

Public Document Pack

Scrutiny Panel A

Thursday, 6th February, 2014
at 5.00 pm

PLEASE NOTE TIME OF MEETING

Conference Room 3 - Civic Centre

This meeting is open to the public

Members

Councillor Burke (Chair)
Councillor Claisse (Vice-Chair)
Councillor L Harris
Councillor Lloyd
Councillor McEwing
Councillor Mintoff
Councillor Vinson

Contacts

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PUBLIC INFORMATION

Role of Scrutiny Panel A

The Overview and Scrutiny Management Committee have instructed Scrutiny Panel A to undertake an inquiry into maintaining balanced neighbourhoods through planning.

Purpose:

To review how effectively the City Council's Article 4 and HMOs Supplementary Planning Document is working.

To increase understanding of the various Government proposals to relax permitted development rights, including those relating to extensions, office to residential conversions and changing retail use without consent, and to consider if a local response should be developed.

To consider the Council's approach to planning enforcement.

Southampton City Council's Priorities

- **Economic:** Promoting Southampton and attracting investment; raising ambitions and improving outcomes for children and young people.
- **Social:** Improving health and keeping people safe; helping individuals and communities to work together and help themselves.
- **Environmental:** Encouraging new house building and improving existing homes; making the city more attractive and sustainable.
- **One Council:** Developing an engaged, skilled and motivated workforce; implementing better ways of working to manage reduced budgets and increased demand.

Public Representations

At the discretion of the Chair, members of the public may address the meeting about any report on the agenda for the meeting in which they have a relevant interest.

Smoking policy – the Council operates a no-smoking policy in all civic buildings.

Mobile Telephones – please turn off your mobile telephone whilst in the meeting.

Fire Procedure – in the event of a fire or other emergency a continuous alarm will sound and you will be advised by Council officers what action to take.

Access – access is available for the disabled. Please contact the Democratic Support Officer who will help to make any necessary arrangements.

Dates of Meetings: Municipal Year

2013	2014
28 th November	9 th January
	6 th February
	6 th March
	3 rd April
	8 th May

CONDUCT OF MEETING

TERMS OF REFERENCE

The general role and terms of reference of the Overview and Scrutiny Management Committee, together with those for all Scrutiny Panels, are set out in Part 2 (Article 6) of the Council's Constitution, and their particular roles are set out in Part 4 (Overview and Scrutiny Procedure Rules – paragraph 5) of the Constitution.

BUSINESS TO BE DISCUSSED

Only those items listed on the attached agenda may be considered at this meeting.

RULES OF PROCEDURE

The meeting is governed by the Council Procedure Rules and the Overview and Scrutiny Procedure Rules as set out in Part 4 of the Constitution.

QUORUM

The minimum number of appointed Members required to be in attendance to hold the meeting is 3.

DISCLOSURE OF INTEREST

Members are required to disclose, in accordance with the Members' Code of Conduct, **both** the existence **and** nature of any "Disclosable Personal Interest" or "Other Interest" they may have in relation to matters for consideration on this Agenda.

DISCLOSABLE PERSONAL INTERESTS

A Member must regard himself or herself as having a Disclosable Pecuniary Interest in any matter that they or their spouse, partner, a person they are living with as husband or wife, or a person with whom they are living as if they were a civil partner in relation to:

(i) Any employment, office, trade, profession or vocation carried on for profit or gain.

(ii) Sponsorship:

Any payment or provision of any other financial benefit (other than from Southampton City Council) made or provided within the relevant period in respect of any expense incurred by you in carrying out duties as a member, or towards your election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.

(iii) Any contract which is made between you / your spouse etc (or a body in which the you / your spouse etc has a beneficial interest) and Southampton City Council under which goods or services are to be provided or works are to be executed, and which has not been fully discharged.

(iv) Any beneficial interest in land which is within the area of Southampton.

(v) Any license (held alone or jointly with others) to occupy land in the area of Southampton for a month or longer.

(vi) Any tenancy where (to your knowledge) the landlord is Southampton City Council and the tenant is a body in which you / your spouse etc has a beneficial interests.

(vii) Any beneficial interest in securities of a body where that body (to your knowledge) has a place of business or land in the area of Southampton, and either:

a) the total nominal value of the securities exceeds £25,000 or one hundredth of

- the total issued share capital of that body, or
- b) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which you / your spouse etc has a beneficial interest that exceeds one hundredth of the total issued share capital of that class.

