

# Overview and Scrutiny Committee

13 March 2018



<b>Title</b>	Planning Enforcement in Spelthorne.		
<b>Purpose of the report</b>	To note		
<b>Report Author</b>	Esmé Spinks, Planning Development Manager		
<b>Cabinet Member</b>	Councillor Colin Barnard	Confidential	No
<b>Recommendations</b>	<ol style="list-style-type: none"><li>1. To note the contents of the report.</li><li>2. To consider whether the Overview and Scrutiny Committee wish to review in detail any aspects of the planning enforcement service.</li><li>3. To note the financial and resource implications of an increased enforcement workload.</li></ol>		
<b>Reason for Recommendation</b>	Not applicable.		

## 1. Background

- 1.1 Cllr Mooney (Chair of the Overview and Scrutiny Committee) has requested that a report be submitted which sets out the work and performance of the Planning Enforcement service. It was requested that the report explains why some enforcement cases take a long time to resolve and also to highlight the successes of the service.

## 2. Key issues

The attached report and appendices set out an overview of the way planning enforcement is provided. The key issues are:

- There is a need to continue to prioritise our resources so we can deal with those matters which have the greatest impact effectively and efficiently
- There are presently two full time equivalent permanent members of staff (three officers) required to deal with an increased workload and increasingly complex issues. This has an impact on the workload of the planning officers. Additional resources are required to manage this.
- Whilst work is largely reactive in nature, we do respond proactively (planning contravention notices, s215 notices) and decisively (injunctions, prosecutions, direct action) where we need to, although resources do limit our proactive approach.

- There are no issues in terms of performance; we have an excellent appeals record.

### **3. Options analysis and proposal**

- 3.1 The priorities and workload cannot be delivered within existing resources. Additional resources are required.

### **4. Financial implications**

- 4.1 There is the need for a new Principal Planning Enforcement Officer post to manage the enforcement team and the upgrade of an existing enforcement officer post to a new senior enforcement officer post. The budget for these posts have been agreed as part of a growth bid (at Cabinet on 21 February 2018).

### **5. Other considerations**

- 5.1 Planning Enforcement is a legal process which means it often takes a lot longer to achieve than councillors or the general public would wish.

### **6. Risks and how they will be mitigated**

- 6.1 Risks are covered in the Local Enforcement Plan. This prioritises the caseload to ensure that those with the highest risk (in terms of permanent effect, impact on the environment or amenity) have the highest priority, so we can deal with these quickly and mitigate the impact.

### **7. Timetable for implementation**

- 7.1 Recruitment for the new staff will take place in March/April 2018.

### **Background papers:**

Planning Enforcement report

### **Appendices:**

1. Local Enforcement Plan (Planning)
2. Planning Enforcement FAQs
3. Flow chart of the enforcement process at Spelthorne
4. Planning Enforcement Appeal Decisions for Appeals Lodged April 2015 to April 2017

## **PLANNING ENFORCEMENT IN SPELTHORNE**

### **1.0 Planning Enforcement**

**1.1** Planning Enforcement is about ensuring compliance with planning legislation and involves the processing of complaints relating to unauthorised work to land and buildings and the resolution of those issues in an acceptable way.

**1.2** Planning permission is needed for the erection of many types of buildings and for the making of a material change in use of land or buildings. Permission is also required to erect many forms of advertisements and there are controls to protect Listed Buildings and preserved trees. Unauthorised development in the main therefore covers the following:

- The erection of buildings or the making of a material change of use without the necessary planning permission
- The carrying out of development which varies from the planning permission (and shown on the approved plans)
- Carrying out development without complying with conditions or a subsequent breach of those conditions which apply in perpetuity.
- The display of advertisements without advertisement consent
- Felling of, and works to, trees included in a Tree Preservation Order or to trees of a certain size in a Conservation Area.
- Demolition of Listed Buildings and of certain buildings in Conservation Areas, and works to Listed Buildings which affect their historic status, without the necessary consent.

