

HERTFORDSHIRE COUNTY COUNCIL

ENVIRONMENT SELECT COMMITTEE

TUESDAY, 10 JULY 2001 AT 2.15 P.M.

Agenda Item No.

4

**SCRUTINY OF DEVELOPMENT CONTROL ENFORCEMENT AND
MONITORING PROVISION WITHIN HERTFORDSHIRE**

Report of the Director of Environment

Author: Sue Davidson, Head of County Development (Tel 01992 556265)

1. Purpose of the report

In response to the Environment Select Committee decision at their meeting of 23 January 2001, to scrutinise the County Council's current arrangements and procedures for development control monitoring and enforcement.

2. Summary

- 2.1 As planning authority for minerals and waste the County Council has a responsibility to ensure that planning conditions imposed are adhered to and that any unauthorised activities are brought back under planning control either by the grant of planning permission, if required, or through enforcement action.
- 2.2 In February 2000 Development Control Spokespersons agreed that a review of development control enforcement be undertaken in order to develop policy objectives and priorities and identify appropriate standards for service delivery within the available resources and agreed priorities.
- 2.3 The Environment Select Committee meeting on 23 January 2001 agreed that the Development Control Committee be asked to comment on the officer review of enforcement following its completion in March, in order to inform the Select Committee's scrutiny of this activity at their next meeting.
- 2.4 The report to Development Control Committee examined the context for the review, particularly in the light of recent publications and legislation, including the Human Rights Act 1998. It reviewed existing enforcement practices and procedures and compared these with other mineral and waste planning authorities.
- 2.5 The Development Control Committee recommended that, as part of the scrutiny exercise, Environment Select Committee consider:
 - (i) the adoption of explicit standards for site inspections and follow up of enforcement matters at the highest practicable level
 - (ii) the publication of an annual report
 - (iii) the adoption of an enforcement manual

(iv) the consequential resource implications, including staff levels

2.6 This report considers the current monitoring and enforcement regimes (including resources), alternative methods for service improvement as identified by the Development Control Committee and the implications of adopting formal standards.

3. Conclusion

3.1 An analysis of the current arrangements and procedures has identified a number of potential options to improve clarity of purpose, transparency of process and accountability for actions. Members are therefore asked to consider the arrangements and procedures for the Council's development control monitoring and enforcement function and make proposals to the Chief Officer.

1. Background information

1.1 In February 2000 management action was taken to commence an officer review of development control enforcement be undertaken in order to develop policy objectives and priorities and identify appropriate standards for service delivery within the available resources and agreed priorities. The Development Control Committee spokesmen endorsed this initial brief.

1.2 At the Environment Select Committee meeting on 23 January 2001 Councillor Michael Moore put forward the following justification for scrutiny of this issue:-

"The committee are asked to scrutinise the County Council's current arrangements and procedures for planning enforcement in the county to see if they are working well or are inadequate. If they are used can they be implemented more quickly and be made more effective?"

It is envisaged that the emphasis of the work of the scrutiny committee would be on minerals and waste planning matters where the County Council is the planning authority. The committee should, amongst other things, examine the staffing and financial resources available for enforcement activity. How does Hertfordshire compare to other authorities? When things go wrong, how effective is the County Council in containing the problems that arise and remedying the situation? What lessons can be learned from previous and on-going high profile cases like the Lye Lane Golf Course at Bricket Wood and Water Hall for internal HCC procedures or recommendations for improved court procedures and/or national legislation?"

The outcome of the investigation would be a series of recommendations for improving HCC procedures and performance and a list of things we would like to see the government implement or change to assist HCC in its public role."

1.3 The committee heard that a review of development control enforcement was currently underway and due to be completed in March 2001.

1.4 The Select Committee recommended:

- *that the Development Control Committee be asked to comment on the current officer review of enforcement following its completion in March, in order to inform the select committee's scrutiny of this activity at their June meeting;*
- *that the suggestions put forward by Michael Moore should form the basis of the terms of reference for scrutiny.*

1.5 Copies of the full Development Control Committee report dated 11 April 2001 are held by group spokesmen and Committee Services (Nikki Patient, ext 25560).

1.6 The report considered the context for a review of development control monitoring and enforcement, comparisons with other authorities, current practice, relationships with other bodies and issues for the service. The Development Control Committee commended the current activity and work of the staff in the County Development Unit

and, in recognising the need to manage expectation, they unanimously recommended that Environment Select Committee consider:

- (i) *the adoption of explicit standards for site inspections and following up enforcement matters at the highest practicable level*
- (ii) *the publication of an annual report*
- (iii) *the adoption of an enforcement manual*
- (iv) *the consequential resource implications including staff levels*

2. The County Council's role

2.1 Planning is concerned with the shaping and management of our environment. Enforcement, both in terms of monitoring and managing permitted development and managing unauthorised development, should be treated as an integral part of the planning system in order to ensure:

- public confidence in the system of control;
- a clear message – sending the right signals;
- protection of the environment.

2.2 It is important to recognise that enforcement is discretionary – it is a power and not a duty. The County Council has to **choose** to undertake enforcement action because unauthorised activity is not (as many people perceive) illegal or an offence. The concept of expediency has to be applied in each case, with the test being whether or not the activity or breach is causing unacceptable harm to public amenity. In choosing whether or not to exercise power to enforce, the Local Government Ombudsman's view is relevant. In cases where enforcement action is appropriate the planning authority should be seen to act fairly and expeditiously. His view is that *“complainants should not have to rely on the intervention of myself or of a Member of Parliament before the council is prepared to address firmly a problem which has been in existence for some time and of which the council is well aware.”*

2.3 The County Council's planning enforcement activities relate to:

- ensuring all active mineral and waste sites within the County are monitored to ensure compliance with the extant planning permission;
- investigating complaints, breaches of planning conditions and unauthorised mineral and waste activity;
- resolving issues in respect of unauthorised mineral and waste activity by means of negotiation or the instigation of formal enforcement procedures.