Other Interests

A Member must regard himself or herself as having a, 'Other Interest' in any membership of, or occupation of a position of general control or management in:

Any body to which they have been appointed or nominated by Southampton City Council

Any public authority or body exercising functions of a public nature

Any body directed to charitable purposes

Any body whose principal purpose includes the influence of public opinion or policy

Principles of Decision Making

All decisions of the Council will be made in accordance with the following principles:-

- proportionality (i.e. the action must be proportionate to the desired outcome);
- due consultation and the taking of professional advice from officers;
- respect for human rights;
- a presumption in favour of openness, accountability and transparency;
- setting out what options have been considered;
- setting out reasons for the decision; and
- clarity of aims and desired outcomes.

In exercising discretion, the decision maker must:

- understand the law that regulates the decision making power and gives effect to it. The decision-maker must direct itself properly in law;
- take into account all relevant matters (those matters which the law requires the authority as a matter of legal obligation to take into account);
- leave out of account irrelevant considerations;
- act for a proper purpose, exercising its powers for the public good;
- not reach a decision which no authority acting reasonably could reach, (also known as the "rationality" or "taking leave of your senses" principle);
- comply with the rule that local government finance is to be conducted on an annual basis. Save to the extent authorised by Parliament, 'live now, pay later' and forward funding are unlawful; and
- act with procedural propriety in accordance with the rules of fairness.

AGENDA

Agendas and papers are now available via the City Council's website

1 APOLOGIES AND CHANGES IN PANEL MEMBERSHIP (IF ANY)

To note any changes in membership of the Panel made in accordance with Council Procedure Rule 4.3.

2 DISCLOSURE OF PERSONAL AND PECUNIARY INTERESTS

In accordance with the Localism Act 2011, and the Council's Code of Conduct, Members to disclose any personal or pecuniary interests in any matter included on the agenda for this meeting.

NOTE: Members are reminded that, where applicable, they must complete the appropriate form recording details of any such interests and hand it to the Democratic Support Officer.

3 DECLARATIONS OF SCRUTINY INTEREST

Members are invited to declare any prior participation in any decision taken by a Committee, Sub-Committee, or Panel of the Council on the agenda and being scrutinised at this meeting.

4 DECLARATION OF PARTY POLITICAL WHIP

Members are invited to declare the application of any party political whip on any matter on the agenda and being scrutinised at this meeting.

5 STATEMENT FROM THE CHAIR

6 PLANNING ENFORCEMENT

Report of the Assistant Chief Executive detailing the Council's approach to planning enforcement, attached

Wednesday, 29 January 2014

HEAD OF LEGAL AND DEMOCRATIC SERVICES

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Agenda Item 6

DECISION-MAKER:	SCRUTINY PANEL A		
SUBJECT:	PLANNING ENFORCEMENT		
DATE OF DECISION:	6 th FEBRUARY 2014		
REPORT OF:	ASSISTANT CHIEF EXECUTIVE		
<u>CONTACT DETAILS</u>			
AUTHOR:	Name:	Mark Pirnie	Tel: 023 8083 3886
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STATEMENT OF CONFIDENTIALITY

None

BRIEF SUMMARY

For the third meeting of the 'Maintaining balanced neighbourhoods through planning review' the Panel will focus on the Council's approach to planning enforcement.

Appended to this report is the Internal Audit report on planning enforcement issued in April 2013 and an update against the reports key recommendations. In addition submissions from Councillors, residents associations, residents and the Southern Landlords Association are attached and will be presented to the Panel.

RECOMMENDATION:

- (i) The Panel is recommended to consider the comments made by the invited representatives, and the written information presented to the Panel, and use the information provided as evidence in the review.

REASON FOR REPORT RECOMMENDATIONS

1. To enable the Panel to compile a file of evidence in order to formulate findings and recommendations at the end of the review process.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

2. None.

DETAIL (Including consultation carried out)

3. Councillor Letts, Leader and Cabinet Member with responsibility for Planning Policy, was scheduled to present the Executive's position on the contribution planning can make to maintaining balanced neighbourhoods at the inaugural meeting of the review in November 2013. He was unable to attend the meeting due to an earlier engagement overrunning and has therefore been asked to outline the Executive's approach at this meeting of the Panel.