**1.3** The following are not breaches of planning control and therefore no action can be pursued by the enforcement officers:

- Operating a business from home where the residential use remains the primary use and there is no adverse impact on residential amenity (planning permission not required)
- Matters relating to roads, footpaths, bridleways (refer to Surrey County Council)
- Parking of commercial vehicles in residential areas (planning permission not required. Refer to Police if blocking a private access)
- Clearing land of undergrowth, bushes and trees provided they are not subject to planning protection (planning permission not required)
- Dangerous structures (refer to building control)
- Poor build quality and workmanship (civil matter)
- Noise related issues (refer to Environmental Health via Council website)
- Grievances with the planning system (a complaint may be made to the Planning Development Manager who will investigate)
- Boundary disputes (civil matter - refer to mediation or solicitors)
- Deeds and covenants (civil matter – refer to solicitors)
- Party Wall etc. Act (civil matter – refer to solicitors)

- Informative placed on planning decisions (this is advisory only)
- Failure to consult during the planning application process (a complaint may be made to the Planning Development Manager who will investigate)

- 1.4 It should be noted that Surrey County Council is the planning authority for minerals and waste matters and is, therefore, also the responsible authority concerning any enforcement activities for these functions. When any complaints are received concerning possible enforcement issues relating to minerals and waste matters, we are required to refer them to Surrey County Council to deal with. These concern the extraction of minerals (sand, gravel, clay, chalk, oil and gas), the disposal, storage and processing of waste and the raising of land levels through the deposit of waste materials. However, the County enforcement team comprises just four officers to deal with these matters across Surrey which could make it difficult in terms of monitoring and dealing with non-compliance.

### **Time Limits for Enforcement**

- 1.5 There are some time limits on the ability to take enforcement action which are set out below.

**A four year limit** - this applies to 'unauthorised operational development' (the carrying out of building, engineering, mining or other operations in, on, over or under land) and to a change of use to a single dwelling house. After four years following the breach of planning control, the development becomes lawful and no enforcement action can be taken.

**A ten year limit** - this applies to all other development including changes of use (other than to a single dwelling house) and breaches of condition. After ten years, the development becomes lawful and no enforcement action can be taken.

- 1.6 In these circumstances, an applicant may apply for a Certificate of Lawful development. If the evidence proves the time period, then a certificate will be granted, following consultation with the Legal department. This has the same effect as issuing a planning permission.
- 1.7 Where a person deliberately conceals unauthorised development, the deception may not come to light until after the time limits for taking enforcement action have expired. In such cases a planning enforcement order may be sought from the Magistrates Court. Enforcement orders enable an authority to take action in relation to an apparent breach of planning control notwithstanding that the time limits may have expired, subject to certain requirements. This occurred with the infamous "castle" in Reigate but we have not had any examples in Spelthorne.

## 2.0 Enforcement Action

- 2.1 There are a number of options available for the local planning authority to deal with possible breaches of planning control in a proportionate way which are listed below. These are summarised in the Planning Practice Guidance (PPG) and include the choice, in appropriate circumstances, of taking no action.

No formal action – Enforcement action should be proportionate to the breach of planning control to which it relates and taken when it is expedient to do so. We will avoid taking enforcement action where:

- there is a trivial or technical breach of control which causes no material harm or adverse impact on the amenity of the site or the surrounding area;
- development is acceptable on its planning merits and formal enforcement action would solely be to regularise the development;
- in its assessment, the local planning authority considers that an application is the appropriate way forward to regularise the situation, for example, where planning conditions may need to be imposed.

Retrospective planning application – We will invite a retrospective application where we consider it is the appropriate way forward to regularise the situation. The fact that it is retrospective will not fetter our discretion prior to the determination of any application for planning permission. These applications are considered in the normal way.

Planning contravention notice – These are used to obtain accurate information about an alleged breach of planning control. They allow the LPA to require any information they want for enforcement purposes about any operations being carried out; any use of; or any activities being carried out on the land, and can be used to invite its recipient to respond constructively to the local planning authority about how any suspected breach of planning control may be satisfactorily remedied.

Enforcement Notice – these are issued where the local planning authority is satisfied that it appears there has been a breach of planning control and it is expedient to issue a notice, taking into account the provisions of the development plan and any other material considerations. There is a right of appeal against an enforcement notice. It is an offence not to comply with an enforcement notice, once the period for compliance has elapsed, and there is no outstanding appeal.

Planning Enforcement Order – As referred to above, this is where a person deliberately conceals unauthorised development, the deception may not come to light until after the time limits for taking enforcement action have expired. A planning enforcement order enables an authority to take action in relation to an apparent breach of planning control notwithstanding that the time limits may have expired.