2.4 Potential enforcement matters can arise in two ways. Firstly, routine visits to sites with planning permission (site monitoring) can identify non-compliance with one or more conditions or unauthorised activities. Secondly, unauthorised activities can also be identified by non-routine visits in response to reports or complaints that development/operations may be taking place without the benefit of planning permission. In both cases the decision whether to take formal enforcement action or deal with the matter through negotiation is taken by a process of evaluation that takes into account the extent of the harm (including potential for harm) to the environment and/or loss of amenity to the local community. This evaluation can range from

carrying out a simple site investigation and informing the complainant of the resolution to the implementation of a range of enforcement procedures which could result in a prosecution within the High, Crown or Magistrate's courts. The latter course of action could take a long period of time from the initial complaint to its resolution. In every case, the test of expediency must be applied.

3. Current practice and Level of Activity

3.1 The report to Development Control Committee set out the current practice adopted for following up complaints and enforcement matters (para.2.11 of that report).

3.2 A sample quarter (November 2000-February 2001) has been examined in terms of the current level of staff time spent on visiting sites with planning permission that require monitoring. 29 sites were visited on 67 occasions. This includes visits made to the sites monitored by Mouchel on the County Council's behalf and equates to approximately 48% of one person (whole time equivalent). The 29 sites visited comprise:

- 12 mineral extraction only or mineral extraction and landfill sites
- 3 composting sites
- 7 waste transfer/waste recycling sites
- 7 waste disposal/landraising sites
- 1 household waste site

3.3 11 sites were visited during the quarter either as a consequence of current enforcement or unauthorised activities or to ensure that previous enforcement concerns had not re-occurred.

3.4 Analysis shows that there are currently some 120 sites with planning permission that require monitoring on at least an annual basis to ensure compliance with conditions. In addition, in 2000-2001, some 18 sites were monitored where there was no planning permission as a consequence of unauthorised activities taking place. Planning applications were subsequently submitted for three of these sites.

3.5 Over a 12 month period some 950 hours (equivalent to 127 man days or 55% of one person) was spent on site monitoring. A further 1580 hours was spent on enforcement as a whole, including researching cases, preparation and issuing of notices and follow up correspondence. Of this, work related to enforcement appeals, excluding administration, accounted for 270 hours (17%). The extent of formal enforcement action is shown in the table under paragraph 2.9 of the report to Development Control Committee.

3.6 Some 134 complaints were followed up in 2000-2001.

3.7 In 2000/01 only one enforcement item was referred to the ombudsman who found no maladministration with regard to the enforcement processes.

4. Options for Future Arrangements

4.1 One of the key points for consideration, in line with the recommendations of the Development Control Committee, is the identification of appropriate standards for service delivery. The following sections look at standards in line with best practice as well as the standards that could be reasonably be achieved within the existing resources of the Unit.

4.2 The options cover the following areas:

- a) Enforcement priorities
- b) Dealing with complaints
- c) Extent and frequency of monitoring
- d) Relationship with other bodies
- e) Production of an enforcement and monitoring manual
- f) Production of an annual enforcement and monitoring report

a) Enforcement Priorities – Initial investigation

4.3 If it is considered expedient to pursue remedial action, enforcement cases must be progressed quickly at every stage. Due to the limited staff resources available, not every case can be given a high priority. Therefore an order of priority should be applied where there are a number of cases being pursued simultaneously.

4.4 The following sets out a potential best practice system of prioritisation:

| CATEGORY | CIRCUMSTANCES TO BE CONSIDERED | ACTION | MAXIMUM RESPONSE TIME ¹ |
|----------------|--|--|---|
| Class A | <ul style="list-style-type: none"> • Potential for irredeemable harm to the environment. • Adverse effect on public health and safety. • Serious nuisance to the general public. • Harm being caused to a protected area e.g. Sites of Special Scientific Interest | Immediate site visit. Contact with operator/landowner at earliest possible date in person if possible. Liaison with County Secretary's to take action as soon as possible. | 1 day (in all cases) |
| Class B | <ul style="list-style-type: none"> • Potential for serious harm to the environment, but unlikely to be irredeemable. • Moderate nuisance to the general public. | Site visit and contact with operator/landowner in person if possible. Liaison with County Secretary's regarding follow-up action. | 3 days (5 days with existing resources) |
| Class C | <ul style="list-style-type: none"> • Redeemable yet moderate harm to the environment. • Minor nuisance to the | Site visit and contact with operator/landowner in person if possible. Liaison with County | 3 days (7 days with existing resources) |

¹ working days

| CATEGORY | CIRCUMSTANCES TO BE CONSIDERED | ACTION | MAXIMUM RESPONSE TIME ¹ |
|----------------|---|---|--|
| | general public. | Secretary's regarding follow-up action. | |
| Class D | <ul style="list-style-type: none"> • Minor harm to the environment. • No public nuisance consideration. | Site inspection. Contact with operator/landowner. Liaison with County Secretary's if appropriate | 5 days. (14 days with existing resources) |

b) Dealing with Complaints

4.5 When complaints are submitted in relation to minerals and waste activities (either permitted or unauthorised) they are logged on a computerised tracking system. A formal protocol would enable the Development Control Team to be more transparent and consistent in its actions so that the public can be clear about the courses of action they can reasonably expect when reporting a complaint about a site or activity.

4.6 Complainants have recourse to the Local Government Ombudsman who has powers to investigate procedures operated by the County Council. Lack of procedures or failure to comply with such systems can bring about claims of maladministration.

4.7 The following is an outline of a potential protocol for the treatment of complaints:

- 1 If it appears that there is a breach of planning control and it is the responsibility of the County Council as planning authority, the appropriate action will be taken if it is considered expedient in accordance with the following guidelines:
 - a) As soon as practicable, appropriate steps should be taken to establish the facts of the case, including site visits, where appropriate, in accordance with the table for enforcement priorities.
 - b) Where it is established that there has been a breach of planning control a decision on the appropriate action to be taken (if any) should be made within 5 working days of the site visit. The person in breach of planning control should be informed in writing within 5 working days of the site visit (unless it is considered expedient to serve a Stop Notice) of the precise nature of the breach, explaining how it contravenes planning control, the need to cease unauthorised activities and the necessary action to be taken.
 - c) The person in breach of planning control should be advised that a planning application may be submitted if appropriate and should also be advised of any conditions likely to be imposed. A timetable will be set for the submission of an application and enforcement action will be progressed if it is not met.

