents and town/parish councils is radically overhauled. A "contract" between the Council and town/parish councils should be entered into to deliver closer working and shared responsibilities.

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2 Introduction

2.1 As a result of concerns expressed by the Executive Member for General Planning & Affordable Housing, and amongst Wokingham Borough Council elected members generally, as to the effectiveness of planning enforcement practice and procedures John Silvester Associates (JSA) was appointed in June 2013 to undertake an independent review. The review was undertaken on behalf of JSA by John Silvester DipP(Dist), MRTPI, MIMSPA, MCMI.

2.2 The review requirements were set by the Council's Strategic Director Development & Regeneration (SDD&R) in association with the Head of Development Management (HDM) in discussion with John Silvester as follows:

- To undertake a review of the planning enforcement service to ensure that it is fit for purpose and is meeting the needs and requirements of Wokingham residents and elected members.
- The review will involve the following tasks:
 - a) a review of WBC current policy, procedures and practice (including documentation and discussions with appropriate officers¹);
 - b) provide a facilitated members workshop and use the outcomes from the session to inform the review;
 - c) provide a facilitated workshop with parish and town councils to inform the review;
 - d) meet with selected local residents¹ to gain an understanding and appreciation of local concerns, to inform the review;
 - c) to review current good practice for enforcement², including:
 - Cabinet Office Enforcement Concordat
 - Planning Advisory Service (PAS) – “A Stitch in Time”
 - Planning Officers Society published “Practice Guidance Note 5 - Towards Proactive Enforcement”
 - Surrey Planning Collaboration Project – Enforcement Review
 - Other good practice from broadly comparable authorities (e.g. district councils)
 - d) an assessment of how the WBC service compares with good practice; and
 - e) preparation of report with recommendations and implementation priorities.

2.3 The Council identified a fixed budget sum for the review which has limited to some extent the comprehensiveness of the review. Thus, whereas areas for improvement have been identified and recommended action made accordingly it has not been possible to suggest replacement procedures in great detail.

2.4 A member workshop on enforcement matters took place on 31st July 2013 facilitated by John Silvester. A further workshop, again facilitated by John Silvester, was held with representatives of town and parish councils on 22nd August 2013. Feedback from the workshops is summarised within the Report at section 3.

¹ In addition, it was agreed that a concerned member of the public should also be interviewed to allow their expression of views and to demonstrate the inclusiveness and transparency of the review.

² After the commissioning of this review the Department for Communities and Local Government published on 28th August 2013 a new suite of planning technical guidance, including “Ensuring Effective Enforcement”. This has been included in the review Report.

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- 2.5 A benchmark template was prepared itemising an identified range of good practice indicators and this, together with documentary information provided by the Council, was used as a basis for discussion with officers and for the review Report.
- 2.6 The complete commentary on the independent review findings is contained in the main body of this Report at section 6; with the recommendations separately listed in section 7. Whilst it was found that the staff are committed and hard working, in the main the service is found to cover the essential requirements only to a minimum level and as a result there is substantial scope for its improvement.
- 2.7 The Council is to be commended in commissioning an independent review of its planning enforcement service and it is trusted that it will take these findings on board; if it does so it is considered that this should contribute towards achieving a more responsive and proactive service. Whilst every effort has been made to propose the delivery of a more sound approach, given the parameters allowed for the review, no guarantee is given by JSA that the review has been exhaustive or that the results will fully meet the Council's aspirations.
- 2.8 John Silvester, Managing Director of John Silvester Associates Ltd, was until 2004 the Director of Planning & Community Services at Surrey Heath BC with responsibility for, amongst other services, planning enforcement. In 2002/03 he was the national President of the Planning Officers Society (POS). In 2006 he was engaged by the Planning Advisory Service (PAS) as the Programme Manager for the Surrey Planning Collaboration Project which included, amongst other matters, a review of enforcement services within all Surrey districts. John Silvester is the author of a number of POS good practice guides on development management matters³; John is also the author of a number of PAS elected member training modules⁴; and has undertaken similar reviews of the planning enforcement service for a number of other district councils.
- 2.9 Further information on JSA, its services and clients can be found on the JSA website⁵.

³ For example *Shop Front & Security Shutters* at http://www.planningofficers.org.uk/POS-Library/POS-Good-Practices/Shop-Front-Security-Shutters_260.htm and *Guide to the Need for Planning Permission for Swimming Pools in Gardens* at http://www.planningofficers.org.uk/downloads/pdf/guide_to_the_need_for_planning_permission_for_swimming_pools.pdf

⁴ John Silvester was part of the POSE Ltd/LDA team commissioned by the PAS to prepare development management member training modules. He was personally responsible for preparing modules on Probity & Planning and Member Involvement in Major Applications. He delivered, with colleagues, the final modules to South Cambridgeshire DC, Scarborough BC, Brentwood DC, South Gloucestershire C and South Kesteven DC.

⁵ See www.johnsilvesterassociates.com

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3 The Need for a Review

3.1 The Director of Development & Regeneration (DD&R) had identified a need for a service review in so far as elected members at Wokingham BC had expressed concerns regarding the effectiveness of enforcement practice in light of a general lack of appreciation as to what was being undertaken. As a result the DD&R came to the view that an independent review of the planning enforcement service was warranted; JSA was appointed in June 2013 to undertake such a review.

3.2 At the request of the Head of Development Management (HDM) an interview was conducted by John Silvester (JS) with a local resident who had previously expressed concern at the efficacy of the Council's enforcement service and provided a dossier of case related information. In summary the concerns⁶ expressed were:

- Cultural issue in that officers and management too readily say "no harm" and "overworked" and thus no need for any action
- Cultural issue in that officers/management present a manifestly uncooperative developer with a deadline, but when the time is up and there is no response from the developer, the Council fails to follow up with the action explicit from the deadline.
- WBC is regarded as a "soft touch" that damages the Council's reputation with the public
- Officers too readily accept word of developers and not of residents
- Feel officers have attitude that as some residents not directly affected they should not be bothering them
- Officers not inclined to verify developers' statements
- Slip shod procedures apparent; e.g. not keeping permanent watch on a site despite note from Legal to this effect
- Officers and management not prepared to listen and respond to reasoned arguments from residents
- Lack of responsiveness to legitimate correspondence

3.3 Interviews were also held by JS with several members and emails received from others. On 31st July 2013 a member workshop on enforcement matters took place facilitated by JS. The DD&R opened proceedings, the HDM provided a factual background to enforcement activity and performance and JS explained the purpose of the workshop and what the review would cover:

- Appoint independent expert
- Discussion with members to ascertain concerns and aspirations for the service
- Discussion with representatives of parish and town councils, and selected members of the public, to understand their concerns
- Review of documentation to catalogue existing policies and procedures
- Discussion with selected staff to gain understanding of existing practice
- Review of existing WBC service against good practice in comparable authorities
- Make recommendations

⁶ In addition, there were other comments made which, in the opinion of JS, do not bear directly on this Review:

- Council doesn't appreciate its green belt as much as it ought to
- Council delayed in getting additional information from applicant
- Residents had to take initiative to get a TPO imposed on a site
- Poor understanding of Council's responsibilities and powers regarding riparian land

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3.4 The HDM gave an outline to what the current enforcement procedures comprised and provided some general statistics. JS chaired an open discussion so as to identify:

- What's good about existing policies and practice?
- What's not so good?
- Any other aspects to be explored as part of the review?
- Members' aspirations for the service as what would they like to be achieved?

3.5 In summary⁷, members expressed a wide range of concerns/queries including:

- Small issues are dealt with quickly and well, but some major issues take too long to resolve
- Staff generally helpful, although they can't do everything we want
- Staff do let members know when enforcement action starts and stops
- Members are now kept informed (on a ward basis) as to when cases are closed
- Enforcement officers are diligent and capable. The direct management of them is poor and seems much more directed towards being seen to go through the process rather than achieving an outcome.
- Do now get a "sensitive sites" report on monthly basis and are able to access confidential information
- There is some legacy of inconsistency in decisions; however, level of information and responses has improved in last six months
- Whereas about half of cases don't come to anything, of the others residents are not kept informed as to what's happening
- Residents do not understand how complicated the enforcement legislation is and have a huge expectation which cannot always be realised
- Residents do not understand the enforcement system and that we negotiate solutions and not punish
- Problems start with what residents consider to be a breach and officers say it is not; need way of better informing residents
- Need to manage residents' expectations as to what is reasonable
- Need to treat residents as allies rather than an impediment
- Members do not always know what's right and wrong about a case and how matters should proceed
- Should try to resolve cases locally rather than have recourse to the High Court
- The public have perception that:
 - resolving cases where big developers are involved is too focussed on a negotiated solution rather than tough action
 - they do not get answers quickly enough, and if matters are delayed (such as going to appeal) they are not kept informed as to the reasons for the apparent delay
 - we bend over backwards to allow perpetrators to continue transgressing
 - perpetrators have better relationship with officers than they do
 - we are reluctant to provide information as to what people are allowed to do and not do
- We need to enable realistic expectations of residents
- There is no database of enforcement cases that members have access to
- Need to eliminate the backlog of major festering cases
- We should issue enforcement notices with a general requirement rather than with detailed lists that inspectors can pick and choose which ones to allow

⁷ The following comprises a summarised version of the comments made by members during the workshop, in interviews and in emails.

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- Some cases need time to investigate and these impact on other cases; do we have a resource implication?
- Do easier cases get dealt with more quickly?
- Our priorities should be set out on the website
- When complaint comes in members should be notified, and complainant notified within set period
- Need for clear guidance
- Members expect too much of the service, so need better appreciation of what can and can't be done
- Things that are urgent should get higher priority
- Need a protocol that states how long we will take to reply, etc and is regularly updated
- The current processes are entirely in the hands of officers. Once a complaint has been lodged it is pursued until it is declared expedient or not expedient.
- The decision is made once all the work has been completed. The decision is made entirely by officers.
- There is no measure published to officers and members to statistically measure performance.
- Without enforcement, much of the development strategies are without teeth and therefore it is vital that we have a robust and first class enforcement system.
- To be affordable, all available parts of the process need be harnessed.
- All transactions must be owned by officers and councillors jointly throughout the process.
- External communication is vital
- Need to better communicate success stories to general public
- WBC needs to celebrate its successes
- At least inform members of successes
- It might help to report on enforcement action by type of breach. Some categories suggested are:
 - construction or construction traffic not obeying rules on times, wheel washing, etc
 - things actually under construction not being built according to the approved plans
 - things under construction or having been built without any planning permission
 - breaches of other planning conditions
 - illegal signs
 - unauthorised activities (e.g. businesses in residential premises, car sales)
- It is the serial transgressors (the "big boys") that residents want to get dealt with
- The Council is known as weak on enforcement as seen as not taking action
- Seem to have an historic legacy - that we negotiate solutions is not seen as justice by residents
- Need consistency in the way we deal with transgressors, but can negotiate with residents and get tough with the big boys
- Planning law is weak in some areas
- We need to be clear as to what we do in relation to national policy as we can't go against it
- Need to be seen as strong where and when appropriate, and smoother with resident transgressors
- When dealing with major cases need different way of dealing with it than with minor resident's transgressions