Planning Enforcement

4. Dr Chris Lyons, Southampton City Council's Planning and Development Manager, will provide the Scrutiny Panel with an overview of the Council's approach to planning enforcement. This will include a summary of the findings from the recently undertaken audit of Development Management – Enforcement, the final report is attached as Appendix 1, and the progress made against the management actions identified in the report (Appendix 2).
5. Progress must be seen alongside the workload of the Planning Enforcement Team outlined in the table below:

	2011-12*	2012-13*	2013-14* (31 st Dec 2013)
Enquiries	291	430	268
Stop Notice	3	1	0
Enforcement Notice	6	6	12
Breach of Condition Notice	8	5	4
s.215 untidy site notice	0	1	2

*Best available data at time of publication

6. Following a request for feedback on the effectiveness of the Council's planning enforcement from all Southampton City Councillors, attached, as Appendix 3, is a collation of responses received by members, residents associations and residents. A more detailed response from Pointout Residents Group is attached as Appendix 4.
7. The final appendix is feedback on the Council's approach to planning enforcement from the Southern Landlords Association.
8. This meeting of the Panel provides members with an opportunity to discuss the findings within the internal audit report, review feedback provided and identify where improvements can be made in addition to the action plan developed following the audit.

RESOURCE IMPLICATIONS

Capital/Revenue

9. None.

Property/Other

10. None.

LEGAL IMPLICATIONS

Statutory power to undertake proposals in the report:

11. The duty to undertake overview and scrutiny is set out in Part 1A Section 9 of the Local Government Act 2000.

Other Legal Implications:

12. None

POLICY FRAMEWORK IMPLICATIONS

13. None

KEY DECISION? No

WARDS/COMMUNITIES AFFECTED:	None directly as a result of this report
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SUPPORTING DOCUMENTATION

Appendices

1.	Internal Audit Final Report: Development Management - Enforcement
2	Update on Internal Audit Action Plan
3.	Enforcement - Table of feedback
4.	Response from Pointout Residents Group
5.	Response from Southern Landlords Association

Documents In Members' Rooms

1.	None
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Equality Impact Assessment

Do the implications/subject of the report require an Equality Impact Assessment (EIA) to be carried out.	Dependent upon forward plan item
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Other Background Documents

Equality Impact Assessment and Other Background documents available for inspection at:

Title of Background Paper(s) Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)

1.	None	
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Internal Audit Services

Confidential

Final Internal Audit Report

Development Management - Enforcement

Prepared by: Jane Collins
Issued date: 26th April 2013

This document has only been distributed to:

Name	Title
Dawn Baxendale	Interim Chief Executive
Paul Nichols	Senior Manager, Planning, Sustainability and Transport
Chris Lyons	Planning and Development Manager

1. Audit objective

1.1. This review has sought to assess the effectiveness of controls in place focusing on those designed to mitigate risk in achieving the following key objectives:

- Policies and procedures are in place for planning enforcement;
- Complaints received are prioritised, investigated, their progress monitored and resolved in a timely manner;
- Enforcement decisions are executed within statutory and legal timeframes; and
- Staff are appropriately trained and qualified.

2. Audit opinion

2.1. The overall opinion of this review based on the audit evidence obtained, is that **limited assurance** can be placed on the effectiveness of the framework of risk management, control and governance designed to support the achievement of management objectives.

3. Executive summary

- 3.1. The work of the enforcement team is largely generated from complaints from the public regarding planning permission and changes of use. Its aim is to put right unauthorised development.
- 3.2. The enforcement policy has not been reviewed since it was published in October 2008 and does not reflect the updated National Planning Policy Statement dated March 2012. As part of its adoption there was a recommendation that a simple guidance leaflet should be produced and made available to the public detailing the main elements of the policy. This guidance leaflet has not been produced.
- 3.3. Enforcement complaints are recorded on the Uniform and Comino systems and initial site visits are made within the best practice timeframes. Key data such as response dates, details of the breach and status of cases are not being entered into the correct areas of Uniform to allow statutory information to be made available to the public on the Get Access Portal and to allow management reports to be run to determine the status of cases, appeals and to monitor progress.
- 3.4. There is no single document maintained that gives clear visibility to the team, management and the legal team of the status of cases, the length of time to respond to and to resolve a case and key dates by which actions must be taken.
- 3.5. The legal and enforcement teams used to have regular meetings with Legal Services to discuss the progress of cases where enforcement notices have been served, their status and required actions. These meetings also gave an opportunity to flag potential issues and seek legal advice. These meetings ceased in July 2012.

- 3.6. All notes, correspondence and documents relating to a case are required to be recorded on the data base Comino, including actions agreed with the perpetrator and outcomes communicated to the complainant. A review of 10 cases found that only two case records evidenced that the complainant had been informed of the outcome of their complaint.
- 3.7. Documents relating to cases in some instances are stored in outlook folders and on the services shared drive. The Council's document retention policy for Planning Enforcement; section D1-3, states that there is a statutory requirement under the Town and County Planning Act 1990 for permanent retention of Planning Enforcement documents. Due to inconsistency in filing of documents both in and out of Comino assurance can not be fully given that this policy is being fully adhered to, any requests for documents may not be met as locating them may be difficult as they are not filed in a central location.
- 3.8. The National Planning Policy Statement (March 2012) states that enforcement should be proactive. The team will follow up on some cases to ensure that a recommendation or an enforcement notice continues to be enforced, however their current approach is mainly reactive.