- d) Where it is established that there has been a breach of planning control the complainant should be notified of the action to be taken within 5 working days of the site visit.
 - e) If it is considered expedient that no action should be taken, the complainant should be informed of the reasons for not taking any action within 5 working days of this decision being reached.
 - f) Wherever possible, communication between the County Council and the complainant should be made in writing to establish good records of the processing of a complaint.
 - g) The County Council should endeavour to keep the complainant, operator, Local County Councillor and any other interested parties informed at all stages.
 - h) The County Council should keep records of all complaints made. These records will not be available to the public in order to protect the privacy of complainants.
2. Where it is established that a breach of planning control is the responsibility of another authority the County Council will pass on the complaint within 2 working days and inform the complainant and operator.
 3. If, in the opinion of the County Council, a breach of control has not occurred, the complainant and the operator will be advised of this fact in writing within three working days of the site visit (or within three working days of the complaint if a visit is not required).

c) Frequency of Monitoring

- 4.8 The level of site monitoring carried out should be in proportion to the level of data required in order to maintain control of the activity on the site. Sites should be visited at a frequency which should enable the maintenance of a reasonable and regular overview of the site so that any need to regularise the planning position can be achieved without recourse to formal enforcement action and avoidance of an escalation of unchecked activity. By preventing or reducing the need for formal action increased monitoring represents an “invest to save” approach.
- 4.9 The following sets out some potential standards for site-monitoring. The minimum standards indicated could be accommodated with existing resources but may have an impact on development control processes and would be unlikely to be sufficient to reduce the need for formal enforcement action.

| SITE CHARACTERISTICS | FREQUENCY OF VISIT |
|---|---|
| CATEGORY A <ul style="list-style-type: none"> • Sites with a history of breaches of planning control in the last 2 years. • Sites subject to current enforcement action. • New sites – first 3 months of coming into operation. | 18-26 visits per annum. (minimum standard 12-26 visits per annum) In this instance certain sites may require 2-weekly visits as a minimum, e.g. sites where enforcement action is being taken. |
| CATEGORY B <ul style="list-style-type: none"> • Fast moving sites. • New sites –months 4-12 of operation. • Contentious sites. | 8-12 visits per annum. (minimum standard 4-8 visits per annum) |
| CATEGORY C <ul style="list-style-type: none"> • Other sites operated by larger companies/operators. • Sites not subject to much change. • Sites unlikely to be contentious. | 2-4 visits per annum. (minimum standard 1-2 visits per annum) |
| CATEGORY D <ul style="list-style-type: none"> • Other active sites • Sites in aftercare. | 1-2 visits per annum. (minimum standard 1 visit per annum) |

4.10 There is currently a wide range of active mineral and waste sites throughout the county in terms of size and level of activity. The proposed monitoring programme will require an average of 2.6 to 6.3 routine visits to these sites per annum. The inspections would record progress with restoration and compliance with planning permissions.

4.11 In addition to the scheduled site visits, there would be provision within the programme for visits in response to complaints and new applications.

d) Relationship with Other Bodies

4.12 To avoid duplication of effort and to achieve maximum effectiveness, liaison with other regulatory bodies and the exchange of monitoring reports is an important feature of the monitoring process.

4.13 There is a clear need for regular contact between the County Council and the various other regulatory bodies. Formal liaison meetings will continue with these bodies and will be reviewed on a regular basis. The County will continue on a site-specific basis with the public and with interest groups.

4.14 Members could consider how to further improve liaison with the various regulatory bodies, site operators, and interested groups through the establishment of site and informal liaison meetings.

e) Enforcement Manual

4.15 An enforcement manual would publicly set out the Council's objectives for monitoring and enforcement in Hertfordshire, the County's enforcement priorities, the procedure for documenting cases and target time limits for enforcement. Such a manual would help to satisfy the Local Government Ombudsman in the event of a future investigation into the County Council's complaints procedure. The manual would be updated in line with changes in Government or County Council policy.

4.16 It is suggested that the following goals and objectives be adopted:

Goals

- To protect the environment
- To have clear procedures and priorities for action
- To have an enforcement/monitoring process that the public have confidence in
- To have an enforcement/monitoring that is equitable and balanced

Enforcement/ objectives

- To ensure environmental and public protection
- To clarify procedures and priorities
- To maintain confidence in the effectiveness of the planning system
- To ensure fairness of approach
- To remedy undesirable effects of unauthorised development
- Wherever possible, to arrive at a solution based on agreement between all the involved parties but without prejudice to the County Council's position to take enforcement action where it would be expedient to do so
- To bring unauthorised activity under control

Monitoring objectives

- To ensure that conditions of planning permissions are complied with and that breaches are identified
- To ensure that the planning system properly regulates development which would not be permitted without the imposition of conditions
- To minimise the need for enforcement action
- To build good relationships with operators and communities within which operations take place.

f) Annual Enforcement Report

- 4.18 An annual report would provide an effective method of measuring performance of the County's enforcement and monitoring system. The report would demonstrate to operators that monitoring and enforcement is taken seriously by the County Council and would also clearly indicate the standards expected of operators on minerals and waste sites throughout the County.
- 4.19 This report could encompass the following:
- Reporting any changes to National, Regional and local policy guidance
 - A programme of scheduled visits carried out within the County
 - A site by site monitoring and enforcement appraisal of all active minerals and waste sites
 - A position statement on any dormant mineral workings
 - Annual enforcement statistics including outcome of enforcement appeals
 - A review of local liaison group meetings including site identification, frequency of meetings, remedial action taken and future participation.