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- Letters could be more personalised with less technical jargon and clear explanations; e.g. “not a breach” is not good enough
- Does the IT system constrain how much can be put in a letter?
- Is the IT system fit for purpose?
- Can members have access to case files via the intranet?
- Members need to be kept informed of process with a case, why delayed, etc
- Things get stuck in Legal; thought this might improve with the new legal service, but it doesn't seem to have.
- Should enforcement be located outside the planning department?
- Are there any skills gaps amongst the officers?
- Unlike some authorities that have done away with an enforcement team we do still have one.
- Are people alerted to site visits and remove the offending parts?
- Parish/town councils:
 - usually have very strong planning teams and very often are the original source of the concern
 - have strong local knowledge which is much of the enforcement officer's work.
 - could be actively involved in resolving local issues as they have local knowledge
 - have a potential role in intercepting problems and communicating information
 - they need to know the ground rules first
 - should not be expected to do our work
 - could monitor compliance with conditions
 - could operate a framework within clear guidelines
 - correctly harnessed and trained they could reduce the investigative workload substantially
 - need to be harnessed to provide the evidential base and the witnesses.
- As for the future service we need:
 - One we can trust
 - One not taken for granted
 - The best
 - To learn from the best
 - To share with other authorities
 - To know what to avoid
 - To examine the potential for a shared service with other authorities
 - To know what type of enforcement regime is right for future needs, and the cost implications
 - A software system that is fit for purpose, and that could be shared with others
 - To know what is reasonable in terms of response times, the expectations of residents and what other authorities achieve
 - The best in the country, but with options and resource implications
 - Costs of the service to be recouped via fines
 - Developers to know we're hot on things and then they will not try to get away with things
 - To have very good staff – currently task is mitigated by road they go down, i.e. 90% of cases not a breach
 - A town/parish council officer to filter things out and thus staff get to deal with the things they can take action over
 - Members need to be 100% behind what the officers do – currently we expect too much of them

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- All our “ducks in a row” so that when we go to court we go to win – have all the witness evidence, residents support, etc ready
- Ward members, officers and parish council working together successfully
- Ward Members and Borough Councillors, who in the past have only been informed, to be part of a continuous filter and particularly at the inception of the complaint to ensure that resources are devoted to the cases that WBC will find to be expedient. Ward Members should be part of that decision.
- Once the Borough Council decides on enforcement action, every WBC resource must be directed towards ensuring that the enforcement action is successful.
- Each failure to be used as a case study to inform continuous improvement and dissected by an officer and member team trying to squeeze it dry for everything which can be learned. Counter measures need to be devised to counteract failure modes and control systems to check their effectiveness
- A performance measure needs to be established
- Members to be better informed as to processes, procedures, etc
- Better communication, in non-technical way
- To publicise our successes
- Timely responses
- Regular enforcement workshops for members
- A triage system for cases; is the front end sufficiently well defined/fit for purpose?
- To thin out the 95% of quickly dealt with cases and thus concentrate on more important ones
- Need to prioritise as only so much resource to deal with all
- Expect zero tolerance

3.6 JS concluded by expressing the value to the review of members’ views, explaining what would happen next and when the report would be delivered.

3.7 A further workshop was held on 22nd August 2013 with representatives of twelve town and parish councils, again facilitated by JS. JS opened proceedings by explaining the purpose of the workshop and what the review would cover (as itemised at 3.3 above); this was followed by a discussion as to what was good about the enforcement service, what was not so good, what sort of service they would like, and whether they would welcome closer working with the Borough Council. A copy of the aide memoire used to conduct the meeting is contained at Annex A.

3.8 In summary, the parish/town councils expressed a wide range of concerns⁸ including:

- There is nothing good about the enforcement service
- Enforcement is non-existent
- Council reluctant to take any action
- Council imposes dates by which action should be taken, nothing happens and the Council doesn’t follow up/take action
- Retrospective applications really annoy us
- Why can it ever be “not expedient to pursue”?
- Does “not expedient” mean not enough resources to pursue?
- If there is not enough staff, Council should find the money and get more

⁸ Some issues raised were, in the opinion of JS, not directly relevant to the review but did have a bearing on matters; e.g. recent gypsy & traveller needs assessment had tone of “enforcement too difficult” and did not take into account that some occupiers of pitches were not true gypsies and should be moved out thus releasing space and no new pitches thus needed.

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- Borough councillors get progress updates but others don't
- Complainant never told about what's happening, offender gets better treatment
- We never get enough information as to how the system works
- If there are later changes to planning permissions we need to be told
- Why does the Council warn offenders of intended site visits as things are tidied up?
- After reporting something it takes weeks for a site visit
- If staff want to visit a site because feel may be intimidated then take the police along
- Ordinary person gets the Council along straight away and yet big companies don't
- One law for individuals and one for big companies
- Are individuals seen as easy targets?
- Are big companies not tackled as would cost more money?
- Some cases go on for years and parishes not informed as to what the Council is doing
- Some companies in breach for years, why does it take so long to deal with?
- When Court action taken council allows too long for compliance
- Some development [occupied sheds in back gardens] has been dismissed as not a problem, but now accepted it is and we don't know what action is being taken and when
- Accept that enforcement not easy and can take long time so it must be difficult to prioritise
- When officers attend parish meeting we just get lectured at, make us feel that no matter what we say we are treated as amateurs
- Is the Council aware of all the powers available?
- We have had to tell the Council what powers to use
- Are officers not doing what they should, or is the policy wrong?
- Is it possible to have a list of enforcement cases for each parish?
- Area is under pressure, people feel things being done to them and planning issues being flouted
- Some flagrant breaches of planning control
- People feel Council will not take action and thus do not even report things
- Can't always check things ourselves so rely on officers
- Have been asked if we can follow up matters as Council has not got enough officers
- Enforcement officers score 0/10, should be 10/10
- Why so many retrospective cases?
- In democratic society need to protect the majority and begin to take robust action
- Why not fine people if they don't go through the proper channels?
- Should prosecute people properly
- Retrospective applicants should be fined
- Some cases have public support and yet get action taken against them whereas gypsy sites allowed to extend into open countryside where there is no public support
- Some cases have long and complicated history and we can't know all the facts
- Officers have to give a reasonable time in which to respond and give offender a chance to put things right
- If we are given information as to what's happening we can inform local people
- We shouldn't have to chase for information
- Can information be available on the website?
- Some borough councillors helpful and discuss things; some know little and do little
- We're informed when a case opened and when closed, but not in between
- Seems to be an "us and them" attitude, why aren't we working together?
- Sometimes we have meetings but still do not get answers despite promises
- Is there a charter as to when we should get answers?

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- 3.9 As for the future, the town/parish council representatives were asked key questions by JS⁹ to which the responses are summarised below:
- Would you welcome closer working?
 - Yes
 - Communication would have to improve first
 - Parish lists of enforcement cases needed for all parishes
 - Need regular parish/borough meetings
 - Could you take on some responsibilities?
 - More formal footing welcomed
 - Welcome range of responsibilities⁸
 - Should be a contract agreed by both sides
 - Borough councillors should be the liaison point
 - Parish representatives could get more personalised treatment, e.g. called by first name
- 3.10 WBC member, and town/parish council, concerns, as expressed in interviews, by email and at the workshops and as summarised above, have as far as possible been embodied in this Review report. Further work would be required to examine or to implement member aspirations in full, this is highlighted in the Report's conclusions.

⁹ See Annex A

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4 The Main Principles of Planning Enforcement

4.1 This section of the Report identifies the main principles of enforcement by way of background to the review.

4.2 A breach of planning control is defined in section 171A of the Town and Country Planning Act 1990¹⁰ as:

- the carrying out of development without the required planning permission; or
- failing to comply with any condition or limitation subject to which planning permission has been granted.

Any contravention of the limitations on, or conditions belonging to, permitted development rights, under the Town and Country Planning (General Permitted Development) Order 1995, constitutes a breach of planning control against which enforcement action may be taken.

4.3 Planning policy at the national level is contained in the National Planning Policy Framework¹¹ (NPPF). The NPPF has a single paragraph on enforcement recommending the preparation of local enforcement plans:

“Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so.” (para 207)

4.4 The NPPF also cites a list of documents replaced by this framework, including *PPG18: Enforcing Planning Control* (20 December 1991)¹². The withdrawal of PPG 18 leaves a major policy vacuum which many professionals believe needs to be filled as this is an area of great interest to authorities and the public at large. After some years the Department of Communities and Local Government (DCLG) has issued new planning technical guidance on planning enforcement this was launched on 28th August 2013 as an on-line resource¹³.

4.5 In summary, the main principles of planning enforcement are:

- The use of enforcement powers is discretionary
- Carrying out development without planning permission is not an offence – it may be unauthorised but is not illegal
- Planning permission may be sought retrospectively

¹⁰ See <http://www.legislation.gov.uk/ukpga/1990/8/section/171A>

¹¹ The National Planning Policy Framework, March 2012 - see <http://www.communities.gov.uk/documents/planningandbuilding/pdf/2116950.pdf>

¹² PPG18 was published in 1991 and never updated. Although now withdrawn this document is still available for reference –see

<http://webarchive.nationalarchives.gov.uk/20120919132719/http://www.communities.gov.uk/documents/planningandbuilding/pdf/147492.pdf>

¹³ This is in Beta format, i.e. not subject to consultation per se but will be amended following comments; see the *Ensuring Effective Enforcement* section at <http://planningguidance.planningportal.gov.uk/blog/guidance/ensuring-effective-enforcement/what-is-a-breach-of-planning-control/>

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- 4.6 With regard to the use of discretion the NPPF states “*local planning authorities should act proportionately in responding to suspected breaches of planning control*” and the withdrawn PPG18 cited “*rapid initiation of enforcement action is usually vital to prevent a breach of control from becoming well established and more difficult to remedy*”. Furthermore, it is clear that the public interest should be foremost in the consideration of whether action is expedient; for example the question should always be posed ‘Would the breach be remedied if planning permission were granted if an application were submitted?’ The Ombudsman has held that where there is evidence of a breach of planning control, there will be maladministration unless the local planning authority (LPA) either solicit an application or consider taking enforcement action. In addition, enforcement action should always be commensurate with the breach of planning control to which it relates.
- 4.7 Thus, it is important to negotiate a satisfactory form of development if practical, but negotiations should not hamper or delay action; the LPA should not wait for the result of a planning application or appeal and complaints of breaches should be recorded and reasons given for no action.
- 4.8 The new DCLG on-line guidance states that LPAs:
- “have discretion to take enforcement action, when they regard it as expedient to do so having regard to the local development plan and any other material considerations. This includes a local enforcement plan, where it is not part of the development plan.*
- There is a range of ways of tackling alleged breaches of planning control and local planning authorities should act in a proportionate way.*
- In considering any enforcement action, the local planning authority should have regard to the National Planning Policy Framework”.*
- 4.9 Powers for the enforcement of planning control over the development and use of land are given by the Town and Country Planning Act 1990 as amended by Part I of the Planning and Compensation Act 1991¹⁴. This legislation allows the Council to use any of the following powers where there has been a breach of planning control which should be rectified:
- (i) the power to serve a 'planning contravention notice' where the Authority requires information about activities on the land, or the nature of the recipient's interest in the land;
 - (ii) the power to serve a 'breach of condition notice' to remedy the consequences of failure to comply with any condition or limitation imposed on a grant of planning permission;
 - (iii) the power to serve an 'enforcement notice' to remedy any other unsatisfactory breach of planning control;
 - (iv) the power to serve a 'stop notice' to require immediate cessation of an activity specified in an enforcement notice;
 - (v) the ability to seek an injunction, in the High Court, or County Court, to restrain any actual or reasonably anticipated breach of planning control.
- 4.10 In addition, to enable the local planning authority to exercise other powers under the provisions of the 1990 Act, the authority may serve a notice under S330 requiring information as to interests in land, including ownership and occupation details. There is no right of appeal against a s330 Notice and failure to respond is an offence.