4. Action plan(s)

4.1. The action plan(s) detailed within this report describe:

- key risks internal audit considered were inadequately controlled by the framework in place;
- the actions management propose to undertake to bring the risks within acceptable parameters; and
- internal audit's assessment as to whether management's actions achieve an acceptable level of risk exposure.

Action Plan 1			
Objective	Policies and procedures are not in place for planning enforcement.		
Observation	<p>Enforcement Policy</p> <p>The enforcement policy has not been reviewed since it was published in October 2008 and does not reflect the updated National Planning Policy Statement dated March 2012.</p> <p>Wording within the document suggests that it remains a draft working copy with some areas still awaiting clarification, for example section 8.4 states:</p> <p>'It may be possible in the future to utilise other officers (e.g. City Patrol) to monitor issues at the weekend, but this is a matter that will need appropriate resourcing, consultation and staff training to achieve, outside the adoption of this policy. If such changes in resourcing the service do occur, the Policy wording here or advice leaflet can always be adjusted later.'</p> <p>Although this document is available to the public through the Southampton City Council's website it is not clear if it is a current and final version.</p> <p>Adoption of the policy was approved by Cabinet on the 28/07/08. As part of the adoption there was a recommendation that a simple guidance leaflet be produced detailing the main elements of the policy. This guidance leaflet has not yet been produced.</p> <p>An up to date and relevant enforcement policy which can be easily understood by users including the public will lead to a better understanding of planning policies and the enforcement system to ensure that legal and statutory requirements are met.</p>		
Management Action			
What	Priority (High, Medium, Low)	Responsible Officer	Target Date
Review and update enforcement policy and place on website	Medium	Chris Lyons, Planning and Development Manager	30th September 2013
Produce simple guidance sheet to the enforcement process	Medium	Chris Lyons, Planning and Development Manager	30th September 2013
Auditor's assessment of management response:			
Management actions will mitigate the risks identified			

Action Plan 2	
Objective	Complaints received are prioritised, investigated, their progress monitored and resolved in a timely manner
Observation	<p>Recording, reporting and monitoring of complaints</p> <p>Enforcement complaints are recorded on the Uniform and Comino systems. Data is mapped from Uniform to the Get Access Portal on the Southampton City Council website to give the public visibility of cases and to allow management reports to be run.</p> <p>Data such as complaint response dates are not being entered into Uniform. Other data such as the details of the breach and status of the cases are not being entered into the correct areas of Uniform to allow key information to be displayed on the Get Access Portal and to allow management reports to be run to determine the status of cases, appeals and monitor progress.</p> <p>Without clear and accurate information, management are unable to determine if the best practice timeframes for responses are being met, how many complaints have been received over a period of time, how long they have taken to resolve, types of enforcement breaches and the number of enforcement notices issued. This information is not only useful as a management tool but may be required in response to freedom of information requests. Additionally the Council is not fully meeting its statutory requirements to make information on enforcement cases available to the public.</p> <p>Document maintenance and Retention</p> <p>All notes, correspondence and documents relating to a case are required to be recorded on the data base Comino, including actions agreed with the perpetrator and outcomes communicated to the complainant. In some instances documents were stored in outlook folders and on the services shared drive and on review of a sample of 10 cases the following was noted:</p> <ul style="list-style-type: none"> • only two case records evidenced that the complainant had been informed of the outcome of their complaint. • two case records sampled contained no documentation or notes. • eight cases were responded to within the good practice guidelines. <p>There is inconsistency in how notes are recorded on Comino. In some instances the notes function is used to record actions, in others a word document is completed which includes a timeline of actions taken.</p>

The Council's document retention policy for Planning Enforcement; section D1-3, states that there is a statutory requirement under the Town and County Planning Act 1990 for permanent retention of Planning Enforcement documents. Due to inconsistency in filing of documents both in and out of Comino assurance can not be fully given that this policy is being fully adhered to and any requests for documents may not be met as locating them may be difficult due to them not being filed in a central location.