5. Conclusions

- 5.1 One of the key issues emerging from the review is that the lack of a formal protocol and standards means that the expectations of the public, developers and members cannot be managed. This can lead to confusion for the public and, in turn, puts added pressure on staff. There is no clarity about what can and can't be delivered, nor any published mechanism for prioritising between cases. The absence of any formally adopted protocol or standards means that officers are under increasing pressure to respond at the expense of other parts of the service.
- 5.2 The profile of enforcement has been raised in recent years, primarily through a greater public interest in the environment. This has meant that enforcement issues have to be addressed in a more positive way. Local authorities are expected to be more accountable and act more speedily in resolving these issues. As such, the ideal is to pre-empt unauthorised activity by having a greater commitment to monitoring and resolving likely issues before they arise. By having a monitoring based approach breaches can be detected early and can often be resolved without recourse to formal enforcement action thus making more effective use of resources and affording greater protection of the environment.
- 5.3 The publication of the Planning Officers' Society 'Good Practice Guide on Monitoring Minerals and Waste Management Sites' and the DETR's current research into monitoring mineral sites add support to the premise that the method for controlling operations within existing sites is through a recognised procedure and frequency of monitoring. If this is the trend for the future, then it will require a fresh approach to monitoring and enforcement.
- 5.4 Given the discretionary nature of enforcement, the existence of a formalised protocol is an indication of good practice within the context of sustainable development

objectives. A clear statement of the priorities and procedures to be undertaken by the County Council would give clarity of purpose, transparency of process and accountability for actions taken. A protocol should:

- set out the County Council’s stance on certain issues;
- provide a timescale;
- establish realistic expectations;
- keep the initiative with the authority;
- inform the public about the pace of action.

5.5 The adoption of a protocol accords with the principles of Best Value and the Enforcement Concordat which the County Council has signed up to (referred to in para. 1.8 of the report to Development Control Committee). It would also assist in demonstrating that the County Council takes human rights into account when taking, or not taking, enforcement action.

5.6 To be meaningful any formal standards should be monitored and reported on. An annual report could demonstrate to operators that monitoring and enforcement is taken seriously by the County Council and would also clearly indicate the standards expected of operators on minerals and waste sites throughout the County.

5.7 As part of the protocols and standards an enforcement manual would clearly set out the objectives of monitoring and enforcement in Hertfordshire, the Council’s enforcement priorities, the procedure for documenting case and target time limits for enforcing a case. Such a manual would make the enforcement function more streamlined and effective. It would also help to satisfy the Local Government Ombudsman in the event of a future investigation into the County Council’s complaints procedure. The manual would be updated as changes in Government or County Council policy occur.

6. Impact on resources

6.1 Current total expenditure for 2000-2001 on site monitoring and enforcement is estimated as:

| | |
|--|-----------------|
| Staff ¹ including support costs | £89,000 |
| Legal (including enhanced SLA) | £90,000 |
| Consultancy | £15,000 |
| Total | £194,000 |

¹ includes development control case officer staff time and on costs spent on monitoring

6.2 An assessment of the resources required to deliver the enhanced services set out above indicates the following:

- 6.3 **Enforcement priorities:** the amount of time currently spent wholly on enforcement is equivalent to 92% of one person's time (it should be recognised that for any member of staff there will be time allocated for training and other administration). Adoption of the enhanced standards would increase this by approximately one-quarter to ensure that targets can be met.
- 6.4 However, there are likely to be invest to save benefits in that faster response rates could stop certain problems escalating by enabling swifter action to be taken. In addition, there would be a strong message to developers/operators that the County Council takes monitoring and enforcement seriously which could eventually reduce the number of incidences of formal enforcement action over the longer term. In addition, if routine monitoring of planning permissions is also increased in line with the proposed standards this could reduce the number of incidences of having to respond reactively to reports regarding unauthorised activities.
- 6.5 **Dealing with complaints:** if considered in conjunction with the improvements for prioritising investigating potential enforcement cases, the adoption of the protocol is unlikely to place a significant additional resource requirement on the Unit as it would complement the timescales proposed. If considered in isolation there would be some staff implications to ensure that the targets are met
- 6.6 **Extent and frequency of monitoring:** the minimum standards indicated represent a similar level of resource to that currently deployed to site monitoring (equivalent to 53% of one person where 100% of their time is spent on monitoring). However, explicit standards would need to be delivered if their adoption is to hold any meaning. In 2000-2001 only 19 county matter applications were received (compared to 35 in 1999-2000 which was a more representative figure). In addition, staffing levels were stable compared to previous years with the Unit being fully staffed. These two factors meant more time was available to undertake monitoring. At present there is one vacancy (about to be re-advertised) and if the number of planning applications received is more reflective of the average then pressure would be put on either site monitoring or meeting the Best Value/Local Performance Plan targets for development control.
- 6.7 The improved standards represent between 92% and 129% of one person – or at least a doubling of current staff resources plus increased support costs such as travel and legal advice. However, as indicated above, the benefits of having explicit standards and more frequent routine monitoring could lead to savings in the longer term in respect of time spent on enforcement and on legal costs particularly once operators are aware that monitoring would be more regular and frequent.
- 6.8 **Relationship with other bodies:** the proposals would formalise existing practice and would be unlikely to require any additional resources.
- 6.9 **Production of an enforcement and monitoring manual:** this would require some staff input to draw together best practice and recommended guidelines and to maintain currency with government and County Council policy. It is estimated that this would represent about 20 days work or approximately 9% of one person. There would be additional publishing costs but this could be met from existing budgets.

- 6.10 **Production of an annual enforcement and monitoring report:** whilst this would require some additional staff input to gather the data and prepare the report, subject to improvements to the existing Site Monitoring and Management database system this could be limited to about 10 days. The costs of publishing could be met from existing budgets.
- 6.11 Members are requested to consider which options they wish officers to pursue in order to improve the provision of the Council's development control monitoring and enforcement functions and make comments to the Director of Environment.

7. Financial implications

- 7.1 Taken together, the above could increase the staff resources devoted solely to monitoring and enforcement from the equivalent of 1.47 to 2.08. Pro rata on existing budgets this represents an increase from £194,000 to £274,500 an increase of £80,500. In the longer term, however, as indicated above this investment could result in a reduction in legal support by avoiding the need for formal enforcement action.

Background material used by the author in compiling the report

Report to Development Control Committee 3 April 2001 (discussed 11 April), Item No 10 "Review of development control enforcement and monitoring provision within Hertfordshire: recommendations for Environment Select Committee"

Part VII of the Town and Country Planning Act 1990. Circular 10/97 "Enforcing Planning Control: Legislative Provisions and Procedural Requirements", (July 1997), Department of the Environment, Transport and the Regions (DETR)

"Enforcing Planning Control: Good Practice Guide for Local Authorities", July 1997, DETR

"Enforcement Concordat", March 1998, Local Government Association

"Best Value Review: Development and Planning Control", Report to Select Committee, Bedfordshire County Council, October 2000.