¹⁴ See <http://www.legislation.gov.uk/ukpga/1991/34/part/i/crossheading/new-enforcement-powers>

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4.11 Section 215 of the Town and Country Planning Act 1990¹⁵ provides a local planning authority with the power, in certain circumstances, to take steps requiring land to be cleaned up when its condition adversely affects the amenity of the area. If it appears that the amenity of part of their area is being adversely affected by the condition of neighbouring land and buildings, they may serve a notice on the owner requiring that the situation be remedied. These notices set out the steps that need to be taken, and the time within which they must be carried out. LPAs also have powers under s219 to undertake the clean up works themselves and to recover the costs from the landowner. S215 action can be taken against land *and* buildings – in s336 of the Act the definition of ‘land’ includes a building.

4.12 The new DCLG on-line guidance makes it clear that human rights issues must be taken into account when considering enforcement action:

“The provisions of the European Convention on Human Rights such as Article 1 of the First Protocol, Article 8 and Article 14¹⁶ are relevant when considering enforcement action. There is a clear public interest in enforcing planning law and planning regulation, in a proportionate way. In deciding whether enforcement action is taken, local planning authorities should, where relevant, have regard to the potential impact on the health, housing needs and welfare of those affected by the proposed action, and those who are affected by a breach of planning control.

4.13 The new DCLG on-line guidance also usefully highlights why enforcement needs to be effective. This is critical to the review of Wokingham BC policy, practice and procedures. The guidance states that:

“Effective enforcement is important to:

- *tackle breaches of planning control which would otherwise have unacceptable impact on the amenity of the area;*
- *maintain the integrity of the decision-making process;*
- *help ensure that public acceptance of the decision-making process is maintained.”*

¹⁵ See Town and Country Planning Act 1990 Section 215 Best Practice Guidance (ODPM January 2005) at <http://www.communities.gov.uk/documents/planningandbuilding/pdf/319798.pdf>

¹⁶ See http://echr.coe.int/Documents/Convention_ENG.pdf

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5 Good Practice Review

5.1 Enforcement has often been described as a ‘Cinderella service’ – one that has not attracted adequate attention or resources. Backlogs of casework have built up in some areas, with unresolved cases running on for years. Authorities have variously attributed the cause of these delays to:

- a lack of resources invested in the enforcement function relative to other more easily measured and less overtly discretionary functions;
- a shortage of people with appropriate knowledge and skills; and
- rising numbers of complaints as the community become more aware of planning control as a means of shaping their communities.

5.2 One of the challenges to building an effective enforcement service lies in reconciling the disconnection between the resources available and the high profile that a failure to enforce against bad development has.

5.3 There is no single template for what constitutes best practice. The NPPF provides scant detail; PPG18 dates back to 1991 and has been withdrawn. The following comprises a review of Government advice and prevailing good practice including that by national organisations and other councils.

5.4 In 1998 the Government introduced the Enforcement Concordat: Good Practice Guide for England & Wales¹⁷ in collaboration with business and local and national regulators. The aim was to promote good enforcement that brings benefits to business, enforcers and consumers. The Enforcement Concordat encourages partnership working between enforcers and businesses, and sets out the Principles of Good Enforcement which enforcers should apply in order to achieve higher levels of voluntary compliance. The principles are:

- Standards: setting clear standards
- Openness: clear and open provision of information
- Helpfulness: helping business by advising on and assisting with compliance
- Complaints: having a clear complaints procedure
- Proportionality: ensuring that enforcement action is proportionate to the risks involved
- Consistency: ensuring consistent enforcement practice.

By 2009 over 96% of all central and local government organisations with an enforcement function have adopted the Enforcement Concordat. The Wokingham BC Enforcement Procedure Note indicates that the Enforcement Concordat is to be used by officers as a reference document.

5.5 In 2002 the Government issued a consultation on possible changes to the planning enforcement regime and the implicit recognition of the importance of planning enforcement¹⁸. In response the Planning Officers Society proposed an extensive list of essential changes¹⁹ and highlighted in particular the following:

¹⁷ See <http://webarchive.nationalarchives.gov.uk/+http://www.berr.gov.uk/files/file10150.pdf>

¹⁸ See the original consultation paper at <http://webarchive.nationalarchives.gov.uk/20120919132719/http://www.communities.gov.uk/documents/planningandbuilding/pdf/157701.pdf>

¹⁹ The POS response is no longer available for reference.

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“POS believes strongly that the entire planning process of statutory plans and planning permission is seriously devalued without a credible and effective enforcement regime. For too long enforcement has been regarded or treated as the Cinderella of town planning, due in part to lack of resources coupled with its status as a discretionary function. The effect of the inadequacy of current powers and resources can be seen in the environment of all our towns and cities.

“The current enforcement system is not as effective as it could be. The time taken to resolve enforcement issues means that often the amenity of those living close to unauthorized development is greatly compromised, bringing the whole of the planning system into disrepute.

The current enforcement culture of protecting those undertaking unauthorised development, as advised in PPG 18, unfortunately appears to condone and, to some extent, encourages breaches of planning control. The preparedness of the Magistrates Courts to give excessive latitude to defendants in enforcement cases, by accepting almost any excuse for not complying with an enforcement notices, makes local planning authorities even more wary of taking enforcement action. One of the fundamental issues to be addressed in reviewing the enforcement system is changing this culture.

POS therefore believes that the fundamental weaknesses of the present system are lack of resources, the culture of excessive protection of those against whom enforcement action is taken and protracted regulatory procedures.”

- 5.6 In November 2006 the Department of Communities & Local Government (DCLG) undertook a further Review of Planning Enforcement²⁰ which raised the profile of planning enforcement by means of 25 specific recommendations; some of these are directly applicable to LPAs:

*“**Recommendation 4:** local planning authorities should be encouraged to spend a proportion of their Planning Delivery Grant on enforcement perhaps through allocating a proportion of Planning Delivery Grant for performance on enforcement if a suitable indicator can be developed.*

***Recommendation 7:** the following initiatives will be linked to the general thrust of the Culture Change agenda.*

a) Enforcement staff should have a career structure.

b) Staff should be encouraged to rotate between all aspects of development control including enforcement. This would ensure that enforcement is understood by all planning staff.

c) There should be a common salary scale for all planning staff. Currently enforcement officers tend to earn less than other planning/development control officers.”

- 5.7 In February 2008 the Planning Advisory Service (PAS) published “A Stitch in Time”²¹ to establish some good practice in planning enforcement. PAS reported that the headline changes that have made the difference in many councils have been very similar:

- the establishment of an agreed policy framework for enforcement which is endorsed by members and which members themselves agree to abide by.
- a charter for planning enforcement which sets out a formula for prioritising casework.
- the introduction of better management arrangements, including performance standards and information systems, and regular progress reports.

²⁰ See the consultation at

<http://webarchive.nationalarchives.gov.uk/20120919132719/http://www.communities.gov.uk/documents/planningandbuilding/pdf/152627.pdf>

²¹ See <http://www.pas.gov.uk/pas/aio/51733>

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- the allocation of sufficient resources, with due attention to staff numbers, salary grades, career structures and training.
- a more pro-active approach, including monitoring developments for compliance with approved plans and conditions and negotiated solutions, leaving confrontation and prosecution as a last resort.
- a closer working relationship with the council's legal team, including regular meetings and a shared database.
- a greater awareness of the interests and expectations of others, including magistrates and the planning inspectorate, and a recognition of the need to promote the value and success of the service.

5.8 In February 2006, with the agreement of the Surrey Chief Executives and the Surrey Local Government Association, the Surrey Planning Officers Association (SPOA) attracted support from the Improvement and Development Agency (IDeA) and PAS for a planning collaboration project²², which was viewed as a national pilot for others to emulate in due course. As result of discussions between SPOA and PAS a list of benefits was devised:

- Improved services
- "Gershon" efficiencies²³
- Improved support to members
- Improved technical support to planning departments
- Networking and best practice opportunities for staff development

5.9 Seven individual projects were selected, including shared specialist services for enforcement. As part of the enforcement project a benchmark template was created outlining the nature of an effective enforcement service. This comprised 21 identified activities with success criteria against which each authority was assessed to highlight areas for improvement. This, together with the other good practice highlighted in this Report, has been utilised as the basis of the review of Wokingham practice and procedures; see section 6 of this Report.

5.10 Surrey Heath BC's approach to the prioritisation of dealing with enforcement issues/complaints was highlighted as a good practice example by the SPOA and by PAS. The Surrey Heath policy statement at that time²⁴ stated that:

"Complainants will normally be responded to (either orally or in writing as appropriate in the particular circumstances) explaining what action is being taken or is proposed to take place or why no further action is being taken, as the case may be, within the following timescales:

- Category A - within 48 hours from time of report.

Those matters as may be determined by the Chief Planner (Development Control) as requiring emergency action e.g. an unauthorised development which causes immediate and serious harm; unauthorised demolition or partial demolition of a building which it is essential to retain; development causing danger to highway users.

²² Following a competitive selection process John Silvester was engaged by PAS as the Programme Manager for the Collaboration Project. See details of the project at <http://www.pas.gov.uk/pas/core/page.do?pageid=28245>

²³ The Gershon Review was a national study into public service efficiency, and the management of change; see http://www.theworkfoundation.com/assets/docs/publications/119_efficiency,%20efficiency,%20efficiency.%20%20the%20gershon%20review.pdf

²⁴ This statement is now longer available; however, an updated one is available at [http://www.surreyheath.gov.uk/Surrey%20Heath%20Borough%20Council/Planning/PlanningEnforcementPolicySurreyHeath2009%20\(2\).pdf](http://www.surreyheath.gov.uk/Surrey%20Heath%20Borough%20Council/Planning/PlanningEnforcementPolicySurreyHeath2009%20(2).pdf)

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- Category B - within 5 days.

Serious harm to residential amenities e.g. noise and other emissions from premises; breach of a condition which results in serious harm to amenity; serious breaches of policy e.g. inappropriate development in green belt locations; unauthorised depositing of controlled waste and other engineering works involving changes to land levels. Allegations of building works not in compliance with, or without, planning permission. Alleged non-compliance with formal enforcement notice.

- Category C - within 8 days.

Office or other business activity in residential units. Contraventions of advertisement control - including fly posting. Matters which after initial investigation are determined to be technical breaches only and which do not give rise to any harm in planning terms.

- Category D - within 10 days.

Repetitions of previously resolved complaints.”