Stop Notice - A stop notice can prohibit any or all of the activities which comprise the alleged breach(es) of planning control specified in the related enforcement notice, ahead of the deadline for compliance in that enforcement

notice. It cannot be served without an enforcement notice. There is no right of appeal but if the associated enforcement notice is quashed, varied or withdrawn or the stop notice is withdrawn compensation may be payable in certain circumstances.

Temporary Stop Notice - A temporary stop notice requires that an activity which is a breach of planning control should stop immediately. It does not have to wait for an enforcement notice to be issued and the effect of the temporary stop notice is immediate. It expires after 28 days and can only be issued once.

Breach of Condition Notice – This requires its recipient to secure compliance with the terms of a planning condition. There is no right of appeal.

Injunction – where it is expedient for any actual or apprehended breach of planning control to be restrained, the LPA can apply to the High Court or County Court for an injunction to restrain a breach of planning control.

Rights of entry – LPAs and Justices of the Peace (JPs) can authorise named officers to enter land specifically for the effective enforcement of planning control. Where entry is refused or is reasonably likely to be refused, or there is a need for urgency, then it is possible for a JP to issue a warrant to allow entry

Enforcement and protected trees - Anyone who contravenes a Tree Preservation Order (TPO) by damaging or carrying out work on a tree protected by a TPO without getting permission from the local planning authority is guilty of an offence and may be fined. There is also a duty requiring landowners to replace a tree removed, uprooted or destroyed in contravention of a TPO

### **3.0 The Council's approach towards dealing with complaints**

- 3.1 We have two full time equivalent Planning Enforcement Officers at Spelthorne; one full time officer and two part time officers with each working half a week. They are based within the Planning Development Management Team under the day to day management of the Planning Development Manager. These officers investigate the majority of complaints but planning officers do become involved in this area of work when they need to provide planning advice on complaints received and evidence to support an appeal against the serving of an enforcement notice. In addition to this we rely on the services of the Council's Legal team particularly when non-compliance with an Enforcement Notice requires prosecution in the Courts or some other form of action (e.g. an injunction).
- 3.2 National Government's policy and guidance on planning enforcement is set out in the National Planning Policy Framework (NPPF) and the PPG). The NPPF advises that:

*“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”.*

The NPPF recognises 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

3.3 The NPPF encourages local authorities to publish a local enforcement plan to manage enforcement proactively in a way that is appropriate to their area. An 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”.

3.4 The Council’s approach towards unauthorised development is set out in our Local Enforcement Plan which was adopted by the Cabinet on 24 September 2013. A copy of this plan is attached at Appendix 1. There has been little change in the enforcement legislation since this time but nevertheless, due to the passage of time, the Plan is currently being updated. There is also a list of frequently asked questions (FAQs) prepared by planning officers which is attached as appendix 2. Both of these documents are available to inspect on the Council’s website.

3.5 A flow chart of the enforcement process detailing the way we work at Spelthorne is attached as Appendix 3. The chart demonstrates (in the blue coloured boxes) how the enquirer is kept informed by the enforcement officers at the various stages in the planning enforcement process.

#### **4.0 The workload**

4.1 The workload of the enforcement team can be divided into two areas. The first, which takes up the vast majority of officer’s time, is the dealing with complaints about alleged unauthorised work, and the resolving of those issues in a satisfactory way. The second area is the proactive monitoring of development to ensure it is carried out strictly in accordance with the planning permission given. The amount of time spent on reactive and proactive work is determined by the resources we have available. At the meeting of Council on 22 February, the budget for 2018/19 was agreed which included a growth bid and this will facilitate the creation of an enlarged and dedicated enforcement team.

#### Reactive - complaints

- 4.2 Last year the Planning Enforcement Officers investigated over 400 complaints relating to alleged unauthorised work. With each of these cases there may be a number of complainants that will need to be responded to. Following the initial investigation, a number of these cases are not pursued because it will be established that there has been no breach of planning control usually because:
- Planning permission has been given for the work
  - The work does not need planning permission
  - The work is “permitted development”
  - The breach is immune from enforcement action and has become lawful because of the length of time it has been in existence.
- 4.3 In addition, there are cases where the breach is minor and a decision is taken that it is not expedient to take enforcement action (e.g. a fence which is 2.3m high, 0.3m over the permitted development allowance).
- 4.4 Where the Council’s permission is required, some cases will be resolved because the owner will stop the unauthorised work and remove the structures. In other cases, the owner will agree to submit a planning application which may be subsequently approved.
- 4.5 In those cases where the breach of planning control cannot be resolved through agreement, a legal notice will be served (there are a variety of Enforcement Notices that are applicable to different types of breaches.) In many instances the owner will decide to appeal against the serving of the Notice and that appeal will be considered by the Planning Inspectorate and will be heard at a Public Inquiry, a hearing, or by the exchange of statements (written representations).
- 4.6 In those cases where the appeal is dismissed, and the Enforcement notice comes in to effect, the Council’s Enforcement Officer will need to ensure it is complied with within the timescales set out in the Notice. In a limited number of cases compliance with Enforcement Notices need to be secured through the Courts and occasionally it is necessary to obtain an injunction through the courts. These are lengthy and time-consuming processes both for the Enforcement Officer and also the Councils solicitor seeking prosecution.
- 4.7 The following table seeks to quantify some of those key stages in the process outlined above and compares the workload to previous years.