"Good Practice Guide on Monitoring Minerals and Waste Management Sites" Planning Officers' Society, January 1998.

Local Government Ombudsman, Digest of Cases 1998, page 87, Report 97/C/1829

**REVIEW OF DEVELOPMENT CONTROL ENFORCEMENT AND MONITORING
PROVISION WITHIN HERTFORDSHIRE: RECOMMENDATIONS FOR
ENVIRONMENT SELECT COMMITTEE**

Report of the Director of Environment

Author: Sue Davidson (Tel 01992 556265)

1. Purpose of the report

To establish the views of the Development Control Committee with regard to the County Council's enforcement activity (including site monitoring) and recommend issues to be considered by the Environment Select Committee when undertaking scrutiny of the function.

2. Summary

- 2.1 In February 2000 it was agreed that a review of development control enforcement be undertaken in order to develop policy objectives and priorities and identify appropriate standards for service delivery within the available resources and agreed priorities.
- 2.2 At the Environment Select Committee meeting on 23 January 2001 it was recommended that the Development Control Committee be asked to comment on the current officer review of enforcement following its completion in March, in order to inform the select committee's scrutiny of this activity at their June meeting.
- 2.3 The report examines the context for the review, particularly in the light of recent publications and legislation, including the Human Rights Act 1998. It reviews existing enforcement practices and procedures and compares these with other mineral and waste planning authorities.
- 2.4 Hertfordshire is one of the larger authorities within the group of authorities compared, but given the different resource approaches it is difficult to determine whether the resources committed to monitoring and enforcement are in line with the majority. The main discernible difference is that Hertfordshire does not have any formal policy or procedure in place to ensure a consistency of approach in providing this statutory function. It is also clear that if a more pro-active approach is to be adopted that this will inevitably require a re-evaluation of the way in which monitoring and enforcement is carried out.
- 2.5 It would therefore be appropriate to consider standards for service delivery in advance of that Review in order to:

- ensure that the County Council does not run the risk of challenge either by appeals to the Ombudsman or the Courts in terms of conflict with human rights;
- provide an opportunity to establish an appropriate level of service within an agreed level of resource having taken into account the appropriate levels of risk;
- provide a transparent set of standards for the benefit of the public, developers and members.

3. Conclusion

The report concludes that the Development Control Committee should recommend that Environment Select Committee consider:

- (i) the adoption of explicit standards for site inspections and following up enforcement matters;
- (ii) the publication of an annual report; and
- (iii) the adoption of an enforcement manual;
- (iv) the consequential resource implications.

1. Background and Context

1.1 In February 2000 it was agreed that an officer review of development control enforcement be undertaken in order to develop policy objectives and priorities and identify appropriate standards for service delivery within the available resources and agreed priorities. The Development Control Committee spokesmen endorsed this initial brief. Two meetings have been held with the Spokesmen during the course of the review, when a clear steer has been given with regard to the emerging issues. In particular, the Spokesmen have been of the view that appropriate standards should be identified, together with an indication of the resources that would be necessary to deliver them, rather than a tailoring of standards to existing resources.

1.2 At the Environment Select Committee meeting on 23 January 2001 Councillor Michael Moore put forward the following justification for scrutiny of this issue:-

"The committee are asked to scrutinise the County Council's current arrangements and procedures for planning enforcement in the county to see if they are working well or are inadequate. If they are used can they be implemented more quickly and be made more effective?"

It is envisaged that the emphasis of the work of the scrutiny committee would be on minerals and waste planning matters where the County Council is the planning authority. The committee should, amongst other things, examine the staffing and financial resources available for enforcement activity. How does Hertfordshire compare to other authorities? When things go wrong, how effective is the County Council in containing the problems that arise and remedying the situation? What lessons can be learned from previous and on-going high profile cases like the Lye Lane Golf Course at Bricket Wood and Water Hall for internal HCC procedures or recommendations for improved court procedures and/or national legislation?"

The outcome of the investigation would be a series of recommendations for improving HCC procedures and performance and a list of things we would like to see the government implement or change to assist HCC in its public role."

1.3 The committee heard that a review of development control enforcement was currently underway and due to be completed in March 2001.

1.4 The Select Committee recommended:

- that the Development Control Committee be asked to comment on the current officer review of enforcement following its completion in March, in order to inform the select committee's scrutiny of this activity at their June meeting;
- that the suggestions put forward by Michael Moore should form the basis of the terms of reference for scrutiny.

1.5 The objectives of the review referred to in paragraph 1.3 were established as:

- to benchmark and compare the enforcement function of the unit with other similar organisations;
 - to identify trends in enforcement issues and potential pressures for the future;
 - to establish member expectations and priorities from the service both in terms of action in respect of unauthorised development and monitoring of planning permissions;
 - to identify any areas of work which may overlap with other agencies (e.g. district environmental health, Environment Agency) which may lead to a more effective use of resources;
 - to develop proposals for change to meet the County Council's objectives for the next five years including resource allocation.
- 1.6 There are a number of drivers that make a review of enforcement timely. In July 1997 the Department of the Environment, Transport and the Regions (DETR) issued circular 10/97 entitled 'Enforcing Planning Control: Legislative Provisions and Procedural Requirements'. This Circular brings together and updates earlier circular advice on the implementation of the amended enforcement provisions in Part VII of the Town and Country Planning Act 1990.
- 1.7 Also in July 1997 the DETR published a guide complementing Circular 10/97 entitled 'Enforcing Planning Control: Good Practice Guide for Local Authorities'. This guide forms a best practice manual for enforcement.
- 1.8 In March 1998 an Enforcement Concordat was published by the government setting out the principles for good enforcement. This was developed in partnership between central and local government, businesses and professional bodies. All local authorities are being actively encouraged to sign up to the Concordat. The County Council did so in 2000.
- 1.9 With the introduction of Best Value and other Performance Indicators there is now a requirement to have in place systems relating to best practice in terms of enforcement procedures that can monitor performance and enable comparisons to be made.
- 1.10 On 2nd October 2000 the Human Rights Act 1998 came into force. Although the planning system has always operated in the public interest and has often conflicted with private interests, the Human Rights Act could potentially highlight this conflict, especially with respect to enforcement procedures.
- 1.11 As part of the Environment Department's commitment to obtaining ISO14001 certification, (which has already been achieved by the Unit as part of the Strategy Group), there is a need to ensure that there is an audit trail in place for the enforcement service and established procedures for site monitoring that demonstrate that the environmental effects of development permitted by the County Council are being managed.
- 1.12 Within this context there has been a continuing pressure arising from member and public expectations with respect to site monitoring and enforcement which is putting increasing pressure on the service both in terms of staff and other budgetary resources.