- 5.11 Rushmoor BC's approach to providing customer information was also identified as good practice by the SPOA. This is embodied by way of an Enforcement Charter²⁵ that sets out service standards for investigating and dealing with suspected planning breaches and their policies and procedures²⁶ that provides a firm decision-making framework for effective enforcement procedures. PAS also used the work arising from the SPOA Collaboration Project to establish a good practice guide to the process of planning enforcement investigation;²⁷ this is, in effect, a procedure manual for a LPA to utilise.
- 5.12 Another good practice element of the SPOA Collaboration Project highlighted by PAS was the development monitoring activity undertaken by the Surrey authorities. This is now common practice amongst those authorities wanting to monitor ongoing development and ensuring compliance with specific conditions²⁸ imposed on the development²⁹. Some authorities have imposed fees to off-set the cost of the service, such as for checks³⁰ to advise whether planning conditions have been complied with and the development has been carried out in accordance with approved plans.
- 5.13 Section 187A of the Town and Country Planning Act 1990 ("the 1990 Act") provides for enforcement of a planning condition by the breach of condition notice. It is recommended best practice to use such notices wherever possible to enable early resolution of unauthorised works, and to avoid further more formal action. It does not apply to breaches of listed building or conservation area control, hazardous substances control or control for protected trees. The breach of condition notice is mainly intended as an alternative to an enforcement notice for remedying a breach of control arising from failure to comply with any planning condition or limitation. But it may also be served in addition to the issue of an enforcement notice, perhaps as an alternative to a stop notice, where the LPA consider it expedient to stop the breach quickly and before any appeal against the enforcement notice

²⁵ The updated Charter is available at <http://www.rushmoor.gov.uk/article/3431/Planning-enforcement-charter>

²⁶ See <http://www.rushmoor.gov.uk/CHttpHandler.ashx?id=5446&p=0>

²⁷ See <http://www.pas.gov.uk/pas/aio/36872>

²⁸ It is recommended good practice that conditions be classified into three separate sections: (i) to be resolved prior to the commencement of development, (ii) to apply to the construction phase, and (iii) to endure for the lifetime of the development.

²⁹ See for example Richmondshire DC's practice at <http://www.richmondshire.gov.uk/planning/developmentmanagement/planningenforcement/monitoringdevelopment.aspx>

³⁰ For example at East Hampshire DC; see <http://www.easthants.gov.uk/ehdc/planning.nsf/webpages/Enforcement>

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is determined, because, for example, it is causing serious environmental harm, or detriment to amenity or public safety.

- 5.14 It is particularly apt for use where a valid planning condition has clearly been breached and the salutary experience of summary prosecution (or the threat of prosecution) seems likely to compel the person responsible to comply with the condition. If there is any legal doubt about the validity of a condition, use of the breach of condition notice procedure is inadvisable.
- 5.15 Section 171B(3) provides that no enforcement action can be taken against (among other cases) a breach of a planning condition after the end of the period of ten years from the date on which the breach first occurred. In effect, there is a ten-year "immunity" rule applicable to the service of a breach of condition notice (except a condition relating to use as a single dwelling house where the period of "immunity" is four years). Thus, assuming the breach has been continuous, any breach of condition which first occurred more than ten calendar years before the date on which the LPA formally recognise its occurrence (e.g. by notifying their opinion that there has been a breach to the owner or occupier of the land) has perpetual immunity³¹.
- 5.16 Section 183(1) provides the power to serve a stop notice³² where the LPA consider it expedient that any "relevant activity" should cease before the expiry of the compliance period specified in an enforcement notice; this enables the LPA to serve a stop notice which prohibits the carrying out of that activity on the enforcement notice land, or any part of that land. A "relevant activity" is any activity required by the enforcement notice to cease, and any activity carried out as part of that activity or associated with it. A stop notice may not be served once the related enforcement notice has taken effect. A stop notice may be served on any person who appears to have an interest in the land to which the notice relates, or who appears to be engaged in any activity prohibited by the notice. One of the attributes of a stop notice is that Section 187(1), as amended, provides that, when a person contravenes a stop notice after a site notice has been displayed or the stop notice has been served on them, they shall be guilty of an offence. A person found guilty of this offence by a magistrates' court is liable to a fine not exceeding £20,000; and, on conviction on indictment, to an unlimited fine. In determining the amount of any fine to be imposed, the court can have regard to any financial benefit which has or is likely to accrue.
- 5.17 Once the LPA have decided to serve a stop notice, it is essential to implement the decision speedily and effectively³³. There should always be a clear understanding (preferably stated in administrative instructions) about the respective responsibilities of the local authority's Planning Department and Legal Department for the necessary preparatory work, the formulation of the terms of the stop notice, the arrangements for serving it and how its practical effect will be assessed (including the need to bring a prosecution quickly if the notice is contravened). As such if a notice is contravened action should be taken swiftly by the LPA in bringing the case before the court.

³¹ See the legal practice note at

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/7709/319295.pdf

³² See <http://www.communities.gov.uk/documents/planningandbuilding/pdf/321033.pdf>

³³ See *Enforcing planning control - good practice guide for local planning authorities* at <http://regulations.completepicture.co.uk/pdf/Planning/Enforcing%20Planning%20Control-%20Good%20Practice%20Guide%20for%20Local%20Planning%20Authorities.pdf>

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- 5.18 There is also the ability to serve a Temporary Stop Notice (TSN³⁴) to enable councils to take immediate action against unauthorised development without having to wait three days for a Stop Notice, or 28 for an Enforcement Notice to come into effect (by which time it becomes costly and much more difficult to enforce against). It is rare to issue a TSN as in most cases the two to three weeks necessary delay in issuing enforcement notices (gathering evidence and gaining councillor approval to proceed) does not prejudice the site; thus TSNs are only used where the risk associated with the breach is of immediate concern. Stroud DC has been highlighted as a good practice example of using TSNs³⁵ and the Secretary of State has recently recognised their value in exceptional circumstances³⁶.
- 5.19 Section 215 of the 1990 Act has been used effectively by a number of local authorities on large vacant industrial sites, town centre street frontages, rural sites, derelict buildings of a range of sizes and semi-complete development as well as the more typical rundown residential properties and overgrown gardens. The scope of works that can be required in s215 notices is wide and includes planting, clearance, tidying, enclosure, demolition, re-building, external repairs and repainting. Hastings BC are amongst the authorities using s215 notices the most, using them as a matter of course to remedy a wide range of what many authorities would otherwise view as not extreme enough to warrant action³⁷. This demonstrates the versatility and practical nature of s215 notices.
- 5.20 In Hastings between June 2000 and February 2006:
- 234 formerly derelict and/or eyesore buildings were reported and rectified
 - 165 Section 215 Enforcement Notices were served
 - 16 successful prosecutions (out of 16) were obtained where enforcement notices had not been complied with
 - Around £70, 000 in fines and costs were recovered
 - Four cases of direct action were taken, where improvement works were carried out on behalf of the owner and the costs recovered.
- 5.21 Unlike s172 enforcement notices, appeal against the s215 notice is to the Magistrates Court. The grounds of appeal against the s215 notice are set out in ss217-218 of the Act. They are relatively limited and a carefully considered and composed, reasonable notice should reduce the chances of a successful appeal.
- 5.22 Advance notification to the landowner of the intention to serve a s215 notice is recommended best practice, as it can often bring about the desired result without the recourse of having to actually serve the notice. S215 notices are effective only in dealing with problems on a one-off basis rather than providing continuing control over the condition of a site. Unlike enforcement notices that provide continuing control against unauthorised use/development, taking the action specified in the s215 notice is generally regarded as compliance with the notice and has no continuing power. Any re-offence needs to be dealt with by a new s215 notice even if the condition of the site and harm to amenity is the same as that which warranted the previous notice. Lewes DC had a particularly difficult case where

³⁴ This provision is by way of Part 4 of the Planning and Compulsory Purchase Act 2004 which inserted sections 171E to 171H to the Town and Country Planning Act 1990 – see Circular 2/2005 at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/7671/circulartemporarystop.pdf <http://www.communities.gov.uk/documents/planningandbuilding/pdf/circulartemporarystop.pdf>

³⁵ See http://www.stroud.gov.uk/docs/press_releases.asp?doit=detail&nid=2019

³⁶ On 10th October 2012 issued a statement that greater freedom would be given to councils to prevent unauthorised traveller sites – see <http://www.communities.gov.uk/news/newsroom/2232314>

³⁷ See http://www.hastings.gov.uk/environment_planning/planning/info_advice/planning_enforcement/#section

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the condition of the land and buildings needed action on an annual basis. Earlier action had secured demolition of the buildings on the site but subsequent fly-tipping meant that s.215 notices had to be re-served on a regular basis.

- 5.23 Wherever possible action using s215 should, therefore, be combined with proactive measures such as empty homes strategies, development briefs and public/private funding programmes, as well as other reactive enforcement and development control tools (including conditions and legal agreements on planning permission).
- 5.24 It is important that officers and members keep abreast of emerging issues and case law to ensure they are familiar with and can apply good practice. For example the Southern Enforcement Officers Group³⁸ provides learning opportunities for practising enforcement officers and members of planning committees. Journals and publications should be obtained for officers and members; e.g. the “Enforcement handbook for planning enforcement officers in England and Wales”³⁹ and “Planning for Gypsies and Travellers – Enforcement”⁴⁰
- 5.25 In February 2008 the Planning Officers Society published “Practice Guidance Note 5 - Towards Proactive Enforcement”⁴¹ which was designed to help authorities who are seeking to introduce more proactive elements into their enforcement work to establish a consistent level of service. It reflected the experience of many other planning authorities who had already moved towards a more proactive enforcement service. The Guidance Note provides advice on policy, priorities and timescales, compliance with conditions, liaison with other parties and within the authority. The Guidance Note has been used in this Review of existing practice in Wokingham.
- 5.26 Effective communication of the principles of enforcement and local policy and procedures is vital for local authorities to convey this essential information and to enable effective dialogue. Good practice examples of effective display of information on council websites has been identified for Harborough DC⁴² which sets out in a very clear way the Council’s approach to enforcement, and also for Richmondshire DC⁴³ where its policy and procedures on enforcement are detailed.
- 5.27 Local authorities accept that they are unable to comprehensively monitor their areas for breaches of planning control and rely on the public to act as their “eyes and ears” and report potential breaches; some authorities work successfully with their parish/town councils⁴⁴. A good practice example of a council working with parish/town councils has been recognised as Melton BC which has adopted a procedure⁴⁵ to permit Parish Council’s to engage with officers over planning enforcement issues, including initial investigation into complaints and the carrying out of some enforcement duties. This operates on an entirely voluntary basis

³⁸ See <http://www.seog.info/>

³⁹ You have to be a member of the RTPI’s Network for Planning Enforcement to access this handbook - [http://www.rtpi.org.uk/knowledge/networks-groups-and-forums/planning-enforcement-\(nape\)/enforcement-handbook/](http://www.rtpi.org.uk/knowledge/networks-groups-and-forums/planning-enforcement-(nape)/enforcement-handbook/)

⁴⁰ See http://www.rtpi.org.uk/media/6345/GoodPracticeNotes4_D.pdf

⁴¹ See <http://www.planningofficers.org.uk/POS-Library/POS-Publications/Development-Management-Practice-Guidance-Note-5-237.htm>

⁴² See http://www.harborough.gov.uk/homepage/96/planning_enforcement

⁴³ See

<http://www.richmondshire.gov.uk/planning/developmentmanagement/planningenforcement.aspx#1916>

⁴⁴ See, for example, the Rother DC *Guide to Development Control Practice for Town and Parish Councils* (which includes a copy of the Council’s Enforcement Policy) at

http://www.rother.gov.uk/media/pdf/d/8/new_guide_for_town_and_parish_councils1.pdf

⁴⁵ See <http://www.melton.gov.uk/pdf/ITEM%207-%20Parish%20Council%20Enforcement%20Project%20review.pdf>

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and comprises ‘stratified’ level of involvement from which Parish Councils can choose, to ensure they are participating at a level they are comfortable with; Melton also provides a form⁴⁶ for parish councils to use in reporting complaints. Guildford BC also works with parish councils by providing the basic information requirements for the reporting of suspected transgressions.⁴⁷

