



NOTICE OF MEETING

Meeting:	Planning (Enforcement) Sub-Committee
Date and Time:	Monday, 7 March 2016 at 10.00 am
Place:	Council Chamber, Civic Offices, Fleet
Telephone Enquiries to:	Mrs Alison Cottrell 01252 774141 alison.cottrell@hart.gov.uk
Members:	Blewett, Gorys, Oliver, Southern

Joint Chief Executive

CIVIC OFFICES, HARLINGTON WAY
FLEET, HAMPSHIRE GU51 4AE

AGENDA

**COPIES OF THIS AGENDA ARE AVAILABLE IN LARGE PRINT
AND BRAILLE ON REQUEST**

1 MINUTES OF PREVIOUS MEETING

The Minutes of the meeting held on 7 December 2015 are attached to be confirmed and signed as a correct record. **Paper A**

2 APOLOGIES FOR ABSENCE

3 CHAIRMAN'S ANNOUNCEMENTS

4 DECLARATIONS OF INTEREST

To declare disclosable pecuniary, and any other, interests.

5 LAND AT KEEPERS COTTAGE (KEEPERS LODGE), FARNHAM ROAD, FARNHAM, SURREY.

To bring to Members attention the requirement to consider taking direct planning enforcement action as a way of carrying out works in default to remedy a breach of planning control and a failure to comply with an Enforcement Notice. **Paper B**

RECOMMENDATION

To delegate to the Head of Regulatory Services the authority to take direct planning enforcement action to remove all structures and items connected with the unauthorised use of the land for residential purposes including the mobile home, and to make good the land at Keepers Cottage (Keepers Lodge), Farnham Road, Farnham, Surrey, the requirements of which are set out in the Enforcement Notice dated 6 March 2012.

6 IMPROVEMENT PLAN

For Members to receive a verbal update on the Improvement Plan. **Paper C**

RECOMMENDATION

Members to note the Improvement Plan.

7 PLANNING ENFORCEMENT PLAN

For members to receive a verbal update on the Planning Enforcement Plan and note any Consultee responses.

Date of Despatch: 23 February 2016

Notes:

A meeting of the Enforcement Panel will consider outstanding cases (including those with Legal) at the conclusion of the meeting. These will be sent electronically to Members a week before the meeting to ensure they are up-to-date.

The Human Rights Act 1998 (the Act) has incorporated part of the European Convention on Human Rights into English law. Any recommendation either to take or not to take enforcement action has been assessed to make sure that the decision is compatible with the Act. If there is a potential conflict, this will be highlighted in the individual report on the relevant item.

PLANNING (ENFORCEMENT) SUB-COMMITTEE

Date and Time: 7 December 2015 at 10am

Place: Council Chamber, Civic Offices, Fleet

Present:

COUNCILLORS

Blewett (10.07 am), Gorys, Oliver, Southern (Chairman)

Officers:

Nick Steevens	Head of Regulatory Services
Sarah Castle	Principal Planning Officer
Sharon Whittaker	Enforcement Officer
Sylvia O'Connor	Enforcement Officer
Kuldip Channa	Shared Legal Services
Gill Chapman	Committee Services

8 MINUTES OF PREVIOUS MEETING

The Minutes of the meeting held on 6 July 2015 were confirmed and signed as a correct record.

9 APOLOGIES FOR ABSENCE

None received.

10 CHAIRMAN'S ANNOUNCEMENTS

None.

11 DECLARATIONS OF INTEREST

None declared.

12 PLANNING ENFORCEMENT PLAN

Members were asked to recommend to Planning Committee the adoption of the Planning Enforcement Plan for approval.

Members asked for clarification on various points and discussed the plan. Issues considered included: anonymity of complaints, prioritisation and timescales, tree loss outside of conservation areas, advertisements, notice period of an officer's visits, discrepancies between approved plans and builders plans and the monitoring by the building control service. Suggestions for minor changes were accepted.