- 1.13 The County Council will need to undertake a formal Best Value Review of development control including enforcement at some point. This is currently scheduled for 2003-2004. However, given the above, it would be appropriate to consider standards for service delivery in advance of that Review in order to:
- ensure that the County Council does not run the risk of challenge either by appeals to the Ombudsman or the Courts in terms of conflict with human rights;
 - provide an opportunity to establish an appropriate level of service within an agreed level of resource having taken into account the appropriate levels of risk;
 - provide a transparent set of standards for the benefit of the public, developers and members.

2. REVIEW OF EXISTING ENFORCEMENT PRACTICES AND PROCEDURES

- 2.1 Planning is concerned with the shaping and management of our environment. Enforcement (both in terms of monitoring and managing permitted development and managing unauthorised development) should be treated as an integral part of the planning system in order to ensure:
- public confidence in the system of control;
 - a clear message – sending the right signals;
 - protection of the environment.
- 2.2 It is important to recognise that enforcement is discretionary – it is a power and not a duty. The County Council has to **choose** to undertake enforcement action because unauthorised activity is not (as many people perceive) illegal or an offence. The concept of expediency has to be applied in each case, with the test being whether or not the activity or breach is causing unacceptable harm to public amenity. In choosing whether or not to exercise power to enforce, the Local Government Ombudsman's view is relevant. In cases where enforcement action is appropriate the planning authority should be seen to act fairly and expeditiously. His view is that *“complainants should not have to rely on the intervention of myself or of a Member of Parliament before the council is prepared to address firmly a problem which has been in existence for some time and of which the council is well aware.”*
- 2.3 Existing staffing and resources
The existing balance of resources between site monitoring, enforcement and development control has evolved over a period of time with different models being tried to ensure the best balance is achieved. Options implemented previously have included:
- case officers being responsible for all monitoring and enforcement on the sites with planning permission that they are responsible for. This led to problems of frequency of monitoring when other development control pressures (particularly dealing with planning applications or appeals) took priority;
 - having a dedicated site monitoring officer whom then reported back to the case officers and enforcement officer. Whilst this addressed the problem of frequency

of monitoring this led to problems in that not all breaches of planning control could be followed through by a more senior officer due to other pressures;

- having a second enforcement officer whose duties were split between development control and enforcement. Whilst this enhanced the enforcement expertise in the Unit the pressures of dealing with planning applications tended to take priority over enforcement.

2.4 This has led to the present position where the County Council has one dedicated Enforcement Officer whose is responsible for:

- ensuring all active sites within the County are monitored to ensure compliance with the extant planning permission;
- investigating complaints, breaches of planning conditions and unauthorised activity;
- resolving issues in respect of unauthorised activity by means of negotiation or the instigation of formal enforcement procedures.

2.5 In carrying out these responsibilities the enforcement officer is supported by the other members of the development control team in two ways. Firstly, where case officers have responsibility for planning matters on specific sites they will also carry out site monitoring inspections. Secondly, case officers may follow through formal enforcement action on their sites if the enforcement officer is over-committed on other cases.

2.6 Within the Unit's existing resources the current model of having a dedicated enforcement resource appears to be the most effective, providing a balance between avoiding the pressures of dealing with planning applications (which are the subject of targets as part of Best Value monitoring) and having the capability and expertise to follow through with formal enforcement action.

2.7 On an "as required" basis, the Unit's legal and consultancy budgets fund expenditure to support enforcement action as well as the other functions of the Unit. In addition, there is a Service Level Agreement (SLA) with County Secretary in terms of the overall legal advice for the Unit, which includes enforcement matters. An additional payment, over and above this SLA, is made to provide an enhanced enforcement capability in terms of legal advice and support.

2.8 At present three sites are routinely monitored by consultants on behalf of the County Council to ensure that regular monitoring takes place. This is a reflection of the nature of the particular sites. This position is reviewed on a 3-monthly basis. Additionally, when required, private surveillance companies have been used to gather evidence for enforcement action in situations where the Unit has not been in a position to resource the surveillance in-house, the site is difficult to monitor in a covert way, or to ensure the safety of County Council officers.

2.9 Workload

The level of formal enforcement activity is detailed in the table below. Formal action has increased over recent years as a result of a number of factors, including a higher public profile of enforcement issues, changes in legislation, increases in the level of

complaints received and the reallocation of resources within the unit to enforcement. An increase in formal action is not necessarily a positive indicator. Overall, because of the number of cases requiring investigation, the approach has tended to be one of reacting to complaints or breaches of planning control rather than being in a position to detect potential breaches at an earlier stage and secure a resolution by negotiation rather than formal action.

| (April-March) | Planning Contravention Notices | Breach of Condition Notices | Enforcement Notices | Stop Notices | Injunctions |
|-----------------|--------------------------------|-----------------------------|---------------------|--------------|-------------|
| 1994/95 | 5 | 0 | 7 | 0 | 0 |
| 1995/96 | 11 | 1 | 2 | 0 | 0 |
| 1996/97 | 18 | 5 | 2 | 0 | 0 |
| 1997/98 | 11 | 4 | 5 | 1 | 0 |
| 1998/99 | 9 | 3 | 9 | 3 | 1 |
| 1999/00 | 13 | 5 | 9 | 7 | 3 |
| [as at 28/2/01] | [12] | [1] | [9] | [4] | [0] |