- 5.28 Effective enforcement relies on consistent application of procedures. The integrity of the whole planning system, putting policies of a council into practice through development management decisions, depends on those involved in compliance and enforcement being equal partners in the planning process. This part of the process is the most litigious, technically complex and sensitive component of a development control regime. Some good practice examples of enforcement procedure manuals include that by Rother DC⁴⁸ and Copeland BC⁴⁹; in addition, flowcharts⁵⁰ of the enforcement process are useful adjuncts to a procedures manual.
- 5.29 Many authorities take advantage of joint planning enforcement training initiatives with neighbouring authorities, such as in Surrey and the East Midlands. There are also a number of recognised training courses available⁵¹, including Certificated Courses in Planning Enforcement⁵².
- 5.30 The new DCLG on-line guidance usefully summarises why it is important to have clear enforcement strategy. It states:

“The preparation and adoption of a local enforcement plan is important because it:

- *allows engagement in the process of defining objectives and priorities which are tailored to local circumstances;*
- *sets out the priorities for enforcement action, which will inform decisions about when to take enforcement action;*
- *provides greater transparency and accountability about how the local planning authority will decide if it is expedient to exercise its discretionary powers;*
- *provides greater certainty for all parties engaged in the development process.”*

⁴⁶ See <http://clawsonhoseandharby.leicestershireparishcouncils.org/planning-enforcement-complaints.html>

⁴⁷ See <http://normandyparishcouncil.co.uk/planning-enforcement/>

⁴⁸ See https://www.rother.gov.uk/media/pdf/c/8/Local_Enf_Plan_-_Pro_Manual_-_public_copy_2013.pdf

⁴⁹ See http://www.copeland.gov.uk/sites/default/files/attachments/planning_enforcement_manual.pdf

⁵⁰ For example that by South Holland DC, see <http://www.sholland.gov.uk/NR/rdonlyres/3567D8BC-9FB8-4E2A-9FDC-607E67304374/0/Cabinet9May2006AgendaItem7Appendix1totheAppendixFlowchart.pdf>

⁵¹ For example see <http://www.lgg.org.uk/events/2013-11-05>

⁵² TRA Ltd provides such courses, see <http://www.tra-ltd.co.uk/training/programmes/7>

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6 Review of Wokingham Policy, Practice and Procedures

- 6.1 The independent review of existing policy, practice and procedures has been undertaken measuring it against existing good practice as identified within this Report. The analysis, findings and recommendations are included below.
- 6.2 The review analysis is divided into two parts: firstly, those activities that are “owned” by and thus the direct responsibility of the Development Management/enforcement service; and secondly, those corporately owned by the Council.

<i>Activity</i>	<i>Measure</i>	<i>Analysis, Findings and Recommendations</i> ⁵³
Owned by service		
1. Success in achieving satisfactory outcome to enforcement complaint or breach of control (cases).	% cases resolved in target period.	Enforcement staff are genuine in their commitment to achieving a satisfactory outcome to complaints/breaches. However, there is no systematic recording undertaken of the time taken for cases to be resolved, and whilst there are target times in the Enforcement Policy no evidence was provided that these are used or reported on. Some general statistics were provided which indicated that during 2012 some 600 complaints (referred to as Requests For Service – RFSs) were received by the enforcement service, in addition to over 200 outstanding cases at the beginning of the year. It seems this level is more or less consistent year on year. Quarterly monitoring reports indicate that between 54-62% of RFSs are resolved within 8 weeks.
		It is RECOMMENDED that an Enforcement Charter be prepared clearly setting out case categories and target times for resolution and that these be consistently applied (see also 2, 3, 4, 5, 14, 15, 17 and 22 below).
2. Effective resolution of cases with formal action as last resort.	% Enforcement complaints/breach resolved without formal action. Negotiated complaints resolved as % of all	It has been demonstrated that the vast majority of complaints are not in fact breaches of planning control (in 2012 some 64% of RFSs) or are resolved by the voluntary removal of the unauthorised development or the cessation of the use (18% of all RFSs). WBC is to be commended for the extent of cases resolved without formal action. There are no clear statistics available for complaints resolved by negotiation as a proportion of all complaints. Information provided shows that in 2012 14% of RFSs were resolved by the submission

⁵³ Arising from the examination of provided documentation (including Committee reports, appeal decisions and Ombudsman’s reports); interviews with a resident, officers and members; the member workshop; and the town/parish councils’ workshop.

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	complaints resolved.	of a planning application and their approval; and in 4% of cases it was deemed not expedient to pursue any enforcement action. However, the statistics provided also indicate that an additional 19 cases were the subject of formal enforcement action in 2012. This data totals over 100% and thus gives no clear breakdown of negotiated complaints resolved as a proportion of all those received.
		It is RECOMMENDED that an Enforcement Charter be prepared clearly setting out targets for the proportion of enforcement complaints/breaches resolved without formal action and negotiated complaints resolved as a proportion of all complaints resolved.
3. Planning permission condition (including commencement) checking.	Diary of required compliance checks for relevant permissions, and mechanism to report finding. >10% permissions have critical condition check	<p>There is no systematic checking of compliance with permissions; this is undertaken on an ad hoc, as and when basis normally by the application case officer who would then refer any serious breaches to the enforcement service. This practice is in conflict with the approach stated in the Council's Enforcement Policy that indicates "the Council will pro-actively monitor major development sites ... to ensure compliance as far as resources permit."</p> <p>It was indicated that lack of staff resources weighed against the undertaking of such checks. The lack of a compliance officer is also referred to in the Development Management Service Plan 2013-14 as a possible lost opportunity for financial contributions.</p> <p>It was noted that a periodic report on "sensitive and/or major undetermined planning applications, judicial reviews and enforcement sites" has recently been initiated; this is to be commended.</p>
		<p>Whilst it is not suggested that all permissions should be checked for compliance it is good practice to undertake compliance checks on a proportion of permissions. Therefore, it is RECOMMENDED that an Enforcement Charter be prepared clearly setting out a requirement for the systematic checking of compliance with permissions and reporting thereof (see also 7 below).</p> <p>It is suggested that compliance monitoring could be undertaken on a selective basis in relation to say 10% of all permissions, focussing on those cases identified at application stage as being particularly sensitive in planning terms.</p> <p>Furthermore, it is suggested that the introduction of fees for certain development checks be considered, along the lines of that imposed by East Hampshire DC.</p> <p>It is RECOMMENDED that Building Control staff be used for the occasional on-site checking of key features (such as layout distances and building height) on planning-sensitive sites.</p> <p>It is RECOMMENDED that enforcement staff suggest planning conditions for sites that have been invited to be subject to a planning application to regularise unauthorised activity, and that development control staff ensure the conditions are imposed.</p>
4. Enforcement Charter	Committee reports,	There are regular quarterly monitoring reports to the Planning Committee outlining enforcement

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<p>and Protocol, setting out:</p> <ul style="list-style-type: none"> • transparent service standards • target timescales and • how complaints are investigated <p>NB the requirement for a Charter is taken to equate with the need for a “local enforcement plan” as recommended in the NPPF (see para 4.3 above).</p>	<p>charter, protocol, leaflet/web guidance.</p> <ul style="list-style-type: none"> • Charter – compare to Rushmoor BC Charter • Complainant gets 5 day acknowledgement • Enquirer gets explanation of proposed initial action within target periods dependent on priority attached by type – compare with Surrey Heath BC categories/ timescales • Policies for different types of breaches published – compare to Rushmoor BC Policies. 	<p>service activity; and a detailed report was recently submitted to the Overview and Scrutiny Committee. These reports do not include any monitoring of service standards. There is no Enforcement Charter.</p> <p>There is a publicly available Enforcement Policy⁵⁴ (dated 2007) which outlines the approach taken by the Council, the general priorities applied to cases, what action the Council can take. It includes target timescales (para 30) for enforcement investigations and a commitment to monitor and review actual performance (para 31); whilst this is to be commended no evidence has been provided to demonstrate that these are adhered to, monitored and reported on.</p> <p>It is apparent that there is also an Enforcement Procedure Note (last updated in January 2013), although it seems this is not publicly available. No indication is given in the Procedure Note that prevailing good practice has been used in its preparation; however, reference is made to a number of documents that officers should be mindful of – these include PPG18 (now no longer applicable), c10/97, Good Practice Guide for Local Authorities: Enforcing Planning, the Government’s Enforcement Concordat, the RTPI’s Enforcement Handbook 2000 and the s215 Best Practice Guide. Officers do not universally appear to be aware /make use of these documents. It does not provide any information on service standards and targets.</p> <p>There are no public leaflets.</p> <p>There is a web page which outlines how to make a complaint, what action will be taken and public accessibility to information. A copy of the Council’s Enforcement Policy and a Request for Service form are available to download.</p> <p>The Delivery Programme Director has indicated that while there is a service plan, it is limited to broad headlines rather than being day-to-day indicator led. This proves to be a problem in so far as it is impossible to assess actual performance against any standards either approved by the Council or other good practice (although the Service Plan does contains data on the number of enforcement cases investigated compared with 8 other authorities).</p> <p>The Enforcement Procedure Note currently used indicates that breaches of planning control will be assessed as being one of five categories, but no clear indication is given as to priorities for action. This contrasts with the Enforcement Policy that indicates that cases will be afforded one of ten priority categories; however, no target periods are set.</p>
<p>It is RECOMMENDED that in future the Development Management Service Plan be adjusted to</p>		

⁵⁴ See <http://www.wokingham.gov.uk/EasysiteWeb/getresource.axd?AssetID=172628&type=full&servicetype=Attachment>

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		<p>include targets and indicators for the enforcement service (see also 17 below). It is RECOMMENDED that an Enforcement Charter be prepared taking on board performance targets imposed by the DM service plan. It is suggested that this should use the Rushmoor BC and Surrey Heath BC attributes as a template. This would comply with the NPPF recommendation for a local enforcement plan. It is RECOMMENDED that the Webpage be revised to provide more extensive information; it is suggested that this could be on the lines of that provided by Harborough DC. It is RECOMMENDED that the Enforcement Policy be updated and incorporated within a new Enforcement Charter. It is RECOMMENDED that the Enforcement Procedure Note be updated to be consistent with the new Enforcement Charter, and be made publicly available.</p>
<p>5. Clear explanation of means of determining expediency to act, including arrangements for delegation + reporting of decision.</p>	<p>Committee reports, charter, protocol, leaflet/web guidance.</p>	<p>As indicated at 4 above there are no committee reports on service standards or performance, no charter, no leaflets. Neither the Enforcement Policy nor the Council webpage set out clearly the basic principles of enforcement. Evidence has been provided to demonstrate that there is a clear delegation arrangement for the HDM to take enforcement action on behalf of the Council. As and when deemed necessary detailed Expediency Reports are prepared by a planning officer, on the basis of information provided by an enforcement officer, and submitted to the HDM for approval to initiate formal enforcement action. This practice is to be commended. See also (22) below. Enforcement staff do not have a dedicated planning officer to report to/liaise with and only have ad hoc case meetings with planning officers and/or the Development Management Team leader to obtain a planning judgement on courses of action. There are no regular structured case liaison meetings.</p>
		<p>It is RECOMMENDED that an Enforcement Charter be prepared clearly setting out the basic principles of planning enforcement:</p> <ul style="list-style-type: none"> • The use of enforcement powers by the Council is discretionary and the carrying out of development without planning permission, although unauthorised, is not illegal. • Investigations into alleged enforcement complaints should be instigated rapidly and the majority of complaints are resolved without resorting to formal proceedings. • Legislation allows planning permission to be sought retrospectively. • Councils need to consider whether it is expedient or in the public interest to undertake formal