Planning Enforcement Work (Financial Year – 1 April – 31 March)

	<b>2013/14</b>	<b>2014/15</b>	<b>2015/16</b>	<b>2016/17</b>
Complaints Received	268	217	295	407
Enforcement Notices Served	9	15	22	12
Stop Notices Served	0	0	1	1

	<b>2013/14</b>	<b>2014/15</b>	<b>2015/16</b>	<b>2016/17</b>
Temporary Stop Notices Served	0	4	3	4
Planning Contravention Notices Served	1	1	5	3
Breach of Condition Notices Served	3	1	1	0
Enforcement Notice Appeals Lodged	8	7	14	6
Appeals Dismissed	1	1	10	5*
Appeals Allowed	2	0	0	2
Appeals – Modified	1	0	0	0
Prosecutions	0	0	3	6
Injunctions	0	0	1	2
S215 Notices	0	0	0	1
High Hedge Notices	0	0	1	0
Objections to Operator's Licence Applications	0	0	1	4

\* One split decision

- 4.8 From the data above, it is demonstrated that there has been a sharp increase in the number of complaints received, particularly in the last two years. In addition, there has been an increase in the number of enforcement appeals over the same period with which we have had a high success rate, with 11 appeals dismissed and two split decisions issued. It is also clear that we have been engaging more in prosecutions and injunctions for sites where enforcement notices have been ignored. We are also serving more Planning Contravention Notices and indeed since April 2017, we have served seven and they will be used with increasing frequency in the future. In addition, we have been increasing objections made to applications for Operator's Licences and have represented one case at appeal. Furthermore, an internal officer group has recently been established; "Every Ward at its Best", chaired by the Council's Head of Corporate Governance. This is a multidisciplinary group which looks at improving the appearance of sites across the borough. We aim to use s215 notices more regularly and in appropriate cases to approve the appearance of sites.
- 4.9 The table below gives an indication of the level of activity of Spelthorne compared with the other Surrey districts. The statistics are for the year ending June 2017 but the number of complaints relates for the calendar year of 2016.

## Enforcement Statistics – Surrey Districts - Year ending June 2017

<u>Local Authority</u>	<u>No. of Enforcement Officers (fte)</u>	<u>Complaints 2016</u>	<u>Complaints per officer (fte)</u>	<u>Enforcement Notices issued</u>	<u>Stop Notices</u>	<u>Temporary Stop Notices issued</u>	<u>Breach of Condition</u>	<u>Planning Contravention Notices Served</u>	<u>Enf. Injunctions granted by H Ct.</u>
Elmbridge	4	465	116	5			3	3	
Epsom & Ewell	1.6	240	150	10			1	1	
Guildford	5	454	91	9	1	2	1	11	
Mole Valley	3	325	108	9	1		2		
Reigate	3	525	175	18		1	3	6	
Runnymede	3	290	97	6	2	2		5	1
Spelthorne	2	402	201	8		4		3	1
Surrey Heath	1+corporate enforcement	160	c.126	5	1			1	1
Tandridge	4	300 - 350	75 - 87	10			1	2	
Waverley	6	337	56	9		1	3	18	
Woking	2	164	82	5			1		

It is clear that Spelthorne has a much higher enforcement case load per officer compared with the other Surrey districts. Whilst the number of Planning Contravention notices are relatively low, we have been more proactive in using them and as referred to above, in the year to December 2017, a total of seven PCNs were served.