Management Action

What	Priority (High, Medium, Low)	Responsible Officer	Target Date
Review processes of recording information and ensure new processes are in place to be able to monitor enforcement data and retain data as required	High	Chris Lyons, Planning and Development Manager	31st July 2013
Ensure process is in place, clear, and understood by team on communicating with complainants	High	Chris Lyons, Planning and Development Manager	31st July 2013

Auditor's assessment of management response:

Management actions will mitigate the risks identified

Action Plan 3	
Objective	Enforcement decisions are not executed within statutory and legal timeframes
Observation	<p>Enforcement Notices</p> <p>Enforcement notices contain dates for the enforcement notice to be complied with. The enforcement officers enter the compliance dates and agreed action dates into their outlook diaries. This aids with planning visits to ensure that breaches have been resolved, however it does not allow for clear visibility of all cases including their current status and key dates for actions that can be easily accessed by the whole team.</p> <p>Without visibility of the status of cases, management, and enforcement officers can not monitor progress of cases and appeals and verify that key dates and actions have been complied with. Key actions may not be implemented in the absence of a team member which may result in enforcement notices not being issued or statutory timeframes adhered to resulting in reputational damage to the Council.</p> <p>Authorisation to enter land</p> <p>Section 196A of the town and country planning act gives officers, who are authorised in writing by the council, to enter any land. Although the officers carry ID badges with them on visits, such powers are not highlighted on their identity badges or carried in writing.</p> <p>Failure to provide information regarding their power under the town and country planning act could result in challenges from the public and full powers not being executed when required.</p> <p>Liaison with the Legal Team</p> <p>The legal and enforcement teams used to have regular meetings to discuss the progress of cases where enforcement notices had been served, their status and required actions. These meetings also gave an opportunity to flag potential issues and seek legal advice. These meetings ceased in July 2012.</p> <p>Legal maintain a spreadsheet of cases where legal action is required, it includes the nature of the breach, status of proceedings and also tracking of appeals. Until July 2012 the enforcement team had visibility of this spreadsheet and would update it with information regarding the status of the case, they would also have visibility of any updates entered by legal.</p> <p>This spreadsheet is a useful tool to inform each team of the status of cases as the legal team do not have access to Uniform or Comino where enforcement case visit notes are stored and are therefore reliant on information being provided to them by enforcement. Consequently, Legal and Enforcement teams may therefore not be in possession of full and current information regarding a case, resulting in incomplete information to inform decisions.</p>

Management Action			
What	Priority (High, Medium, Low)	Responsible Officer	Target Date
Ensure process is in place where cases are reviewed periodically and action taken when appropriate	Medium	Chris Lyons, Planning and Development Manager	30 th September 2013
Get written authorisation for all enforcement officers to be able to enter land	High	Chris Lyons, Planning and Development Manager	31st July 2013
Reinstate regular liaison meetings with the legal team	High	Chris Lyons Planning and Development Manager	31st July 2013
Auditor's assessment of management response:			
Management actions will mitigate the risks identified			

Action Plan 4			
Objective	Policies and procedures are not in place for planning enforcement.		
Observation	<p>The National Planning Policy Statement (March 2012) states that enforcement should be proactive. The team will follow up on cases to ensure that a recommendation or an enforcement notice continues to be enforced. Compliance checks to ensure that planning conditions are implemented in accordance with the approved plans are only undertaken if a complaint has been received. Although resources do not allow for 100% compliance checks, there is no process in place to make targeted random checks.</p> <p>A proactive approach to enforcement will aid the education and understanding of planning requirements by the public and help to reduce the number of complaints and breaches. It can also enhance the reputation of the service.</p>		
Management Action			
What	Priority (High, Medium, Low)	Responsible Officer	Target Date
Given current resourcing it is unlikely that this will be possible in the foreseeable future	Low	Chris Lyons, Planning and Development Manager	
Auditor's assessment of management response:			
Due to current resourcing levels, management accept the risk highlighted.			

Annex A**Key**

The following is the key to quantify observations identified in the audit:

Assurance levels

Opinion	Framework of governance, risk management and management control.
Substantial assurance	A sound framework in place that is operating effectively.
Adequate assurance	Basically a sound framework in place with possible opportunities to improve controls or some immaterial evidence of inconsistent application.
Limited assurance	Critical weakness (es) identified within the framework and / or significant evidence of inconsistent application.
No assurance	Fundamental weaknesses have been identified or the framework is ineffective or absent.

Priority

Priority rating	Current risk
High	A significant risk of; failure to achieve objectives; fraud or impropriety; system breakdown; loss; or qualification of the accounts by the organisation's external auditors. Such risk could lead to adverse impact on the organisation or expose the organisation to criticism.
Medium	A serious, but not immediate risk of: failure to achieve objectives; system breakdown; or loss.
Low	Areas that individually have no major impact, but where management would benefit from improved risk management and / or have the opportunity to achieve greater efficiency and / or effectiveness.

