



## **SCRUTINY SUB-COMMITTEE C**

MINUTES of the Scrutiny Sub-Committee C held on Wednesday 17 March 2010  
at 7.00 pm at Town Hall, Peckham Road, London SE5 8UB

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**PRESENT:** Councillor Toby Eckersley (Chair)  
Councillor Gordon Nardell

**OFFICER SUPPORT:** Rachel McKoy, Legal Services  
Richard Parkins, Head of Health, Safety and Licensing  
Gary Rice, Head of Development Management  
Dennis Sangweme, Group Manager, Planning Enforcement  
Karen Harris, Scrutiny Project Manager

### **1. APOLOGIES**

1.1 Apologies for absence were received from Councillors Anood Al-Samerai, Richard Livingstone and Jane Salmon.

### **2. NOTIFICATION OF ANY ITEMS OF BUSINESS WHICH THE CHAIR DEEMS URGENT**

2.1 There were none.

### **3. DISCLOSURE OF INTERESTS AND DISPENSATIONS**

3.1 There were none.

### **4. MINUTES**

The chair reminded the sub-committee that the draft report following the conclusion of the 20mph review is outstanding and will be produced for agreement by circulation in the next few weeks

## **RESOLVED:**

That, subject to the following amendments, the minutes of the meeting held on Wednesday 3 March 2010 be agreed as an accurate record:

Page 6 paragraph 6.21, the word “serious” should be added to the end of the paragraph.

Page 8 paragraph 6.43 replace the word “you” with “their”.

## **5. PLANNING ENFORCEMENT**

5.1 The chair explained the numerous papers circulated to the sub-committee as a result of the requests for evidence made at the last meeting, and additional papers which were tabled as follows:-

- Additional information response from Richard Parkins, health, safety and licensing manager
- Schemes of delegation memo from Councillor Nardell
- Schemes of delegation memo from Karen Harris, scrutiny project manager (attached to the minutes for information)

5.2 The sub-committee agreed to take evidence according to the three topics agreed at the last meeting (Joined up Working, Scheme of Delegation, Use of Temporary Stop Notices and Injunctions), and draw up recommendations for a draft report from the discussion.

### **Joined Up Working**

5.3 The chair invited Richard Parkins, health safety and licensing manager to introduce the papers he had submitted to the sub-committee concerning the interface between the licensing and planning enforcement processes, current working arrangements and the systems that would facilitate better joint working in the future.

5.4 The health, safety and licensing manager introduced the subject by acknowledging that historically, the effectiveness of the relationship between the licensing and planning enforcement functions within the council had been poor. Recently however, there has been much improvement, through working together on small steps and improvements. Much more of this type of work is needed and planned for the future. This was also the view of the head of development management.

5.5 The health, safety and licensing manager went on to explain the legal separation of enforcement and licensing processes, explaining that the licensing committee and planning committee operate independently and are not bound by the decisions of the other body. In addition, there is a difference of emphasis during the consideration of applications. Planning is concerned with “amenity” whilst licensing has a focus on “public nuisance”.

5.6 The council’s own policy sets out a framework for cross-consultation so that there is consistency for the customer from both processes, with an expectation that

where rules differ between the two approvals, for example on opening hours, the more stringent rules would apply.

- 5.7 An issue over the Evolution of Premises was highlighted as a possible area of concern. In this type of instance a number of incremental changes can result in a need for a different planning consent, and “catching” these issues is dependent on staff awareness of this.
- 5.8 The sub-committee discussed this issue and agreed that this could be resolved through a development session for staff from both planning and licensing. The head of development management and health and safety licensing manager agreed to undertake this training work.
- 5.9 Both Richard Parkins and Gary Rice agreed that better sharing of information between the planning enforcement and licensing services would be beneficial. In particular licensing should have easy access to the “accolade” system, which would enable staff to reference the planning register.
- 5.10 The sub-committee discussed the issue of cross-consultation between planning and licensing on applications. It was confirmed that systems and processes are in place, and will be enhanced through the restructuring taking place which is likely to bring together staff in environmental health and licensing which will bring greater awareness of planning issues in to the department.
- 5.11 The sub-committee discussed the need for licensing to be consulted on planning applications, in particular to deal with the issues of cumulative effect and saturation where there are many licensed premises in a small area. It was explained that the licensing function produces regular statistical analysis on issues such as alcohol related crime and disorder, which inform saturation policy. The helpfulness of supplying this information to the planning committee was discussed, and it was agreed that it would be effective if it could be disaggregated and applied to individual cases that planning are considering. This should be done at an officer level, otherwise the information would be interesting but difficult for the committee to apply.
- 5.12 In the context of the differences of emphasis and priority between the planning enforcement and licensing systems, the sub-committee discussed the issue of public expectations from the two systems, and how users of the system understand and negotiate their use.
- 5.13 It was agreed that as the objective is to reduce non-compliance and misunderstanding, better advice to the public is clearly needed.
- 5.14 The sub-committee discussed how this better advice on planning enforcement issues could be developed, which could be of use to existing licensees and to the general public. Eileen Conn (community activist) suggested that a workshop comprising local citizens active on this issue would be a good way forward, and have the benefit of testing advice on a group of potential users. It was agreed that the production of such advice would be recommended in the review report.
- 5.15 The chair summarised the key recommendations for the scrutiny review

emerging from the discussion around licensing as follows.

