

## **Development Control Procedures**

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**Planning Committee**  
**5 October 2006**

### **1 Purpose of report**

1.1 This report has been prepared to advise Committee on the current situation with a number of procedural and related issues, which have arisen during the consideration of planning applications at meetings of the Development Quality Sub-Committee and elsewhere. The current issues are:

- Conditioning the use of domestic garages in new development.
- Co-ordination between Planning and Services for Communities (Environmental Assessment) in handling breaches of conditions.
- Delegating decisions to serve Stop Notices and some enforcement notices in respect of advertisements.

### **2 Summary**

2.1 This report considers the feasibility of conditions to restrict the use of garages to car parking and concludes that it would be ultra vires. It also updates the Committee on measures for improving arrangements between Planning and Services for Communities (Environmental Assessment) in terms of conditions monitoring. Finally, it concludes that delegation should not be introduced for the Service of Enforcement and Stop Notices at this stage but should be the subject of a further comprehensive review.

### **3 Main report**

#### **3.1 Item 1 – Use of domestic garages**

- 3.2 On 7 December 2005, having approved a small housing development at 26 Quality Street (application 05/02712/FUL), the Development Quality Sub-Committee asked the Head of Planning and Strategy to examine the possibility of imposing conditions to restrict the use of garages to parking.
- 3.3 Scottish Planning Circular 4/1998 sets out Government policy on the use of conditions in planning permissions. It advises that the wide power to impose conditions needs to be exercised in a manner which is fair, reasonable and practical and identifies six tests which conditions should meet. Conditions should only be imposed where they are:
- **necessary,**
  - **relevant to planning,**
  - **relevant to the development to be permitted,**
  - **enforceable,**
  - **precise, and**
  - **reasonable in all other respects.**
- 3.4 The suitability of the suggested restriction has been discussed with the Council Solicitor in the context of these tests. While it can be argued that such a condition is relevant to planning and to the development, there are considerable difficulties with the other tests. There is, of course, a right of appeal against conditions, when the Council must try and justify their use.
- 3.5 In considering **need**, the circular advises that a condition should not be applied unless there is a definite need for it. Planning authorities should avoid imposing conditions through anxiety to guard against every possible contingency and should ask themselves whether planning permission would have to be refused if the condition were not imposed. If it would not, then special and precise justification is required. Given that advice, while it may be acceptable to impose the restriction in exceptionally special circumstances, a general policy of imposing such a condition on new housing developments as a matter of course would not be appropriate.
- 3.6 In most cases, there are driveways in front of garages and these can accommodate one or more vehicles, thus providing off-street parking. In any case, the suggested condition might seek to prevent garages being used for purposes other than parking, but that does not mean that vehicles would be parked in them. If the matter of need is unclear, the circular suggests that it may be helpful to ask whether it would be expedient to enforce against a breach.
- 3.7 That leads into the area of **enforceability**, and that matter of expediency is relevant here too. It would not be feasible to regularly check the contents of garages. Also, there would seem to be little point in restricting the use of garages to parking unless there was some way of ensuring that vehicles were actually kept in them. A condition which attempted to achieve that would have the same sort of failings as the condition proposed, and it is hard to envisage that it would ever be practicable or expedient to pursue enforcement action. The circular advises that a condition should not be imposed if it cannot be enforced.