### Proactive – monitoring

- 4.10 In addition to investigating complaints about unauthorised work we also seek to proactively monitor key planning permissions to ensure development is built in accordance with the approved plans and complies with the conditions attached to the permission. Each year we determine over 1400 applications and a large majority of these are subject to a number of conditions (in large residential schemes it is usual for the permission to contain some 30+ conditions). It is not possible for planning officers to monitor the construction of all of these developments at the same time as processing current planning applications. In cases which have been known to be particularly sensitive during the processing of the planning application, we will check the setting out of the development and liaise with Building Control in the cases where they

are dealing and are informed when schemes start. The setting out of commercial development and new residential development (i.e. houses and flats but excluding domestic extensions) is physically checked on the site by Building Control although this is not possible if the building regulation applications are being undertaken by an independent inspector. The compliance with any pre-commencement conditions is checked by planning officers (such as the need for a contaminated land assessment before construction starts).

## **5.0 Current Enforcement Cases**

- 5.1 A list of the current enforcement cases is sent out on a monthly basis to all councillors. The list details the previous, current and future actions and is issued to advise councillors on a confidential basis. The list also provides a message which councillors are able to convey to residents. Some of these cases appear on the list for several years and this is a consequence of the length of time the enforcement process takes, even for sites where the issues seem to be relatively straight forward. It should be noted that those who breach planning rules have a number of legally valid routes they are able to pursue and they often exhaust them all in order to slow down complying with enforcement action. If a breach occurs sometimes considerable time is spent gathering robust evidence in order to build a strong case. Without this evidence, there is a greater risk of failure at appeal or in the courts. If a breach occurs which in planning terms is totally unacceptable, we would not request a planning application. However, the owner/occupier is at liberty to submit one and we cannot refuse to entertain repeat applications unless they are identical to an application which has been dismissed on appeal in the last two years. If an application is submitted, this results in in-built delays whilst the application is processed, refused planning permission and appealed against and court action is pursued. During this time, we are unable to pursue compliance. The examples below demonstrate how exasperating the enforcement process can be.

### 2A School Road, Ashford

- 5.2 In early 2007 the owner unlawfully constructed an outbuilding for residential purposes on land adjacent to his property at 2a School Road, Ashford. A planning application was refused, an enforcement notice was served and the appeal was dismissed. The owner subsequently made further appeals through the Civil Courts including the High Court. All of the appeals were refused. There were two further applications in 2011, which were refused and the appeals were dismissed in 2013. Further civil action continued and concluded with an Injunction made in 2015. This gave the defendant until 4pm on the 30 March 2016 to comply with the Injunctive Order, which reinforced the requirements of the original enforcement notice. This was not complied with and the owner was in Contempt of Court. The owner was advised by the Council that as he had failed to comply with the Court Order and failed to comply with the Enforcement Notice, the Council now intended to demolish the unauthorised outbuilding. Such demolition works would not commence before 1 October 2016. The owner made an application to the Court to vary the

injunction order and Spelthorne Council applied to have the owner committed for failing to comply with the order. This was heard on 26 April 2017. The owner's application was dismissed and Spelthorne Council's application was granted as the breach of the injunction had been proved. The owner was given four months to demolish the building (until the end of August 2017). The owner did demolish the building 10 years and one day after the enforcement notice was served following the threat of direct action by the Council. However, he did not remove the concrete slab, foundations and services. Following a further court hearing and the threat of direct action by the Council, the enforcement notice was fully complied. The planning enforcement officer was required to attend court on 12 occasions in the last two years and most occasions took a full working day each and the whole process took over ten years to conclude.

### Sheep Walk, Shepperton

- 5.3 The site known as land to the west of Sheep Walk in Shepperton has a long and complex planning enforcement history dating back to 2012. There are three issues in question.
- The first relates to a relatively large area of land known as land to the west of Sheep Walk where there has been action against the stationing of mobile homes/caravans;
  - The second concerns an area adjacent to the road on former Highways England land. This site is known as "Hamilton's Pitch" and there has been recent action against the stationing of mobile homes/caravans which relocated from the first site; and
  - The third relates to the unauthorised scraping back of surface material and erection of gate and posts.
- 5.4 In 2012, an enforcement notice was served on the first site requiring the removal of the mobile homes, caravans and paraphernalia which was followed in the following year by an injunction. The appellants stayed on the land in contempt of the injunction (and therefore contempt of court). The Council took them to court at the end of 2015 where they were found guilty of contempt, they were sentenced in 2016 and received a fine of £2500 each, suspended for 12 months. If the land was cleared by 09 May 2016 the fines would be withdrawn (they did this). The judge stated that a further contempt of the injunction would make them liable to be committed to prison. After 2.5 years of non-compliance of the injunction and the threat of imprisonment, the applicant moved their mobile homes and associated equipment off their land.
- 5.5 The owners relocated to the second site known as Hamilton's Pitch which is owned by Highways England. In 2017, a further injunction was sought and obtained for this land. Despite this, a planning application was received last year for the retention of the existing caravans, hardstanding and paraphernalia. This was appealed against and heard at a Hearing in January 2018. The appeal outcome is awaited and meanwhile the occupants are still living on this land in breach of the injunction.
- 5.6 The third issue concerning the surface material, gate and posts was the subject of enforcement notices in April and May 2016. This was appealed against and