Enforcement - Internal Audit Report

Progress on management actions
14.01.2014

Management Action	Original target date	Update
AP1 - Review and update enforcement policy and put on website	30.9.13	The policy has been reviewed and revised but not agreed yet.
AP2 - Produce simple guidance sheet to the enforcement process	30.9.13	Not yet started.
AP3 - Review processes of recording information and ensure new processes are in place to be able to monitor enforcement data and retain data as required	31.07.13	Completed
AP4 - Ensure process is in place, clear, and understood by team on communicating with complainants	31.07.13	Completed
AP5 - Ensure process is in place where cases are reviewed periodically and action taken when appropriate	30.09.13	Completed – fortnightly meeting with enforcement team and Manager. Commenced 3 rd June
AP6 - Get written authorisation for all enforcement officers to be able to enter land	31.07.13	Completed (26 th September 2013)
AP7 - Reinstate regular liaison meetings with the legal team	31.07.13	Completed (Commenced 9 th May 2013)

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Scrutiny Panel A Review – Maintaining balanced neighbourhoods through planning

Enforcement - Table of feedback up to 28th January 2014

Member feedback	Feedback within Inquiry Enforcement ToR
Cllr Moulton	<ul style="list-style-type: none"> • More robust planning enforcement needed from the Council and enforcement team. Fears that the Council are seen as a soft touch by rogue developers • Planning permission is not required for HMOs existing pre April 2012. Would like to see more thorough checks brought in to verify that those properties were in fact HMOs. The current process is not robust.
Cllr Noon	<ul style="list-style-type: none"> • No real concerns around the approach of planning enforcement.
Residents Groups	Feedback within inquiry Enforcement ToR
Pointout Residents' Group (PRG)	<ul style="list-style-type: none"> • Pointout Residents' Group submitted (Appendix 4). • Endorses the recommendations to be presented by Highfield Residents Association. • The SPD and the planning system in general are ineffective without proper, rigorous and fast enforcement of breaches. We agree that temporary stop orders would be a valuable tool for Local Planning Authorities to operate. • We acknowledge that the Planning Enforcement team is chronically under resourced and has an almost impossible backlog to tackle. • PRG would like to see more transparent relations between Planning and Legal. In our experience there have been unnecessary delays in enforcement because Legal appeared to 'sit' on cases, effectively facilitating continued planning breaches.
Highfield Residents Association (HRA)	<ul style="list-style-type: none"> • Endorses the submission submitted by Pointout Residents' Group (see Appendix 4). • HRA recognise that the council has to act within the law and that a major constraint on undesirable development is the inability to issue a Temporary Stop Notice without risk of compensation against unauthorised residential uses (at present the Council has to wait for a breach to occur to serve an Enforcement Notice to require the use to cease). • The above would require a change in the law, and HRA alongside other resident groups are already vigorously lobbying for this change. • There is the question of adequacy of the resources allocated to enforcement, even though there has been some recent increase.

	<ul style="list-style-type: none"> • Officers give the impression that they are keener to find reasons for not taking action than for taking action. • There does seem to be a marked reluctance on behalf of officers to (a) accept resident's evidence in the first place and (b) to act expeditiously in the enforcement against newly created HMOs. • This then gives the impression there is an implicit tolerance of these types of breaches and encourages landlords and developers to take advantage as they believe "they can get away with it" – this is sending out the wrong message. • It would be helpful if officers could confirm that, as enforcement is a matter of fact rather than discretionary judgement, unlawful uses are normally enforced against. • Dealing with various aspects of HMOs absorbs a not insignificant amount of Council resources. It is therefore consideration as to whether, if the Council tax cannot be levied on landlords, some other form of financial charge should be applied. • The level of fines for breaches should be increased. Levels could increase on a daily basis. • LPAs should be allowed to charge normal planning application fee for HMOs (currently excluded by the A4D). • Appeals should require a fee. • To be a limit on the number of repeat applications per (HMO) site. • Landlords should be liable to prosecution in cases where their tenants are found to be repeatedly responsible for noise and other forms of nuisance. • It is strongly arguable that a planning contravention should itself be an offence, as being an unlawful action, irrespective of the eventual outcome in retrospective applications/ appeals. • HRA would like to see council officers take a more proactive, less risk-averse approach in marginal cases. • HRA would like to see the council commit to implementing the Proceeds of Crime Act at the completion of the Enforcement/ Appeal processes.
<p>East Basset Residents Association (EBRA)</p>	<ul style="list-style-type: none"> • Endorses all statements made by Highfield Residents Association. • Faced with a 'catch 22' situation of Enforcement Officer being unable to act until tenants are residents in the property concerned and a clear contravention has taken place and the council are then unable to act because the tenants would be made homeless if turned out. • Have encountered problems caused by the present Enforcement regulations, they are:- <ul style="list-style-type: none"> (a) Properties, previously solely occupied as family homes, advertised by letting agencies as student lets without submission of the necessary planning application to convert from C3 to C4.