- 2.10 The present regime of site monitoring is one of custom and practice based on officer experience rather than a formally adopted protocol. Site information is held on a computer database with each site allocated a frequency of visit based on professional judgement. This generates a monthly list of sites to be visited during the period. The actual frequency of visits will, however, depend on other workloads and pressures.
- 2.11 Potential enforcement matters can arise in two ways. Routine visits to sites with planning permission (site monitoring) can identify non-compliance with one or more conditions or unauthorised activities. Unauthorised activities can also be identified by non-routine visits in response to reports or complaints that development/operations may be taking place without the benefit of planning permission. In both cases the decision whether to take formal enforcement action or deal with the matter through negotiation is taken by a process of evaluation taking into account the extent of the harm (including potential for harm) to the environment and/or loss of amenity to the local community. This evaluation can range from carrying out a simple site investigation, which could result in the complainant being informed of the resolution; to the implementation of a range of enforcement procedures which could result in a prosecution within the High, Crown or Magistrates courts. This course of action could involve a long period of time elapsing between the initial complaint and the resolution. In every case the test of expediency must be applied. Although not formalised, current practice is based on the following sets of circumstances.

| CIRCUMSTANCES TO BE CONSIDERED | ACTION | RESPONSE TIME¹ |
|---|--|---|
| Irredeemable harm to the environment. Adverse effect on public health and safety. Serious nuisance to the general public. Harm being caused to a protected area e.g. SSSIs, AONBs. | Immediate site visit – where practicable. Contact with operator/landowner at earliest possible date in person if possible. Liaison with County Secretary's to take action as soon as possible. | 1 day |
| Serious harm to the environment, but unlikely to be irredeemable. Moderate nuisance to the general public. | Site visit and contact with operator/landowner in person if possible. Liaison with County Secretary's re follow-up action. | 3 days – 5 days |
| Redeemable yet moderate harm to the environment. Minor nuisance to the general public. | Site visit and contact with operator/landowner in person if possible. Liaison with County Secretary's re follow-up action. | 5-10 days |
| Minor harm to the environment. No public nuisance consideration. | Site inspection. Contact with operator/landowner. Liaison with County Secretary's if appropriate | Low priority- only when resources allow |

¹ Response time will dependent on staff resources being available

2.12 As indicated in paragraph 2.5 above, the Enforcement Officer is assisted by development control case officers on individual problem sites. This involves them taking a lead role in carrying out site investigations, collection and collation of evidence and drawing up and service of subsequent notices. However, the responsiveness of this approach will change on a day-to-day basis, as this does have implications for the general development control activity within the unit in terms of meeting statutory deadlines and workload.

2.13 Case officers, as part of their day-to-day role, carry out a limited level of site monitoring on an ad-hoc basis. As a result many minerals and waste sites have not been subject to regular detailed inspection. Visits are generally limited to sites that either have current planning applications under consideration or recent approvals where inspections are required for the discharge of conditions. The enforcement officer does provide some limited support in the monitoring of conditions, particularly for suspected non-compliance, however, this is based on workload pressures as he is generally fully committed to pursuing unauthorised activities.

2.14 The current approach to enforcement matters does not facilitate a negotiated resolution. Enforcement issues normally arise from recognised problem minerals and waste sites or result from the receipt of complaints from local residents. As such, the majority of issues relating to unauthorised activity or non-compliance result in formal

enforcement action being taken because there is no early detection. This has direct consequences for the Unit in terms of resources as the collection and collation of the necessary evidence is time consuming and costly, often requiring external monitoring/surveillance services, which have to be purchased.

- 2.15 The Unit’s enhanced Service Level Agreement with the County Secretary provides the necessary legal support for enforcement matters and to date this has enabled the speedy response required in taking action against unauthorised activity. This is especially important as members and the public have high expectations in terms of the speed and type of action taken to control activity that can result in serious harm to the environment.
- 2.16 Benefits have been gained from having a designated solicitor in respect of enforcement in terms of facilitating a positive response. However, this resource is brought under pressure when formal enforcement action moves onto prosecution. The extent of officer and legal resources required to take enforcement cases to prosecution in the courts is extremely high due to the amount of evidence and documentation required. It would therefore be difficult to maintain the current level of activity in terms of enforcement action without the enhanced SLA agreement.
- 2.17 Current total expenditure for 2000-2001 on site monitoring and enforcement is estimated as:

| | |
|--|----------|
| Staff ¹ including support costs | £89,000 |
| Legal (including enhanced SLA) | £90,000 |
| Consultancy | £15,000 |
| Total | £194,000 |

¹ includes development control case officer staff time and on costs spent on monitoring

3. COMPARISON WITH OTHER LOCAL PLANNING AUTHORITIES.

- 3.1 Some benchmarking has been carried out with similar organisations within the eastern region - Norfolk, Essex, Suffolk, Cambridgeshire, Bedfordshire, Hertfordshire, Peterborough, Luton, Thurrock and Southend. However, specific data to enable a detailed comparison is not currently available. No clear pattern has emerged, with a variety of approaches to dealing with site monitoring and enforcement being adopted. The information available is set out in Appendix A attached to this report.
- 3.2 In addition, Norfolk County Council is currently undertaking its Best Value review and has provided some helpful information from a questionnaire survey covering its Audit Commission Family Group, the East of England Group and a number of other county councils.

- 3.3 There are some examples of best practice within the region in that of the six county authorities compared, five (i.e. all except Herts) have an adopted enforcement policy and/or procedure. Both Cambridgeshire and Norfolk have recently addressed their monitoring and enforcement policy and procedures and they have adopted a more proactive approach, placing greater emphasis on the monitoring of their minerals and waste sites to pre-empt the requirement for more formal enforcement action being taken.
- 3.4 Norfolk has adopted an Environmental Protection Code and this seeks to achieve the highest possible standards, minimise environmental effects and provides an equitable and consistent operational framework in which all operators are required to work. They have established a team of four who are responsible for site monitoring (including restoration and aftercare) and enforcement. As a result of their Review, Cambridgeshire have established a second enforcement officer post.
- 3.5 Bedfordshire has also carried out their Best Value review of development control. It noted that there was no planned schedule of regular visits and that regular monitoring would enable some issues to be identified at an early stage and therefore more likely to be resolved before they give rise to complaint. They have also identified that the Review of Mineral Planning Permissions has meant that there are now hundreds of new conditions on existing sites that require monitoring. They have therefore resolved to prepare a monitoring strategy including a pro-active monitoring regime; report annually on county matter monitoring and enforcement and adopt a planning control enforcement code of practice.
- 3.6 Hertfordshire is one of the larger authorities within the group, but given the different resource approaches it is difficult to determine whether the resources committed to monitoring and enforcement are in line with the majority. The main discernible difference is that we do not have any formal policy or procedure in place to ensure a consistency of approach. It is also clear that if a more pro-active approach is to be adopted that this will inevitably require a re-evaluation of the way in which monitoring and enforcement is carried out.

