

CABINET – 14 September 2005

TEMPORARY STOP NOTICES - EXPLANATION OF NEW ENFORCEMENT POWERS

REPORT OF DIRECTOR OF DEVELOPMENT

Contact Officer: Lesley Wells Tel No: 01962 848564, Email: [lwells@winchester.gov.uk](mailto:lwells@winchester.gov.uk)

RECENT REFERENCES:

None.

EXECUTIVE SUMMARY:

On 7 March 2005 the provisions on temporary stop notices in Section 52 of the Planning and Compulsory Purchase Act 2004 came into force. This gave local planning authorities a new power to issue a temporary stop notice for 28 days, where there has been a breach of planning control and it is expedient to stop it immediately.

This report briefly explains these new enforcement powers and how they have been implemented since March 2005.

RECOMMENDATIONS:

That it be recommended TO COUNCIL that the Council's Constitution be amended as follows:-

That in Part 3 of the Constitution, Section 6 (Scheme of Delegation to Officers) the authority of the Director of Development be amended as follows:-

Under "Planning Matters", amend paragraph 16 by the addition of the wording after "...withdrawal of enforcement notices" "the issue and withdrawal of temporary stop notices".

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##### DETAIL:

##### 1.0 Introduction

1.1 On 7 March 2005 the provisions on temporary stop notices in Section 52 of the Planning and Compulsory Purchase Act 2004 came into force. This provides local planning authorities (LPA) with the power to issue a temporary stop notice when unauthorised development commences, which would require its immediate cessation for a limited period of 28 days. This differs from and is in addition to the normal stop notice powers because the temporary stop notice does not have to wait for an enforcement notice to be issued. In addition the effect of a temporary stop notice is immediate: it is not necessary to wait three days before it takes effect or to give reasons why it takes effect immediately. There is no right of appeal against the service of a temporary stop notice to the Secretary of State. However, a challenge in the High Court may be brought by way of judicial review proceedings.

1.2 The temporary stop notice expires after 28 days (it is not possible to issue a further temporary stop notice against the same breach). During this period the LPA must decide whether it is appropriate to take further enforcement action, against the unauthorised activity. At the end of the 28 days there is the risk of the activity resuming if an enforcement notice is not issued and a stop notice served.

1.3 It is an offence to contravene a temporary stop notice once served. A person guilty of this offence is liable, on summary conviction, to a fine not exceeding £20,000; and, on conviction on indictment, to an unlimited fine. In determining the fine, the Court should have regard to any financial benefit, which has accrued, or appear likely to have accrued, in consequence of the offence.

##### 2.0 Circumstances when a Temporary Stop Notice may be Served

2.1 The activities that a temporary stop notice may prohibit include: the unauthorised activity; a use of the land which is ancillary, or incidental to the unauthorised main use of the land; or a particular activity taking place only on part of the land; or an activity which takes place on the land intermittently or seasonally.

2.2 A temporary stop notice may be used to prohibit “operational development” – activity consisting of, or incidental to building, engineering, mining or other operations, or the deposit of refuse or waste materials, or the change of use to operational development.

### 3.0 Temporary Stop Notice Restrictions

3.1 The primary legislation makes clear that a temporary stop notice may not prohibit the unauthorised use of a building as a dwelling house. It also makes clear that it may not prohibit the continued stationing of a caravan on land where it is the main place of residence of the occupiers, or where permitted development rights exist for the caravan use.

3.2 However, a temporary stop notice may be used in cases whether there are no permitted development rights and where the LPA considers that the risk of harm to a compelling public interest arising from the stationing of the caravan is so serious so as to outweigh any benefit, to the occupier of the caravan. A temporary stop notice may also prohibit the stationing of any additional caravans on land, on which a caravan is already stationed.

### 4.0 Compensation

4.1 Compensation is only payable when a temporary stop notice is served if there is no breach of planning control; where planning permission has been granted for the development; the development benefits from permitted development rights; a lawful development certificate is subsequently issued for the development; the notice is withdrawn because the development has planning permission. Liability may however be reduced or eliminated in any case where the claimant was required by a planning contravention notice or other formal requisition for information, to provide information to the LPA and did not provide it or otherwise failed to co-operate when responding to the notice.

### 5.0 Procedures for Dealing with Temporary Stop Notices

5.1 Government advice (ODPM Circular 02/2005: Temporary Stop Notices) is that to ensure the most effective use of this notice, it is essential that LPAs act quickly. Therefore it is advised that authority to take such action is delegated to officers.

5.2 Since the legislation comes into effect in March 2005, one temporary stop notice has been served, although authority to serve such notices has been obtained on a number of occasions. In addition, the mere threat of issuing such a notice has secured the cessation of unauthorised developments in a number of other cases – e.g. residential developments commencing on site before conditions were discharged. It has therefore been found to be an effective tool. However, under the current ‘Scheme of Delegation to Officers’ it is necessary to obtain authority from the Chief Executive or if time permits, from the Planning Development Control Committee (PDCC). This causes delay and increases the administrative burden of obtaining proper authority for issuing a temporary stop notice. To address this it is recommended that the Director of Development be given delegated authority to issue temporary stop notices. The power to authorise stop notices will remain delegated to the Chief Executive or the PDCC.

### 7.0 Conclusion

6.1 The temporary stop notice provisions are designed to give LPAs a means of acting immediately to bring an unacceptable breach of planning control to an end for a limited duration of 28 days. Since the introduction of this legislation in March 2005 it has been found to be an effective tool. However, in implementing the legislation, it has been found that there are unnecessary delays in existing administrative

procedures. To resolve this it is recommended that authority to issue such notices be delegated to the Director of Development.

OTHER CONSIDERATIONS:

7.0 CORPORATE STRATEGY (RELEVANCE TO):

7.1 Environmental Implications

7.2 The ability to act quickly to bring about the cessation of unacceptable, unauthorised developments should protect the environment for the benefit of the community. It should also avoid the consolidation of developments that are harmful to amenity.

8.0 RESOURCE IMPLICATIONS:

8.1 This will be dependent on how many notices are served, which is impossible to quantify. Currently it takes approximately a day to issue a notice, due to administrative procedures. Also, due to the nature of such notices, they are usually served in emergency situations, which have a knock on effect on existing workloads within planning enforcement and the legal section. The position will be monitored over the next 12 months, to assess the impact of implementing the legislation.

9.0 BACKGROUND DOCUMENTS:

None

10.0 Appendices

None.