	<p>(b) Where planning applications to convert have been refused by the council and dismissed on appeal when there is uncertainty that letting to a family will continue or multiple lettings may be taking over.</p> <ul style="list-style-type: none"> • EBRA believe that there is no legal obligation on letting agencies for them to act to prevent owners from advertising their property as a student let, irrespective of the present or past circumstances of that property. • Where owners have committed a contravention, the present position of being unable to pursue enforcement because tenants would be made homeless can be used to the advantage of the landlord. • EBRA requests the council to seek stronger legislative powers to control such exploitation. • EBRA contends that the impact of having a tenancy termination, while a severe imposition on a family or single person without immediate assistance, is different in the case of student occupied properties. Where hardship would arise, any new legislation would need alleviation to be available according to the type of tenancy. The availability of rapid re-housing should be taken into account. HMOs for student occupation are plentifully supplied within the city, vacant rooms for student lets are advertised all year round and students have the dedicated support of their Students' Union and Accommodation Unit to give immediate help.
<p>Portswood Residents Gardens Conservation Area (Planning group)</p>	<ul style="list-style-type: none"> • Endorses the recommendations to be presented by Highfield Residents Association. In particular:- <ul style="list-style-type: none"> (1) a more robust system for enforcement and imposition of penalties for failure to adhere to the Council's enforcement instructions • Concerned with lack of enforcement when planning conditions etc are flouted by applicants • Request a more robust approach. • Aware that the council receive large numbers of applications and the limitations due to cut-backs. • Concerns around the delay in acknowledging planning conditions violations concerns and an apparent tardiness on many occasions of any action being taken, this appears to be the case especially when an application is supported by the planning department but is turned down on referral to Planning Committee. • Often constant pressure is necessary by ourselves to obtain enforcement and effective action.
<p>Residents</p>	<p>Feedback within Inquiry Enforcement ToR</p>

Bedford Place/ Polygon Resident	<ul style="list-style-type: none"> • To Let signs flout planning regulations, by being up past the allowed period or having more than one per property. • Feels To Let signs are a branding exercise, as all initial research would be done online and by other means. If enforced it would be a level playing field business wise, but some of the smaller agents/ landlords may have to up their game- but that should be reflected in property too. • The Planning dept is either too stretched or are just not interested in dealing with smaller issues.
Student Unions	Feedback within Inquiry Enforcement ToR
Southampton University Students' Union	<ul style="list-style-type: none"> • Enforcement and improvement of standards in HMOs should be priorities for the Council. • SUSU welcomes improved partnership working to tackle unscrupulous landlords and lettings agencies and wish to see more effective mechanisms for enforcing student's rights as tenants.

Agenda Item 6

Appendix 4

Pointout Residents' Group,

23/01/2014

Miss Louise Fagan,
Southampton City Council.

Dear Miss Fagan,

Re: Scrutiny Panel A – “*The Council’s approach to planning enforcement*”

Pointout Residents' Group thanks you for the invitation to submit evidence to the Scrutiny Panel concerning enforcement issues. Our experience relates solely to 2 properties in the immediate neighbourhood, both of which have been, and continue to be, operating as unlawful HMOs. We will not name the properties but rather use our experience to make general points.

We have found it very hard to obtain appropriate enforcement action against a property which was clearly operating as a long term unauthorized HMO in open defiance both of Council's refusal to grant permission for C4 use and of PIN's dismissal of the subsequent appeal. Repeated requests to Planning Officers for enforcement were declined. There seemed to be a marked reluctance on Council's part to move to formal enforcement. What is not clear however is where the “sticking point” lies;

- with Planning in requesting enforcement
- with Legal in actioning the request
- or with enforcement in delivering it.