It was agreed the Plan would be amended to reflect the Committee's suggestions. Subsequent consultation would include Parishes and agents. Unless there were significant changes the Plan would not need to be re-considered by the Enforcement sub-committee.

RECOMMENDATION to Planning Committee

That the Planning Enforcement Plan, subject to consultation with stakeholders, be adopted.

Councillor Blewett entered the meeting during this item.

13 OMBUDSMAN COMPLAINT - PLANNING ENFORCEMENT

The Committee were informed of the outcome of a complaint lodged with the Local Government Ombudsman and informed of the improvement plan to ensure the planning enforcement function is fit for purpose.

Members discussed learning the lessons to ensure there would not be a recurrence, reasonable expectations and timescales, levels of communication between services, cross skilling and taking ownership.

Members considered the Improvement Plan, and it was confirmed that as a work in progress, discussions on potential improvements were still being discussed with staff. The final version would be considered at the March meeting.

RESOLVED

The Planning Enforcement Sub-Committee acknowledge the contents of the investigators report and agree the action plan detailed in Appendix 2.

14 PLANNING ENFORCEMENT REPORTING

Approval was requested to amend the way in which planning enforcement cases are reported at Planning Enforcement Sub-Committee. The proposals were considered and agreed.

RECOMMENDATION

Planning Enforcement Sub-Committee agree to an amendment in the way active enforcement cases are reported to the Planning Enforcement Sub-Committee.

The meeting closed at 11.30 am

PLANNING ENFORCMENT SUB COMMITTEE

DATE OF MEETING: 7th March 2016

TITLE OF REPORT: **LAND AT KEEPERS COTTAGE (KEEPERS LODGE),
FARNHAM ROAD, FARNHAM, SURREY**

Report of: **Head of Regulatory Services**

Planning Member: **Cllr Ambler**

I PURPOSE OF REPORT

- 1.1** The purpose of this report is to bring to Members' attention the requirement to consider taking direct planning enforcement action as a way of carrying out works in default to remedy a breach of planning control and a failure to comply with an Enforcement Notice.

2 OFFICER RECOMMENDATION

- 2.1** To delegate to the Head of Regulatory Services the authority to take direct planning enforcement action to remove all structures and items connected with the unauthorised use of the land for residential purposes including the mobile home, and to make good the land at Keepers Cottage (Keepers Lodge), Farnham Road, Farnham, Surrey, the requirements of which are set out in the Enforcement Notice dated 6th March 2012.

3 BACKGROUND

- 3.1** This has been an ongoing enforcement case since 2012 for the unauthorised use of the land. The Enforcement Notice covers a number of requirements including the cessation of the use of the land of residential items and the mobile home. The notice was upheld at appeal on 17th July 2012, attached at Appendix A and B.
- 3.2** Under s179 of the Town and Country Planning Act 1990 as amended it is an offence for a person who is the owner, or has control of or an interest in the land to which an enforcement notice relates to carry on the activity which is required to cease by the notice, or cause or permit the activity.
- 3.3** Between 2012 to date the land has passed to the Crown although there is a registered interest in the land. Prosecution proceedings have commenced because the notice has not been complied with. However, this in itself would not remedy the breach of planning control.

4 CONSIDERATIONS

- 4.1** The removal of the items would resolve an outstanding issue and possibly aid the prosecution case for the Council should Members agree to take direct action. Should Members agree not to take action then the land would remain as it is.

- 4.2** Under the Human Rights Act a person has the right to the peaceful enjoyment of their possessions and clearly removing all of the structures on the site may interfere with their Human Rights however, these rights are not unfettered and the act permits the dispossession of possessions in the public and general interests. It is considered that the removal of the structures on site would represent a proportionate interference as the mobile home is not in residential occupation.

5 FINANCIAL IMPLICATIONS

- 5.1** Any costs incurred would be registered against the land although they could not be reclaimed against the Crown. Should the land move into private ownership in the future then any costs incurred could be reclaimed.
- 5.2** It is anticipated that the likely cost would be approximately £6,000 to dismantle and dispose of the items.