the appeals were dismissed in March 2017. The unauthorised structures are still in situ and the Council is proceeding with further action against these breaches.

#### Kestrel, Horton Road, Stanwell

- 5.7 This site concerned the unauthorised change of use from residential to a mixed use of residential and private members club together with associated structures and a hardstanding. The complaint was first received at the end of 2012. An enforcement notice was issued in mid-2013 and a subsequent appeal was submitted at the end of the same year. This appeal was heard via a public inquiry in June and September 2014 and dismissed October 2014. The applicants applied to the High Court against the Inspectors decision in 2015 and this was refused at the end of 2015. However, in April 2016 they lodged an appeal in the Court of Appeal. This was heard in July 2016 in favour of the Council permission to appeal to the Supreme Court was refused. Nevertheless, the applicant attempted to submit an appeal to the Supreme Court and the Court of Appeal's decision to refuse this was upheld. The current compliance date for the enforcement notice was 25 July 2017. Officers had to seek a warrant to inspect the premises. As the enforcement notice had not been complied with, an injunction was obtained. However, in February 2018 the premises closed and the majority of the unauthorised structures were removed. At present the Council is prosecuting against the failure to comply with the enforcement notice. At the time of writing this report, this matter is on-going.

#### Bretts Site, Littleton Lane

- 5.8 Whilst not the subject of an enforcement notice, the current minerals site has been the subject of recent investigation involving our planning enforcement officer. The minerals activity comes within the control of Surrey County Council as the minerals authority rather than Spelthorne Bough Council. The site has a particularly complex planning history and it would appear that several buildings have been erected on the site over the years which are used for industrial and storage purposes unconnected with the minerals activity. Many of these buildings are exempt from planning control due to the length of time they have existed whilst Surrey County Council was responsible for monitoring the minerals activities on the site. Meetings have recently taken place with local residents, the planning portfolio holder, county councillor and planning and enforcement officers. A considerable amount of our Planning enforcement officer's time has already been spent on establishing the planning history on this site in order to establish the way forward and at the time of writing, this matter is on-going.

## **6.0 Recent Successes**

6.1 Recent enforcement successes have included the following:

### 2A School Road, Ashford

6.2 This is referred to above as an example of a protracted enforcement case. However, after over 10 years following the serving of the enforcement notice and numerous appeals and court hearings, the enforcement notice has been complied with. This is a good example of officer perseverance in pursuing enforcement action against an individual who deliberately and consistently attempted to flout the planning process. The Council has been awarded costs by the court. To date, £17,500 has been received and a further £8,000 is due in installments.

### Maxwell Road, Ashford

6.3 In 2014, a planning application for a single storey dwelling with associated parking and amenity space to the side of 7 Maxwell Road was refused planning permission. Following this refusal, the owner began to build what was purported to be an outbuilding ancillary to the main dwelling which was claimed to be permitted development. The building was the same size and in the same location as the dwelling which had been refused and had the appearance of a house. A temporary stop notice was served in 2015 followed by an enforcement notice requiring the removal of the structure. The enforcement notice was appealed against and the appeal was dismissed at the end of 2015. The building was demolished the day prior to the compliance date, however the land was not cleared as required, the owner was summonsed to Court for the failure to fully comply with the Enforcement Notice, was found guilty, fined, and Spelthorne were awarded and has received costs of £735. The following year it was observed that a residential caravan had been sited on the land. A further enforcement notice was served and the caravan was removed.

6.4 The enforcement case on this site relating to the bungalow was a calculated bid to by-pass the planning system and build a house by stealth.