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	<p>enforcement action to remedy breaches of planning control.</p> <ul style="list-style-type: none"> • The suite of enforcement powers available to councils is comprehensive and the choice of action should be commensurate with the breach of planning control. <p>It is RECOMMENDED that a public information leaflet be prepared summarising the Council’s Enforcement Charter, how to make a complaint, what the Council does next, accessibility to information, and the penalties for breaches of planning control.</p> <p>It is RECOMMENDED that an easy to use complaint form for public use be made available in printed format and on the website; it is suggested that this could be on the lines of that used by Melton BC.</p> <p>It is RECOMMENDED that a senior planning officer be nominated as the dedicated case liaison officer for the enforcement staff and that they meet on a frequent and regular basis to discuss case tactics and strategy.</p>
<p>6. Effective implementation of enforcement powers</p>	<ul style="list-style-type: none"> • Use of Breach of Condition Notices • Use of Stop Notices • Use of s215 notices – compare with Hastings BC practice • Use of Planning Contravention Notices • Use of s330 Notices • Use of Enforcement Notices • Use of Injunctions <p>It was indicated that Breach of Condition Notices are used as and when deemed appropriate; however, it seems that these are far from frequently used – only 1 issued in the six months from 1 October 2012 to 31 March 2013. It was also indicated that non-compliance with a BCN is not routinely followed up.</p> <p>It was indicated that Stop Notices are used where and when necessary; however, it seems that these are far from frequently used – none were issued in the six months from 1 October 2012 to 31 March 2013. It was also suggested that when served non-compliance was often not followed through. There appears to be no use of Temporary Stop Notices.</p> <p>It was indicated that s215 Notices are rarely used; none were issued in the six months from 1 October 2012 to 31 March 2013. The Enforcement Procedure Note indicates that the s215 Best Practice Guide is used as a reference document by officers; however, no evidence to this effect was supplied.</p> <p>Planning Contravention Notices are used as and when appropriate - 3 issued in the six months from 1 October 2012 to 31 March 2013. This practice is to be commended.</p> <p>It was indicated that s330 Notices are used as and when deemed appropriate; however, no evidence to this effect was supplied.</p> <p>Enforcement Notices are quite properly seen as a last report and are used as and when deemed expedient – 12 served in the six months from 1 October 2012 to 31 March 2013. This practice is to be commended.</p> <p>It was indicated that Injunctions are used where and when necessary; however, none were issued in</p>

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		<p>the six months from 1 October 2012 to 31 March 2013. It was suggested there was some nervousness as to their use due to cost implications.</p> <p>It was indicated that wherever possible the use of other legislation is sought (by another department) to secure a successful outcome; in addition, encouragement is given to the Environmental Health Department to serve s215 Notices.</p>
		<p>It is RECOMMENDED that the use of Breach of Condition Notices be reviewed and that once served they are all followed up without exception and appropriate action taken.</p> <p>It is RECOMMENDED that the use of Stop Notices be reviewed and that the follow up of any non compliance is always prosecuted through the courts.</p> <p>It is RECOMMENDED that Temporary Stop Notices be used as and when appropriate and that the follow up of any non compliance is always prosecuted through the courts.</p> <p>It is RECOMMENDED that the use of s215 Notices be reviewed and that and that once served they are all followed up without exception and appropriate action taken.</p> <p>It is RECOMMENDED that the use of s330 Notices be instigated and that once served they are all followed up without exception and appropriate action taken.</p> <p>It is RECOMMENDED that the use of Injunctions be reviewed and that when imposed they are all followed up without exception and appropriate action taken.</p> <p>It is RECOMMENDED that publicity be undertaken as a matter of course in relation to the successful use of Notices, any prosecutions achieved and any fines imposed and/or action taken.</p>
7. Adequate resources to achieve 1-6 above.	Development Control/ Enforcement officer maximum caseload of 150 cases/officer.	<p>There are three full time enforcement posts on the establishment; all are occupied although one is currently only on a temporary basis.</p> <p>The enforcement staff believe there are adequate staffing resources to deal with the ongoing workload; the approx. 600 - 700 cases p.a. should be capable of being dealt with by 3 members of staff as on average 64% of cases are found to be not in breach of planning control; nevertheless, each case merits investigation to determine if no action is warranted. It has also been noted that from time to time a minor backlog of cases accrues; together these matters will to a limited extent adversely impact on the ability of the officers to adequately cope with the daily caseload.</p> <p>Furthermore, it is apparent that there is no dedicated administrative support provided by the shared service administration team, and the IT system is hindering the effective day to day operation of the service (see 23 below).</p>
		<p>It is RECOMMENDED that the three full time enforcement officer posts on the establishment be filled on a permanent basis.</p>

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		<p>It is RECOMMENDED that additional resources be sought to deal with the recommended compliance monitoring requirement⁵⁵ (see 3 above) which should reduce workload of the enforcement officers to an acceptable level.</p> <p>It is RECOMMENDED that consideration be given to the filling of the current vacant administrative post with the specification of support duties to the enforcement team.</p>
8. Annual report monitoring, updating, and describing targets/progress against Service Business Plan submitted to Committee or Executive.	Evidence of a minimum annual frequency of Committee/ Executive reports.	Whilst there is a quarterly report monitoring enforcement activity it seems there is no reporting of performance as there are no service standards in place.
		<p>It is RECOMMENDED that an annual enforcement performance monitoring report be instigated to be submitted for consideration by the Planning Committee and the Overview & Scrutiny committee (see 4 above).</p>
9. Sufficient resources and opportunities for enforcement staff training.	Minimum 1% of budget devoted to training, and equal provision between Enforcement and other Planning staff.	Whilst there is a Development Management training budget there is no specific provision for the enforcement service; however, it seems there is no difficulty in obtaining resources for training needs as and when they arise.
10. Effective enforcement officers' liaison and peer group development + information sharing with	<ul style="list-style-type: none"> • Local enforcement officers group with scheduled meetings. • Exchange of enforcement appeal 	<p>It seems that enforcement staff attend meetings of the Southern Enforcement Officers Group (SEOG) on an as and when basis.</p> <p>The enforcement staff seek advice of/exchange case histories/decisions with colleagues in neighbouring districts on an as and when basis.</p>

⁵⁵ Such a post would be responsible for monitoring development activity within the Borough and checking compliance with conditions set out in planning permissions. Under supervision, the postholder would inspect sites, draft reports on compliance of conditions, and deal with related complaints. They would collect information and evidence on breaches of planning control, or non-compliance, and create site notes and report on findings, with support from senior colleagues.

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adjoining authorities.	decisions + any court decisions.	
		<p>It is RECOMMENDED that the enforcement staff take turns in attending meetings of the SEOG⁵⁶ on a routine basis and exchange appeal decisions, court cases, etc on a regular basis.</p> <p>It is RECOMMENDED that the enforcement staff be supported by the Council in joining the RTPI's Network for Planning Enforcement (NAPE)⁵⁷ to share good practice as part of their professional development.</p>
11. Joint training initiatives for Enforcement staff with other Authorities.	Agreed structure and responsibility for organising training and agreed funding arrangements. (Minimum annual training event)	There are no structured joint training arrangements; any initiatives by the Berkshire authorities appears to be on an ad hoc basis.
		<p>It is RECOMMENDED that chief planning officers on a county/regional basis be asked to support an annual enforcement training workshop; by any one of a range of potential training providers (e.g. POS⁵⁸ or PAS⁵⁹).</p>
12. Sound business plan for Enforcement Service dovetailed with Development Control Business Plan.	Business Plan up to date, taking account of any peer review (or similar), or stakeholder consultation review.	<p>There is no separate business plan in place for the enforcement service and there are no performance standards for enforcement incorporated with the Development Management service plan.</p> <p>There is no stakeholder consultation undertaken with regard to enforcement matters.</p>
		<p>It is RECOMMENDED that the Development Management service plan be amended (see 4 above) to incorporate the need to take account of stakeholder feedback on a regular basis (see also 15 below) and that it be used as a tool to drive performance.</p>
13. Annual Personal	PDR records.	With no effective business plan the annual staff appraisal process is unable to cascade targets and

⁵⁶ See <http://seog.info/> for copies of past presentations

⁵⁷ See [http://www.rtpi.org.uk/knowledge/networks-groups-and-forums/planning-enforcement-\(nape\)/](http://www.rtpi.org.uk/knowledge/networks-groups-and-forums/planning-enforcement-(nape)/)

⁵⁸ The Planning Officers Society can provide specialised courses as required; see for example <http://www.planningofficers.org.uk/POS-Enterprises/POS-Enterprises-Training/>

⁵⁹ The Planning Advisory Service provides a range of training events; see for example <http://www.pas.gov.uk/events-and-support2>

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Development Review (PDR) targets established, recorded, and reviewed, and drawn from Business Plan.		adequately review the performance of individual officers.
		It is RECOMMENDED that once the DM service plan is amended (see 4 and 12 above) that targets and specific performance monitoring be included in the annual staff performance review process.
14. Standard letters, forms, and leaflets, checked for clarity for users and compared to other authorities, and checked annually for any procedure changes or for amended legislation.	Recorded in Business Plan targets, Enforcement Charter /protocols, and PDR records.	Some standard letters and forms have been prepared; however, it seems these are not widely used, nor updated or cross-checked with other authorities on a systematic basis. Officers seem to use their own style of “standard” documents as they find the standard ones on SX3 practicably unusable.
		It is RECOMMENDED that the Enforcement Procedure Note be reviewed (see 4 above) to include a requirement for the use of standard forms, notices, etc that meet prevailing requirements. It is RECOMMENDED that an Enforcement Charter be prepared to include the requirement that standard documents are to be annually cross-checked with other authorities (see 4 above).
15. Stakeholder feedback sought regularly on service standards and performance and fed back into service delivery.	<ul style="list-style-type: none"> • Survey evidence/ stakeholder event within last 2 years, and evidenced in Committee report and Business plan. • Joint stakeholder event for adjacent authorities/county to minimise cost 	<p>There have been no enforcement stakeholder surveys or events in the recent past, and none are planned.</p> <p>It is clear that neither the Council’s Enforcement Policy nor the Procedure Note were prepared following public engagement.</p> <p>The authority is, however, to be commended in facilitating this independent review of the enforcement service and allowing residents and parish/town councils to contribute. One of the key lessons to be learnt from this review is that more effective communication with the public is essential.</p>
		It is RECOMMENDED that a stakeholder review mechanism be instigated; exploring the potential for joint initiatives with other authorities, as appropriate, to minimise cost. It is RECOMMENDED that the preparation of an Enforcement Charter be subject to public