- a) A need for clear advice to the public on planning enforcement issues, especially on licensing issues.
  - b) Increased and systematic internal communication and training between licensing and planning, including access to computerised record systems.
  - c) Particular training focus on Evolution of Premises issues
  - d) Supply of analysed information from licensing an community safety which reveals potential planning issues on a cumulative basis
  - e) When differential and potentially contradictory or confusing compliance requirements are made by planning enforcement and licensing, a clear “joint” explanation will be offered to minimise misunderstanding.
- 5.16 The sub-committee thanked Richard Parkins, health, safety and licensing manager for his helpful contribution to the review.
- 5.17 The sub-committee noted the written evidence from housing and highways requested at the last meeting as useful examples of how important improved joined-up working and systems between council departments is to successful planning enforcement.
- 5.18 It was agreed that the sub-committee’s recommendations on joined up working would focus on actions which will help to avoid the need for enforcement action within the council. Reference was made to the benchmarking data provided by the planning enforcement team which suggests that this is the preferred approach taken in neighbouring boroughs, with best endeavours to rectify issues between departments before they escalate to require legal action.
- 5.19 The head of development management outlined the pilot work now underway to develop training and awareness sessions for council staff, to minimise cases of planning breach within the council.
- 5.20 Members of the sub-committee suggested that this should include a common system for all enforcement teams across the council to pass information on when they become aware of a possible breach of planning control.
- 5.21 Eileen Conn suggested that this council based activity could be even more useful if it included sessions for the public and a system of passing on information that they could use too. Eileen Conn suggested that the voluntary sector is well placed to help develop and facilitate this work, and advocated the use of active members of the community to develop such a system within the voluntary sector.

### **Schemes of Delegation**

- 5.22 Councillor Nardell introduced his paper on delegation which outlines the detail of the delegation schemes in some other local authorities.
- 5.23 He explained a variety of approaches to delegation. Overall there is a trend towards maximising delegation, but with some variation of approach and referral to elected members where there is uncertainty over

- Whether something falls within existing agreed policies and plans (departure from the development plan)
- If there is a judgement to be made about expediency
- If a decision is likely to be controversial
- If an elected member “calls in” an enforcement action

- 5.24 The sub-committee discussed the merits of the various approaches vis a vis the approach taken in Southwark which is a simple delegation of all planning enforcement matters to the head of development management.
- 5.25 It was agreed that it would be useful for the head of development management to be able to delegate/ refer matters upwards if judged appropriate, in particular before taking a decision not to take enforcement action on a controversial issue.
- 5.26 A query was raised over the way upwards delegation would work in the context of the council's constitution, and which body this delegation would be to.
- 5.27 It was agreed that the most appropriate place of referral would be the planning committee, and a recommendation will be developed with appropriate wording for inclusion in the draft scrutiny report.

### **Pre-Emptive Powers**

- 5.28 Following on from the discussion at the last meeting, and the additional evidence received on the use of temporary stop notices, both in terms of guidance on use, experience of use from other authorities, and the legal advice discussed under the closed agenda item, the sub-committee discussed their views and recommendations on the council's approach to the use of pre-emptive powers.
- 5.29 There is now agreement with legal services, that the potential for compensation is not a material consideration in decisions over the use of temporary stop notices, and that this should not be factored into the cost/benefit analysis. Councillor Nardell also highlighted that serving a temporary stop notice very quickly can actually reduce any economic costs that could be incurred through stopping economic activity, and that this does not preclude the submission of a retrospective planning application.
- 5.30 The sub-committee heard from Dennis Sangweme, group manager of planning enforcement on the processes he would like to see in place to ensure an early identification of any breach of planning control, which can then be verified through a site visit. If the nature and the impact of the development are inappropriate this will then be referred to legal services where a decision will be taken on the expediency of serving a temporary stop notice.
- 5.31 The ability to collect data efficiently and quickly is vital to the effective use of temporary stop notices. The sub-committee asked about the speed of the council's system and if this is an issue. The planning enforcement team explained that they use the prioritisation scheme as a preliminary filter, so that issues that are “priority one” are dealt with as fast as possible, with a first contact or site visit taking place within twenty-four hours of the receipt of the complaint.

- 5.32 The sub-committee discussed the overall use of resources on planning enforcement issues and the cost incurred in terms of staff time if enforcement notices and action become necessary. Members felt that this should be factored into the cost/benefit analysis when considering the use of temporary stop notices, which are a more cost effective measure in terms of cost to the council.
- 5.33 The sub-committee agreed to make a recommendation in the scrutiny report that the systems should be put in place which would facilitate the use of temporary stop notices by the council.
- 5.34 It was also agreed that the report would include a recommendation that there should be a presumption in favour of the speedy use of temporary stop notices by the planning enforcement and legal teams where breaches are discovered in the council's "priority one" priority area for enforcement action.
- 5.35 The use of injunctions was discussed by the sub-committee. It was agreed that the temporary stop notice powers are intended to reduce the need to use injunctions by local authorities. The evidence from the benchmarking exercise shows that injunctions are used infrequently by other authorities as well as in Southwark.

#### **Other Issues from Previous Discussions**

- 5.36 The sub-committee confirmed that they would like to see recommendations in the scrutiny report that:
- Every community council should receive a quarterly report on planning enforcement issues. This report should include information on activity and also qualitative information on cumulative effects and the work in progress to improve communications, and guidance
  - The planning enforcement team should produce a range of guidance, building on the good work done in relation to faith communities. This should begin with issues where there have traditionally be a high level of breaches, such as shop fronts etc.
  - The planning committee should receive an annual report on planning enforcement containing both quantitative and qualitative information, to allow it to set policy priorities effectively.