### Land to the rear of The Bugle, Upper Halliford Road

6.5 At the end of 2012, an enforcement notice was issued requiring the removal; of caravans to the rear of the former public house. Following an appeal, the notice was upheld in July 2013. However, despite requests for compliance, the pub licensee was very obstructive and the caravans remained. The planning enforcement officer advised the licensee on two separate occasions that the Council would instigate direct action and seek to remove the illegal caravans from the site. In October 2015, the bailiffs entered the site on behalf of the LPA with police protection, and removed the unauthorised caravans from the site. The cost to the Council was £9,000. It is extremely unlikely that these costs will be recovered. The site has been clear of caravans since this time. This direct action is another success story for the LPA. Since this time, the Council has

purchased this site.

### Planning Appeals

- 6.6 A table of the appeal decisions on enforcement notices for appeals lodged between April 2015 and March 2017 is enclosed as appendix 4. We have had a very high success rate. Out of a total of 17 appeals, 15 were dismissed, (including which one was a split decision) and only 2 were allowed; one was only for a temporary period. This represents a success rate of over 88%, an excellent achievement and demonstrates that we are choosing to take action against the unauthorised uses which are causing harm to the amenity of the local area.

## **7.0 Updates to the service**

- 7.1 Since the beginning of 2013 the Enforcement Officers have been drafting and issuing their own Enforcement Notices which are authorised by a senior officer to minimise the delay in the serving of notices although with the more complex notices, the legal officers assist with the drafting. The enforcement officers have also attended training courses covering various enforcement matters. The officers have themselves provided enforcement training to Councillors in 2015 and 2017 and from the feedback provided from the Members who attended, this has been well received. We continue to e mail a monthly list to all Members which sets out, in ward order, the details of those unresolved cases which are subject to Enforcement Notices.
- 7.2 As demonstrated above, in the last two years, we have used stop notices, injunctions, prosecutions and direct action with the more serious breaches of planning control or where enforcement notices per se have not secured compliance. However, these actions have resource implications for our planning enforcement officers and our legal officers. Each time an officer is required to attend court, it invariably takes place at Guildford County or Crown Court and usually takes all day plus preparation time for the case. Time has been wasted when the defendant has not appeared and a new date has to be set. In addition, there are the legal costs associated with counsel representing the Council at court and costs associated with direct action, as in the case of The Bugle site. Whilst the Council has been successful in recouping costs, for example at 2A School Road, other sites have proved less successful, for example where there have been cases of zero assets. Notwithstanding this, we still take decisive action where the harm has significant adverse impact on the locality and action can be justified regardless of whether we can recoup the costs.
- 7.3 The enforcement work also has an impact on the planning officers' workloads. The enforcement officers are managed directly by the Planning Development Manager who has overall responsibility for enforcement and signs off all cases. Other planning officers deal with retrospective planning applications and applications for Certificates of Lawfulness. Planning staff provide planning advice to the enforcement officers and the issues are

invariably complex. They also assist with the enforcement appeals including giving evidence at hearings and public inquiries

## **8.0 Resource Implications**

- 8.1 On 21 February 2018 Cabinet considered a number of growth bids – one of which covered an additional resource for planning enforcement. Our team has some very complex matters as well as injunctions and court appearances. These take up a very significant amount of time, and we are not sufficiently resourced to respond to matters as quickly as residents and councillors expect. We are very reactive. However, we cannot be more proactive in targeting sites which need to be tidied up (section 215 notices). This impacts on how the borough looks at the moment we simply react to neighbour complaints.
- 8.2 A significant proportion of the Planning Development Manager's time is spent dealing with the planning aspects (e.g. would planning give retrospective approval, should we go straight to stop notice) which takes her away from managing the whole team. That post holder needs to be able to focus more closely on performance to ensure that we are not at risk of intervention from Central Government (designation). Planning Officers are also called on to give advice, taking them away from dealing with large scale applications and managing their teams. Recently one officer has been out of 'circulation' for nearly two weeks due to all the preparation required for an enforcement hearing. The growth bid that was agreed by Council on 22 February will facilitate the creation of an enlarged and dedicated enforcement team.
- 8.3 We will look to continue to improve the service in the future.

## **List of Appendices**

1. Local Enforcement Plan, adopted 24/09/2013
2. List of frequently asked questions on Enforcement
3. A flow chart of the enforcement process at Spelthorne.
4. Planning Enforcement Appeal Decisions for Appeals Lodged April 2015 to April 2017