In this particular case it seemed that Planning was ultimately willing to enforce, but the applicant kept submitting new applications and appeals and Council's Legal Department / Planning Solicitor kept “recommending” (Chris Lyons's wording) waiting until each successive application was judged before acting, resulting in a very delayed process. We have heard the term “risk adverse” used to describe the Council's approach and concur with this description. In one instance Legal also recommended not scheduling discussion of a planning application by Panel until a related appeal had been decided, resulting in an appeal to PINS for non determination, with further time and cost implications for the Planning Team and where the Council's (and local residents') standpoint was not upheld by PINS. From the date of PIN's decision (27th August 2013), it then took until 26th November (3 months) to actually issue the enforcement notice - surely these are generic documents for each type of planning breach, which are held on file and could easily be prepared in advance and sent out on the day that the decision is received?

In this particular case, (1) the enforcement notice was then served to a completely wrong address and it was only when we noticed this, and notified Council, that it was re-served to the correct address with a further month's grace given to respond (2) The period for compliance was set at 6 months which seemed to be an unnecessarily generous one. Mr. Ivory has promised to investigate how the address error occurred; the delays extend the compliance period to the end of the academic year (very convenient for the owner).

In a second case, a property started acting as an unauthorized HMO. Given our experience with trying to action enforcement through Planning, in this case we approached the enforcement team directly and despite them being inundated with cases, we received a more proactive response and promise to investigate. In this instance a planning contravention notice was served on 19th November 2013. The PCN text is not available on the planning portal but we assume that it carried the standard requirement to reply within 21 days. No further information is

available on the Planning portal to say whether a reply was received or not, or what follow-up action is now underway.

From our limited experience at Planning Panel meetings and from discussions with other residents' groups and Councillors, it would seem that the Legal Department has been performing sub optimally; issuing inaccurate advice and causing long delays in decision making, causing problems for Council, applicants and resident groups. This has resulted in widespread frustration and cynicism; we can only hope that recent changes within the Department will prevent this from continuing.

It is clear from the admitted backlog of enforcement cases requested, under active investigation or in action, that the Council's enforcement team remains, despite its best endeavours, chronically under resourced (despite recent recruitment). We understand that it has proven hard to attract suitable applicants to fill vacant posts. However, as we understand it, these were advertised as extremely short term and part time contracts, which does not help attract the best candidates for what is clearly a demanding and complex job. Given the number of outstanding cases, we would suggest that thought be given to further recruitment and better terms of employment if at all possible

On a purely practical level, multiple attempts to contact enforcement officers by phone to obtain updated information have been unsuccessful. Messages have been left on the Team answer phones but infrequent return calls received. Again we appreciate that the team is under resourced.

In summary, we appreciate the impact of current financial constraints but the clearly apparent unwillingness / failure to enforce in a timely and appropriate manner is sending a clear and strong message to unscrupulous landlords, developers and the such that, chances are, they can get away with unauthorized development. It is also meaning that resident's associations are spending considerable time and effort and money (in our case for one property, nearly £2,800 in legal fees) in trying to ensure that planning breaches are not left unchallenged. This also ties up officer time and would be unnecessary if a more proactive approach were in evidence.

Yours sincerely,

David Johnston,

A handwritten signature in blue ink that reads "D.A. Johnston". The signature is written in a cursive style and is underlined with a single blue line.

Lynette Hand,

A handwritten signature in blue ink that reads "Lynette Hand". The signature is written in a cursive style.

for Pointout Residents' Group.

Southern Landlords Association - *'the Council's approach to planning enforcement'*.

The view of the SLA is in line with the published central government policy and guidance notes on enforcement. The council should follow this guidance and specific policies aimed as usual at HMO housing and should not stray from this guidance. We do not support a "zero tolerance" race to court as proposed by others. If the council does not follow the government guidance it will lay itself open to local Government Ombudsman claims for maladministration.

Government guidance states that enforcement action should only be taken when expedient to do so. The expediency test is the critical test and the council should continue to uphold this test. A breach of planning control is not a criminal offence and just because there has been a breach of planning control is not a reason to take action. Taking enforcement action is not a mandatory duty of the council it is discretionary and should be judged on a case by case basis. The decision to take action rests on whether the breach causes "significant harm". It is for the council to decide this and if significant harm cannot be shown then it is not expedient to take enforcement action. We have particular concern over taking action against historic breaches of planning law that may have occurred a significant number of years ago and gone unnoticed and unchallenged. This type of historic breach cannot be causing significant harm if nobody even realized and thus fails the expediency test.

To conclude we feel that currently the council does not follow the expediency test and will take enforcement action because it is pressurized by an all powerful few, even if "significant" harm cannot be adequately demonstrated. The council should review government guidance and operate within it.

Dr Julian Jenkinson

Southern Landlords Association

www.southernlandlords.org

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