6 ACTION

- 6.1** It is requested of Members to note the contents of this report and approve the Officer recommendation as set out in section 2 above.

Contact Details: S. Castle / Extension 4125 / e-mail sarah.castle@hart.gov.uk

APPENDICES

Appendix A - Enforcement Notice
Appendix B - Appeal Decision

**IMPORTANT - THIS COMMUNICATION AFFECTS YOUR
PROPERTY**

**TOWN AND COUNTRY PLANNING ACT 1990 (as amended by the
Planning and Compensation Act 1991)**

ENFORCEMENT NOTICE

ISSUED BY: HART DISTRICT COUNCIL

1. **THIS NOTICE** is issued by the Council because it appears to them that there has been a breach of planning control, within paragraph 1 (a) of section 171A of the above Act, at the land described below. They consider that it is expedient to issue this notice, having regard to the provisions of the development plan and to other material planning considerations. The Annex at the end of the notice and the enclosures to which it refers contain important additional information.

2. **THE LAND TO WHICH THE NOTICE RELATES**
Land at Keepers Cottage, Farnham Road, Crondall, Farnham, Surrey, shown edged with a bold black line on the attached plan ("the Land").

3. **THE BREACH OF PLANNING CONTROL ALLEGED**
Without Planning Permission the change of use of the Land to a mixed use of the Land for the importation of wood and subsequent processing into logs, log yard, storage of builder's materials, scaffolding, building waste, general waste, car storage and occupation of a residential mobile home.

4. **REASONS FOR ISSUING THIS NOTICE**
It appears to the Council that the above breach of planning control has occurred within the last ten years.
 1. The site is located in open countryside outside any settlement boundary, where development is restricted to that essential to agriculture or other authorised uses. None of the uses is so authorised. In addition the development has resulted in the loss of protected trees detrimental to the visual amenities of the area. The development is therefore contrary to saved policies RUR 2, RUR 3 and CON 8 of the Hart District Local Plan (Replacement) and PPS 7: Sustainable Development in Rural Areas.

2. There is no agricultural justification for the siting and occupation of the caravan and as such the development is contrary to saved policies RUR 2 and RUR 3 of the Hart District Local Plan (Replacement) and PPS 7: Sustainable Development in Rural Areas.
3. The site is located within 5KM of the Bourley and Long Valley Site of Special Scientific Interest (SSSI) which forms part of the Thames Basin Heaths Special Protection Area (SPA). In the absence of any evidence that the test of no alternatives under Regulation 62 of The Conservation of Habitat and species Regulations 2010 can be satisfied, or evidence that there are grounds of overriding public interest, the development, in combination with other plans or projects, would be likely to have a significant adverse effect on the SPA. As such the development is contrary to saved policies CON 1 and CON 2 of the Hart District Local Plan (Replacement).
4. The development exacerbates the existing deficiency in provision for primary and secondary schooling in the vicinity of the site. As such the development is contrary to paragraph 4.6.1, the accompanying text to saved policy RUR 35 of the Hart District Local Plan (Replacement).

The Council considers that planning permission should not be given because planning conditions could not overcome these objections to the development.

5. WHAT YOU ARE REQUIRED TO DO

1. Cease the use of the Land for:
 - a. the importation of wood and subsequent processing into logs;
 - b. use as a log yard;
 - c. storage of materials, including but not limited to builder's materials, scaffolding, building waste, general waste and car storage; and
 - d. residential use;
2. Remove all structures and items connected with the unauthorised uses on site, including but not limited to fences, compounds, builder's waste, builder's materials, scaffolding poles and burned materials;
3. Disconnect any service connections to any caravans or mobile homes on the Land and permanently remove all caravans and mobile homes from the Land; and
4. Make good any damage caused to the Land when carrying out points 1 to 3.