- 3.8 Although it may seem straightforward enough to devise a **precise** condition, that may not be so. Most garages are large enough to accommodate the family car plus varying amounts of storage and, sometimes, a small workshop area., and that presents difficulties for devising a suitably worded, precise - and enforceable – condition which details permitted uses.
- 3.9 In terms of other aspects of **reasonableness**, the circular advises that a condition that is unduly restrictive may be held to be unreasonable. It is likely that the restriction on how householders arrange uses within their property as suggested would be difficult to justify, unless it could be clearly demonstrated that only its inclusion would prevent specific planning problems, such as an unacceptable or dangerous level of on-street parking, from arising.
- 3.10 In conclusion, the condition under consideration would be *ultra vires* other than, perhaps, in truly exceptional and particular circumstances.
- 3.11 Item 2 – Co-ordination between Planning and Services for Communities (Environmental Assessment) in handling breaches of conditions.**
- 3.12 On 21 September 2005, the Development Quality Sub-Committee resolved to take enforcement action on respect of the breach of conditions at a hot food shop in Brighton Place. They also asked the Director of City Development to report to the Planning Committee on any measures to improve co-ordination between the Planning and (then) Environmental and Consumer Services functions in respect of the breach of conditions.
- 3.13 That case involved an unusual combination of circumstances. The breach was considered serious enough to warrant the service of a Stop Notice and it was important to have early consideration by the Sub-Committee. Indeed, the case was considered as an additional item at the Sub-Committee, having been ruled urgent by the Vice-Convenor. Unfortunately, that timing coincided with the Environmental Health Case Officer being on leave and so the report did not include information on any action being taken by that department. Such circumstances have not arisen subsequently.
- 3.14 Nevertheless, improvements in all aspects of conditions monitoring continue to be pursued. A computer-based process has been developed. Planning staff have recently been trained in its operation and guidance has been issued. One further exercise needs to be undertaken before the new system is implemented early in the new year. That exercise is a review of how we use conditions and of the conditions themselves. This follows the publication of Validation Guidance earlier this year, which require more information to be submitted with applications with a view to reducing the need for conditions and the number used. It is the intention to involve Environmental Officers in that review exercise and so enhance co-ordination between the functions in respect of planning conditions.

### **3.15 Item 3 – Delegated decision-making for Stop Notices**

- 3.16 On the 6 September 2006, when considering a case at St Margaret's Road, the Development Quality Sub-Committee called for an early report on the possible introduction of some form of delegated decision-making when service of a Stop Notice is required. The Sub-Committee was concerned that in such cases, where action needs to be expedited, the current process is lacking. The issue has been discussed with Committee Services and Legal officers.
- 3.17 It is accepted that the existing enforcement process often does not give a fast enough response in such cases. However, the decision-making stage causes little delay. Cases can be ruled as urgent and dealt with by the Sub-Committee as extra items, as happened in the above case. The weekly meeting schedule is helpful in this respect. Even if an urgent decision is required between meetings, Standing Order 91 makes provision for this.
- 3.18 A Stop Notice must be served in conjunction with an Enforcement Notice. It would be inappropriate to introduce delegated enforcement powers on a piecemeal basis, especially as Stop Notices cases tend to be the more contentious ones and may give rise to compensation claims. It would be better to review the issue on a comprehensive basis at an appropriate future time, perhaps after conditions monitoring is established and the enforcement provisions of the new planning legislation are known.
- 3.19 While the introduction of partial delegated decision-making is not recommended at this time, improvements to other stages in the process should be pursued. Potential Stop Notice cases should be identified at the outset and prioritised. While there is a place for making an initial attempt to seek voluntary remedial measures, such negotiation should not be allowed to delay whatever form of enforcement action is considered to be commensurate with the circumstances of the case. Liaison with the Council Solicitor should be such that Notices in these cases can be prepared in advance of the decision and served very quickly thereafter. Arrangements for processing cases on that basis and the identification of any further measures should be discussed by the relevant officers, including the solicitors.
- 3.20 On 27 September 2006, the Development Quality Sub-Committee noted that the period of delegation for enforcement cases in respect of advertisements in the vicinity of the airport had expired. It is recommended that this issue is also dealt with under the comprehensive review.

## **4 Financial Implications**

- 4.1 None

## 5 Conclusions

- 5.1 Other than in particularly exceptional circumstances, restricting by condition the use of domestic garages to parking would be *ultra vires* and should not be pursued.
- 5.2 Measures to improve co-ordination between Planning and Environmental Officers have been identified.
- 5.3 Delegation should not be introduced for the service of Enforcement and Stop Notices at this stage, but this should be subject of a future comprehensive review. In the meantime, other improvements to the process should be pursued.

## 6 Recommendations

- 6.1 It is recommended that the Committee notes this report and its conclusions and discharges the relevant remits.



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<b>Appendices</b>	None
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<b>Wards affected</b>	Citywide
<b>Background Papers</b>	None