4. RELATIONSHIP WITH OTHER BODIES

- 4.1 Planning and planning control interfaces with a number of other agencies/authorities which, with a co-ordinated approach, can lead to an optimum use of resources. In particular, the County Council works closely with the Environment Agency, often sharing data and evidence or conducting joint inspections. Regular meetings are held with the Agency to discuss sites of common concern. Other resources are the district environmental health officers (particularly with regard to noise and dust issues); district enforcement and planning officers (sites where both county and district planning matters are occurring); MAFF and the Forestry Commission (monitoring of aftercare and specialist advice).
- 4.2 The County Council is also seeking to promote a degree of self-regulation by the industry by imposing conditions requiring the submission of an annual report detailing

compliance with conditions, progress over the previous year and proposals for the coming year. A number of companies are also working towards ISO14001 certification which would mean that they would have to be legally compliant (i.e. have systems in place to ensure that they are not in breach of any planning conditions).

5. ISSUES ARISING AND OPTIONS FOR THE SERVICE

- 6.7** One of the key issues emerging from the review is that the lack of a formal protocol and standards means that the expectations of the public, developers and members cannot be managed. This in turn puts added pressure on staff. There is no clarity about what can and can't be delivered, nor any published mechanism for prioritising between cases. The absence of any formally adopted protocol or standards means that the County Council is potentially exposed and that officers are under increasing pressure to respond at the expense of other parts of the service.
- 6.7** The profile of enforcement has been raised in recent years, primarily through a greater public interest in the environment. This has meant that enforcement issues have to be addressed in a more positive way. Local authorities are expected to be more accountable and act more speedily in resolving these issues. As such, the ideal is to pre-empt unauthorised activity by having a greater commitment to monitoring and resolving likely issues before they arise. By having a monitoring based approach breaches can be detected early and can often be resolved without recourse to formal enforcement action thus making more effective use of resources and affording greater protection of the environment.
- 6.7** The publication of the Planning Officers' Society 'Good Practice Guide on Monitoring Minerals and Waste Management Sites' and the DETR's current research into monitoring mineral sites add support to the premise that the method for controlling operations within existing sites is through a recognised procedure and frequency of monitoring. If this is the trend for the future, then it will require a fresh approach to monitoring and enforcement.
- 6.7** Given the discretionary nature of enforcement, the existence of a formalised protocol is an indication of good practice within the context of sustainable development objectives. A clear statement of the priorities and procedures to be undertaken by the County Council would give clarity of purpose, transparency of process and accountability for actions taken. A protocol should:
- set out the County Council's stance on certain issues;
 - provide a timescale;
 - establish realistic expectations;
 - keep the initiative with the authority;
 - inform the public about the pace of action.
- 6.7** The adoption of a protocol accords with the principles of Best Value and the Enforcement Concordat referred to in paragraph 1.8. It would also assist in

demonstrating that the County Council takes human rights into account when taking (or not taking) enforcement action.

- 6.7** To be meaningful any formal standards should be monitored and reported on. An annual report could demonstrate to operators that monitoring and enforcement is taken seriously by the County Council and would also clearly indicate the standards expected of operators on minerals and waste sites throughout the County.
- 6.7** As part of the protocols and standards an enforcement manual would clearly set out the objectives of monitoring and enforcement in Hertfordshire, the Council's enforcement priorities, the procedure for documenting case and target time limits for enforcing a case. Such a manual would make the enforcement function more streamlined and effective. It would also help to satisfy the Local Government Ombudsman in the event of a future investigation into the County Council's complaints procedure. The manual would be updated as changes in Government or County Council policy occur.

6. Financial implications

- 6.1** There are no financial implications arising directly from this report. However, experience elsewhere suggests any alterations to the enforcement and monitoring service along the lines set out in this report are likely to have some resource implications. As the Development Control Committee is not a budget-setting Committee it is appropriate that any recommendations are considered by the Environment Select Committee to consider any resource implications arising from the standards it wishes to set.

Background material used by the author in compiling the report

Part VII of the Town and Country Planning Act 1990. Circular 10/97 "Enforcing Planning Control: Legislative Provisions and Procedural Requirements", (July 1997), Department of the Environment, Transport and the Regions (DETR)

"Enforcing Planning Control: Good Practice Guide for Local Authorities", July 1997, DETR

"Enforcement Concordat", March 1998, Local Government Association

"Best Value Review: Development and Planning Control", Report to Select Committee, Bedfordshire County Council, October 2000.

"Good Practice Guide on Monitoring Minerals and Waste Management Sites" Planning Officers' Society, January 1998.

Local government Ombudsman, Digest of Cases 1998, page 87, Report 97/C/1829

APPENDIX A

| ACTIVITY | HERTS | N'FOLK | BEDS | CAMBS | ESSEX | S'FOLK | SURREY | BUCKS | HANTS |
|---|--------------|---------------|-------------|--------------|-----------------|---------------|---------------|--------------|--------------|
| Staff Nos: Development Control – minerals and waste | 6.0 | 5.0 | 4.4 | 4.7 | 10 (incl admin) | 3.5 | 14 | 2.5 | 5.0 |
| Staff Nos: Enforcement and monitoring | 1.5 | 3.5 | 1.5 | incl above | 1.0 | 0.5 | 2 | 1.8 | 3.0 |
| Staff Nos: Local Plans and Policy | 2.0 | 2.75 | 2.8 | 1.3 | | 1.0 | 3 | 2.0 | 1.5 |
| No. of county matter applications 1999-2000 | 34 | | 26 | | 53 | 33 | | | |
| No. of active sites (with planning permission) | 112 | 180-200 | 64 | | 171 | 90-100 | | | |