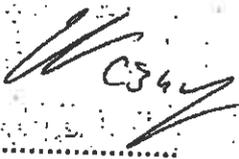
6. TIME FOR COMPLIANCE

For steps 1, 2, 3 and 4, within six months from the date this notice takes effect.

7. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on the 3 April 2012 unless an appeal is made against it beforehand.

Dated: 6 March 2012



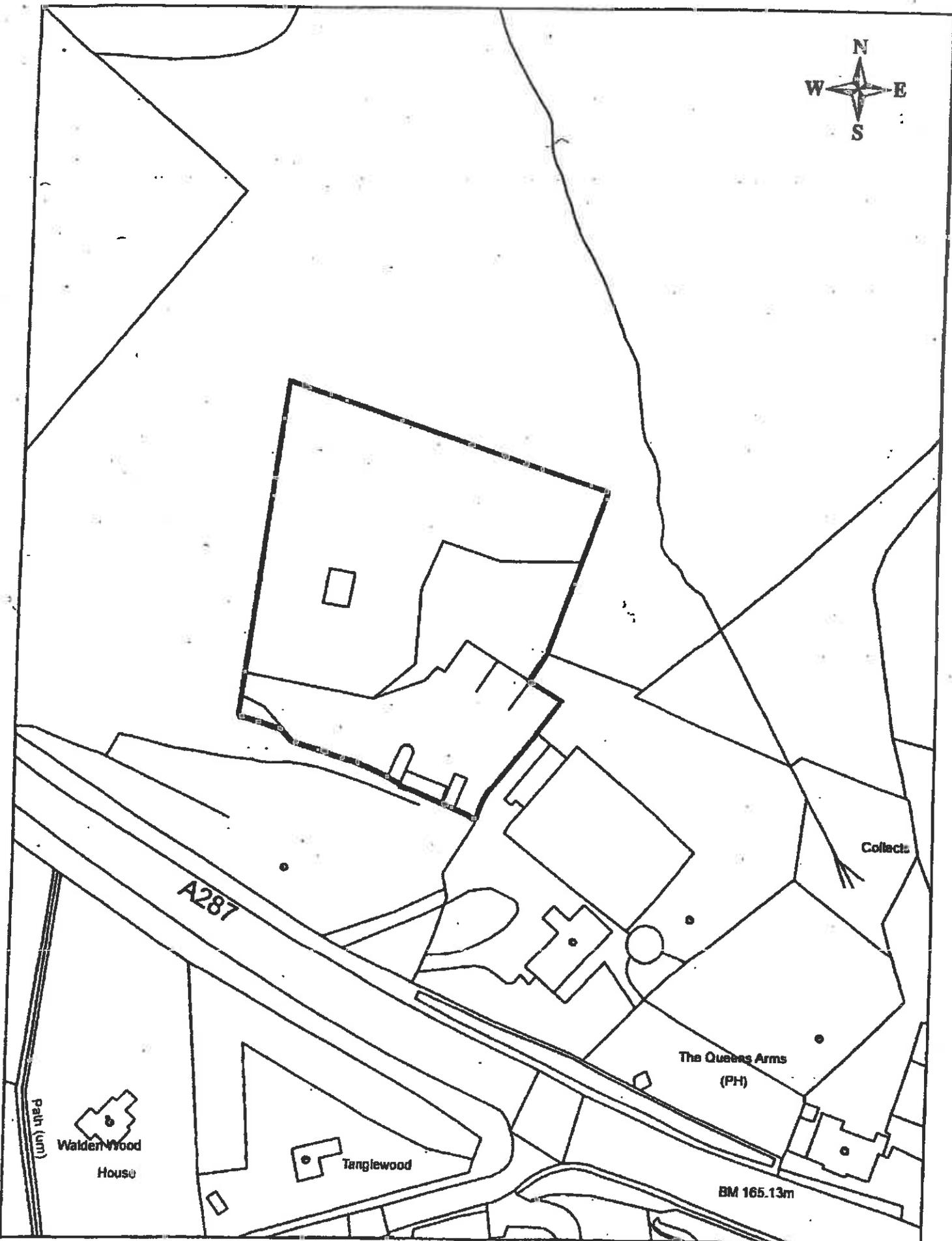
Signed.....
Head of Legal & Democratic Services

on behalf of
Basingstoke and Deane Borough Council and Hart District Council
Shared Legal Services
Civic Offices
London Road
Basingstoke
Hampshire
RG21 4AH