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		<p>consultation to define objectives and priorities tailored to local circumstances.</p> <p>It is RECOMMENDED that all communication with the public should be in plain English with any technical terms clearly explained.</p>
16. Enforcement procedure manual produced and kept up to date	Procedure manual quality checked, and Peer Reviewed/ quality checked by another Authority/ consultant	<p>Whilst there is an Enforcement Procedure Note it is not up to date, is inconsistent in places with the adopted Enforcement Policy; it is not apparent as to whether this is currently used by staff. However, the HDM has prepared a process flow chart to demonstrate the necessary steps for the investigation of a complaint/breach; it is not apparent as to whether this is currently in use.</p>
		<p>It is RECOMMENDED that the Enforcement Procedure Note be reviewed, to accord with the recommended Enforcement Charter, to clearly set out the processes and procedures to be followed (see also 24 below). It is suggested that the procedure manual produced by Rother DC could be used as a basis for the revisions together with a flowchart of the enforcement process.</p>
Corporately owned		
17. Enforcement Policy & Procedures are seen to support the Council's Environmental objectives, and dovetail into and support any other Planning Business Plans.	Enforcement Policy and Procedure evidence and Peer Review.	<p>The planning enforcement service and activity takes as its context the Council's corporate Vision, Priorities and Principles. The relevant matters are:</p> <ul style="list-style-type: none"> • "Create an environment that allows businesses to thrive and provides the conditions for economic growth, whilst maintaining the quality of our environment and taking advantage of our favourable location" – within the Development Management service plan there are no specific performance indicators for the Enforcement Service. • "Continue to work with our partners to maintain our outstanding performance as one of the best local authorities in the country for educational attainment" – within the Development Management service plan there are no specific performance indicators for the Enforcement Service. • "Deliver well designed development and strong communities through our collaborative efforts in planning" – there are no specific performance indicators for the Enforcement Service within the Development Management service plan. <p>Neither the Enforcement Policy nor the Enforcement Procedure Note makes any reference to corporate priorities.</p> <p>There is no evidence of any peer review. The Council is, however, to be commended for initiating this review by independent consultants John Silvester Associates Ltd.</p>
		<p>It is RECOMMENDED that the Council requires the preparation of an Enforcement Charter and a review of the Enforcement Procedure Note to take into account relevant corporate objectives, and</p>

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18. Enforcement monitoring reports feedback into Planning policy review work.	Evidence of operation and Peer Review.	<p>that it commits to periodic peer review(s) (see 4 above).</p> <p>There is no evidence of any enforcement monitoring reports feeding back into any planning policy review or of any systematic peer review.</p>
		<p>As identified at 8 above, it is RECOMMENDED that an annual enforcement monitoring report is instigated which should be used to feed into the monitoring and review of Development Management (as appropriate) and planning policy (as appropriate) .</p>
19. Enforcement staff PDRs & Enforcement Business Plan show “Listening culture”, customer orientation and feedback/action loop.	Business Plan evidence and Peer Review.	<p>As highlighted at 17 above the Development Management Service Plan has no specific performance indicators for the Enforcement Service. There is no other business plan for the service. The Council’s Corporate Plan 2008-18⁶⁰ has as one of its key priorities “Keeping the Customer satisfied”; however, at the present time there is no evidence that customer and/or stakeholder surveys play a part in the review of services, such as that for enforcement.</p> <p>The Corporate Plan 2008-18 also states that “Effective performance management is critical to our success. It is about setting clear targets and taking action in response to our performance to deliver better quality services to our residents. It is also about ensuring that our capacity, resources, staff and management are of the right quality to deliver the performance we have promised.” However, there is no evidence to suggest that there is an effective performance management process in place for the enforcement or planning service, other than of general headline statistics (see 4 above). There is no evidence to suggest that officers treat complaints/RFSs as an opportunity to review practice and procedures.</p> <p>It seems the Council holds an annual parish forum on a corporate basis but this does not specifically address, nor give any feedback, on enforcement matters.</p>
		<p>It is RECOMMENDED that an effective customer involvement mechanism be initiated to ensure residents and town/parish councils are viewed as allies of the Council in the development management process; and to enable stakeholder feedback to influence service improvements, as part of service plan monitoring (see 4 above).</p> <p>It is RECOMMENDED that regular parish bulletins be circulated providing a general update, including planning and enforcement matters; it is suggested that this practice could be along the lines of that used by Wealden DC⁶¹</p>

⁶⁰ See <http://www.wokingham.gov.uk/EasySiteWeb/GatewayLink.aspx?allid=485>

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		It is RECOMMENDED that the annual parish forum be reformatted to enable a formal review of enforcement service provision in relation to local needs and concerns.
20. Sufficient resources and opportunities for member training/development	Budget provision for regular member training/review of developments/ previous decisions.	It seems there is a corporate budget for general member training, but not a planning-specific budget; this is used primarily for live local government issues of the moment that are applicable to all members by way of in-house workshops as and when deemed appropriate.
		It is RECOMMENDED that consideration be given to identifying part of the corporate training budget for facilitating improved understanding/awareness of current and pending planning issues and legislative changes; furthermore, a range of external providers (such as POS or PAS) should be utilised to enable wider experience and cases to be brought to members attention. It is RECOMMENDED that from time to time appropriate training be provided for Town and Parish Councillors on planning enforcement matters.
21. Proactive Enforcement service focussed on securing environmental improvements following consultation.	Business Plan evidence and Peer Review.	There is no evidence of any systematic identification of specific environmental improvements being sought to which enforcement action can be targeted. There does not appear to be any effective monitoring of compliance with planning permissions to ensure imposed requirements are being met.
		It is RECOMMENDED that a planning compliance monitoring regime be instigated (see 3 above) that is tailored to contributing towards the achievement of corporate environmental objectives and specified area improvements⁶².
22. Enforcement Service interaction with other Council services seamless & effective.	Tested by activity 14, and Peer Review of Business Plan. Evidence of agreed method of transferring complaint to other	It seems there is no systematic checking with the legal service for legislative compliance of standard letters, forms, etc. It appears that complaints received which are identified as the remit of another Council service are routinely referred on as appropriate, but there is no reference to this effect in the Policy or Procedure Note to demonstrate when and how complaints are referred and feedback supplied. The Council has utilised the Government's Enforcement Concordat (as evidence by its reference in

⁶¹ See http://www.wealden.gov.uk/Wealden/News_and_Events/Policy_Parish_Bulletins.aspx

⁶² Examples might be ensuring landscaping schemes required in permissions are implemented in accordance with environmental enhancements envisaged in a village design statement, to enhance a local nature reserve, or in the Core Strategy (e.g. CP3 to "Provide for a framework of open space in secure community use ...").

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	<p>services with complainant properly advised of new contact, and confirmation of “new ownership”. Enforcement concordat adopted and monitored for compliance.</p>	<p>the Procedure Note), and the Council is to be commended accordingly. However, there is no evidence to show that compliance with the Concordat is monitored.</p> <p>It appears that whilst ad hoc liaison takes place there is no structured enforcement liaison group involving environmental health officers, planning, legal and enforcement officers.</p> <p>There is no regular meeting between legal, enforcement and planning officers; although ad hoc meetings do occur. It has been indicated that precise written instructions for formal action are not always received. It seems that the legal service is not involved in the preparation of expediency reports.</p> <p>It seems that there are often delays in instigating formal action expeditiously which may be as a result of the lack of dedicated legal staff resources. It has also been suggested that the legal service is risk averse.</p>
		<p>It is RECOMMENDED that an Enforcement Charter be prepared clearly setting out the procedures for transferring complaints to other services, how the complainant is to be advised of the new contact, and confirmation of “new ownership” of the complaint (see also 1 above).</p> <p>It is RECOMMENDED that a cross-department enforcement group be established to include planning, environmental health and legal representatives and others as appropriate) to ensure appropriate action can be instigated expeditiously where and when appropriate.</p> <p>It is RECOMMENDED that instructions to legal services for formal enforcement action are always clear and precise accompanied by all relevant supporting material, plans, etc.; and are reviewed by a senior planning officer prior to transfer to the legal service.</p> <p>It is RECOMMENDED that if and when expediency reports are to be submitted to the Planning Committee they referred to the legal service for review.</p> <p>It is RECOMMENDED that the legal service deal with referred cases without delay to ensure performance standards (when adopted) are maintained and that their handling of enforcement matters be subject to periodic review.</p>
<p>23. Back office Enforcement systems fully integrated with Council’s Planning, Building Control, and other corporate Environmental ICT</p>	<p>Minimum requirement full Planning system integration. To reinforce activity 21 needs at least full environmental or corporate database integration.</p>	<p>The Council has adopted the use of SX3 as a corporate office IT system; it is understood that whilst this is currently operational for enforcement it is far from effective in so far as it is not integrated with other services and because of its limitations it hinders rather than assists officers in their daily operations. This is a major impediment to efficient and effective working.</p>

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systems.		<p>It is RECOMMENDED that consideration be given to integrating all service systems (including planning applications, planning appeals, enforcement, condition monitoring, listed buildings, trees, building control, street naming and numbering, estates , property database, environmental health, legal and licensing) as soon as is practicably possible to ensure more effective and efficient case handling. It is suggested that the applicability of SX3 as the selected system be reviewed. It is RECOMMENDED that full use be made of existing trained specialist staff (such as in the enforcement team) in reviewing and adapting standard letters, forms, etc.</p>
24. Effective health and safety policy, including review of enforcement practice and appropriate action taken.	<p>Evidence of recent health and safety review. Evidence of any required action being implemented and monitored.</p>	<p>It seems that risk assessments are undertaken from time to time; however, no evidence was provided that staff or managers are aware of their responsibilities imposed by health and safety legislation or of the requirements for the assessment of risks as and when required. This is evidenced by one enforcement officer having reported of being threatened with violence on a site visit and yet it appears there was no follow up by management. It seems there is a corporate register that allows managers to record potentially dangerous sites and record any incidents (be they accident or violence related); however, not all staff appear to be aware of this system and thus do not always make use of it.</p>
		<p>It is RECOMMENDED that a Development Management risk assessment is undertaken with particular attention paid to the potential vulnerability of enforcement staff, with the intention of identifying appropriate procedures for enforcement staff to follow in a range of circumstances (see 4 and 16 above). It is RECOMMENDED that appropriate staff be trained with regard to their corporate health and safety responsibilities. It is RECOMMENDED that all staff be advised of the corporate register of potentially dangerous sites/persons, that it is regularly updated and made accessible to all staff.</p>

7 Recommendations

- 7.1 The recommendations included in the review findings (section 6) are itemised here on the basis of those owned by, and thus the responsibility of, the Development Management service; and those owned corporately.
- 7.2 The recommendations have been amalgamated in a more rational fashion rather than listed in the order identified against the practice benchmarks in section 6; in addition an implementation priority ranking has been suggested.

Service owned:

<i>Ref.</i>	<i>Recommendation</i>	<i>Priority</i> ⁶³
A	<p>It is RECOMMENDED that an Enforcement Charter be prepared, subject to public consultation:</p> <p>a. clearly setting out the basic principles of planning enforcement:</p> <ul style="list-style-type: none"> • The use of enforcement powers by the Council is discretionary and the carrying out of development without planning permission, although unauthorised, is not illegal. • Investigations into alleged enforcement complaints should be instigated rapidly and the majority of complaints are resolved without resorting to formal proceedings. • Legislation allows planning permission to be sought retrospectively. • Councils need to consider whether it is expedient or in the public interest to undertake formal enforcement action to remedy breaches of planning control. • The suite of enforcement powers available to councils is comprehensive and the choice of action should be commensurate with the breach of planning control. <p>b. clearly defining objectives and priorities tailored to local circumstances;</p> <p>c. clearly setting out case categories and target times for resolution including the proportion of enforcement complaints/breaches resolved without formal action and negotiated complaints resolved as a proportion of all complaints resolved and that these be consistently applied;</p> <p>d. clearly setting out a requirement for the systematic checking of compliance with permissions and reporting thereof. It is suggested that compliance monitoring could be undertaken on a selective basis in relation to say 10% of all permissions, focussing on those cases identified at application stage as being particularly sensitive in planning terms. Furthermore, it is suggested that the introduction of fees for certain development checks be considered, along the lines of that imposed by East Hampshire DC;</p> <p>e. taking on board performance targets imposed by the DM service plan. It is suggested that this should use the Rushmoor BC and Surrey Heath BC attributes as a template. This would comply with the NPPF recommendation for a local enforcement plan; and</p> <p>f. to include the requirement that standard documents are to be annually cross-checked with other authorities.</p>	2
B	<p>It is RECOMMENDED that Building Control staff be used for the occasional on-site checking of key features (such as layout distances and building height) on planning-</p>	2

⁶³ 1 = within one month; 2 = within 3 months; 3 = within 6 months

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	sensitive sites.	
C	It is RECOMMENDED that enforcement staff suggest planning conditions for sites that have been invited to be subject to a planning application to regularise unauthorised activity, and that development control staff ensure the conditions are imposed.	3
D	It is RECOMMENDED that in future the Development Management Service Plan be adjusted: <ul style="list-style-type: none"> a. to include targets and indicators for the enforcement service; b. to incorporate the need to take account of stakeholder feedback on a regular basis; c. as a consequence targets and specific performance monitoring be included in the annual staff performance review process; and d. as a consequence it be used as a tool to drive performance. 	3
	It is RECOMMENDED that the Webpage be revised to provide more extensive information; it is suggested that this could be on the lines of that provided by Harborough DC.	2
F	It is RECOMMENDED that the Enforcement Policy be updated and incorporated within a new Enforcement Charter.	3
G	It is RECOMMENDED that the Enforcement Procedure Note be updated to: <ul style="list-style-type: none"> a. be consistent with the new Enforcement Charter, and be made publicly available; b. include a requirement for the use of standard forms, notices, etc that meet prevailing requirements; and c. accord with the recommended Enforcement Charter, to clearly set out the processes and procedures to be followed It is suggested that the procedure manual produced by Rother DC could be used as a basis for the revisions together with a flowchart of the enforcement process. 	3
H	It is RECOMMENDED that a public information leaflet be prepared summarising the Council's Enforcement Charter, how to make a complaint, what the Council does next, accessibility to information, and the penalties for breaches of planning control.	3
I	It is RECOMMENDED that an easy to use complaint form for public use be made available in printed format and on the website; it is suggested that this could be on the lines of that used by Melton BC.	1
J	It is RECOMMENDED that a senior planning officer be nominated as the dedicated case liaison officer for the enforcement staff and that they meet on a frequent and regular basis to discuss case tactics and strategy.	1
K	It is RECOMMENDED that the use of Breach of Condition Notices be reviewed and that once served they are all followed up without exception and appropriate action taken.	2
L	It is RECOMMENDED that the use of Stop Notices be reviewed and that the follow up of any non compliance is always prosecuted through the courts.	1
M	It is RECOMMENDED that Temporary Stop Notices be used as and when appropriate and that the follow up of any non compliance is always prosecuted through the courts.	1
N	It is RECOMMENDED that the use of s215 Notices be reviewed and that and that once served they are all followed up without exception and appropriate action taken.	2
O	It is RECOMMENDED that the use of s330 Notices be instigated and that once served they are all followed up without exception and appropriate action taken.	3
P	It is RECOMMENDED that the use of Injunctions be reviewed and that when	3

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	imposed they are all followed up without exception and appropriate action taken.	
Q	It is RECOMMENDED that publicity of be undertaken as a matter of course in relation to the successful use of Notices, any prosecutions achieved and any fines imposed and/or action taken.	3
R	It is RECOMMENDED that the three full time enforcement officer posts on the establishment be filled on a permanent basis.	3
S	It is RECOMMENDED that additional resources be sought to deal with the recommended compliance monitoring requirement (which should reduce workload of the enforcement officers to an acceptable level.	2
T	It is RECOMMENDED that consideration be given to the filling of the current vacant administrative post with the specification of support duties to the enforcement team.	2
U	It is RECOMMENDED that an annual enforcement performance monitoring report be instigated to be submitted for consideration by the Planning Committee and the Overview & Scrutiny committee.	3
V	It is RECOMMENDED that the enforcement staff take turns in attending meetings of the SEOG on a routine basis and exchange appeal decisions, court cases, etc on a regular basis.	2
W	It is RECOMMENDED that the enforcement staff be supported by the Council in joining the RTP1's Network for Planning Enforcement (NAPE) to share good practice as part of their professional development.	2
X	It is RECOMMENDED that chief planning officers on a county/regional basis be asked to support an annual enforcement training workshop; by any one of a range of potential training providers (e.g. POS or PAS).	3
Y	It is RECOMMENDED that a stakeholder review mechanism be instigated; exploring the potential for joint initiatives with other authorities as appropriate to minimise cost.	3
Z	It is RECOMMENDED that all communication with the public should be in plain English with any technical terms clearly explained.	1

Corporately owned:

AA	It is RECOMMENDED that the Council requires: a. the preparation of an Enforcement Charter and that it clearly sets out the procedures for transferring complaints to other services, how the complainant is to be advised of the new contact, and confirmation of "new ownership" of the complaint; and b. the review of the Enforcement Procedure Note to take into account relevant corporate objectives, and that it commits to periodic peer review(s).	1
BB	It is RECOMMENDED that an annual enforcement monitoring report is instigated which should be used to feed into the monitoring and review of Development Management (as appropriate) and planning policy (as appropriate) .	3
CC	It is RECOMMENDED that an effective customer involvement mechanism be initiated to ensure residents and town/parish councils are viewed as allies of the Council in the development management process; and to enable stakeholder feedback to influence service improvements, as part of service plan monitoring.	3
DD	It is RECOMMENDED that regular parish bulletins be circulated providing a general update, including planning and enforcement matters; it is suggested that this practice could be along the lines of that used by Wealden DC.	2
EE	It is RECOMMENDED that an annual parish conference be instigated to enable a	3

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	formal review of enforcement service provision in relation to local needs and concerns.	
FF	It is RECOMMENDED that consideration be given to identifying part of the corporate training budget for facilitating improved understanding/awareness of current and pending planning issues and legislative changes; furthermore, a range of external providers (such as POS or PAS) should be utilised to enable wider experience and cases to be brought to members attention.	3
GG	It is RECOMMENDED that from time to time appropriate training be provided for Town and Parish Councillors on planning enforcement matters.	3
HH	It is RECOMMENDED that a planning compliance monitoring regime be instigated that is tailored to contributing towards the achievement of corporate environmental objectives and specified area improvements.	2
II	It is RECOMMENDED that a cross-department enforcement group be established to include planning, environmental health and legal representatives and others as appropriate) to ensure appropriate action can be instigated expeditiously where and when appropriate.	2
JJ	It is RECOMMENDED that instructions to legal services for formal enforcement action are always clear and precise accompanied by all relevant supporting material, plans, etc.; and are reviewed by a senior planning officer prior to transfer to the legal service.	2
KK	It is RECOMMENDED that if and when expediency reports are to be submitted to the Planning Committee they are referred to the legal service for review.	3
LL	It is RECOMMENDED that the legal service deal with referred cases without delay to ensure performance standards (when adopted) are maintained and that their handling of enforcement matters be subject to periodic review.	1
MM	It is RECOMMENDED that consideration be given to integrating all service systems (including planning applications, planning appeals, enforcement, condition monitoring, listed buildings, trees, building control, street naming and numbering, estates , property database, environmental health, legal and licensing) as soon as is practicably possible to ensure more effective and efficient case handling. It is suggested that the applicability of SX3 as the selected system be reviewed.	3
NN	It is RECOMMENDED that full use be made of existing trained specialist staff (such as in the enforcement team) in reviewing and adapting standard letters, forms, etc.	3
NN	It is RECOMMENDED that a Development Management risk assessment is undertaken with particular attention paid to the potential vulnerability of enforcement staff, with the intention of identifying appropriate procedures for enforcement staff to follow in a range of circumstances	2
OO	It is RECOMMENDED that appropriate staff be trained with regard to their corporate health and safety responsibilities.	1
PP	It is RECOMMENDED that all staff be advised of the corporate register of potentially dangerous sites/persons, that it is regularly updated and made accessible to all staff.	1

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8 Conclusions

- 8.1 The Council is to be commended for much good practice and the Council's enforcement staff are clearly dedicated and hard working; nevertheless, the Council's enforcement service is found to inadequately cover the essential requirements of an effective proactive service and thus is not fully fit for purpose. Through the review the key matters identified as needing to be addressed are communication, performance management and culture change to deliver a more effective user-focussed service. It has been established that there are a significant number of areas for improvement. As a result, procedural changes have been identified and recommendations for action made accordingly.
- 8.2 Planning enforcement in Wokingham BC is recognised as a valuable Council service; nonetheless, sufficient resources need to be made available to enable it to compare favourably with good practice elsewhere, prosecutions should be sought on each appropriate occasion and successes publicised accordingly, and communication with residents and town/parish councils should be radically overhauled. A "contract" between the Council and town/parish councils should be entered into to deliver closer working and shared responsibilities.
- 8.3 If the Council is committed to providing effective enforcement that is fit for purpose to meet the needs of its residents and town/parish councils then it is vital that it provides greater transparency and accountability about how it decides if it is expedient to exercise its discretionary powers, and thus provide greater certainty for all parties engaged in the development process.
- 8.4 Within the limits of this commission it has not been possible to address some of the members' aspirations (see para 3.5), to suggest detailed new procedures for each recommendation or to identify resultant resource implications; further assistance can be supplied if required.
- 8.5 It is hoped that the Council will (a) make the review Report publicly available; (b) report it to both the Planning Committee and the Overview & Scrutiny Committee for consideration of the recommendations; and (c) use the information gained to reform the service.
- 8.6 It is further concluded that the Council should take cognisance of further good practice guidance when published, e.g. by DCLG, PAS, POS and others.

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Managing Director
John Silvester Associates Ltd
4th September 2013

Wokingham BC Planning Enforcement Services Independent Review

Annex A Town/Parish Councils Workshop, 22nd August 2013

- 1 Introduction and welcome
 - JS profile
 - Purpose of review
 - To undertake a review of the planning enforcement service to ensure that it is fit for purpose and is meeting the needs and requirements of Wokingham residents and elected members.
 - The review will involve the following tasks:
 - a) a review of WBC current policy, procedures and practice (including documentation and discussions with appropriate officers);
 - b) provide a facilitated members workshop and use the outcomes from the session to inform the review;
 - c) provide a facilitated workshop with parish and town councils to inform the review;
 - d) meet with selected local residents to gain an understanding and appreciation of local concerns, to inform the review;
 - c) to review current good practice for enforcement, including Government advice, national body guidance notes, Surrey enforcement review, other good practice from broadly comparable authorities (e.g. district councils)
 - d) an assessment of how the WBC service compares with good practice; and
 - e) preparation of report with recommendations and implementation priorities.
- 2 Progress to date –
 - interviewed officers and selected members
 - interviewed concerned local resident
 - drafted first part of the report, awaiting outcome of tonight's meeting before progressing further
- 3 Discussion
 - What's good about WBC enforcement?
 - What's not so good?
 - What sort of service would you like?
 - Would you welcome closer working?
 - Could you take on some responsibilities?
 - Reporting? – need framework?
 - Initial investigations? – need training?
 - Compliance monitoring? – conditions on planning permissions and approved plans (e.g. construction phase - hours of operation, wheel washing, built in accordance with approved plans, etc; and in use phase - hours of operation, activity limits, etc)
 - Act as witness at public inquiries, magistrates' court hearings?
- 4 What Next?
 - anticipate draft report being sent to WBC for factual correction by end of August
 - final submission as soon as poss. thereafter
 - meeting with selected members to discuss findings
 - recommendation that the report be made publicly available and reported to both the Planning Committee and the Overview & Scrutiny Committee for consideration of the findings and recommendations

John Silvester