This Notice has been served upon:

The Secretary
Ivory Projects Limited
3 Heathfields
Heath Lane
Crandall
Farnham
Surrey GU10 5PA

Mr L Fogarty
Keepers Cottage
Farnham Road
Ewshot
Farnham
Surrey GU10 5AU



1:1,250

Land at Keepers Cottage
Farnham Road
Crandall



Appeal Decision

Inquiry held on 17 July 2012

Site visit made on 17 July 2012

by **David Leeming**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 30 July 2012

Appeal Ref: APP/N1730/C/12/2173705

Land known as Keepers Lodge, adjacent to Keepers Cottage, Farnham Road, Ewshot, Farnham, Surrey, GU10 5AU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr G Lambert against an enforcement notice issued by Hart District Council.
 - The Council's reference is SACA/08/00136/PROACT.
 - The notice was issued on 6 March 2012.
 - The breach of planning control as alleged in the notice is the change of use of the Land to a mixed use of the Land for the importation of wood and subsequent processing into logs, log yard, storage of builder's materials, scaffolding, building waste, general waste, car storage and occupation of a residential mobile home.
 - The requirements of the notice are:
 1. Cease the use of the Land for:
 - a. the importation of wood and subsequent processing into logs;
 - b. use as a log yard;
 - c. storage of materials, including but not limited to builder's materials, scaffolding, building waste, general waste and car storage; and
 - d. residential use;
 2. Remove all structures and items connected with the unauthorised uses on site, including but not limited to fences, compounds, builder's waste, builder's materials, scaffolding poles and burned materials;
 3. Disconnect any service connections to any caravans or mobile homes on the Land and permanently remove all caravans and mobile homes from the Land; and
 4. Make good any damage caused to the Land when carrying out points 1 to 3.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(d) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.
-

Decision

1. The site address in section 2 of the enforcement notice is corrected to refer to the site as: 'Land known as Keepers Lodge, adjacent to Keepers Cottage, Farnham Road, Ewshot, Farnham, Surrey, GU10 5AU, shown edged with a bold black line on the attached plan ('the Land').' Subject to this correction, the appeal is dismissed and the enforcement notice is upheld. For the avoidance of any doubt, nothing in this decision prevents the lawful use of the land.

The Appeal Site Address

2. The site is described in the enforcement notice as: 'Land at Keepers Cottage.....' However, it forms a separate area of land adjacent to this property. The appellant refers to it as Keepers Lodge. The description of the address given in section 2 of the notice is therefore being corrected to reflect the fact that it is not part of the Keepers Cottage land.

Background Information

3. The appeal site lies within the countryside and is partly wooded. It shares a common access from the A287 Farnham Road with the adjacent property, Keepers Cottage, a residential dwelling with an associated manège. Part of the site is hard surfaced and there are some fenced areas where vans are parked and materials are stored, including scaffolding. Towards the south-western end of the site is an area where logs are processed and stored, beyond which, through a gated access is the appellant's twin unit residential mobile home. A private track leads off the shared common access from the main road via a gateway into adjacent woodland.

The Planning Unit

4. The current planning unit is the whole of the appeal site owned by the appellant and identified in the plan attached to the enforcement notice.
5. In the Council's closing submissions the position was advanced that, on the evidence produced, it was not satisfactorily established that the appeal site represented, through physical and functional separation, a single planning unit with a continuous mixed use throughout the 10 year period necessary to demonstrate lawfulness. In this respect, lawful use rights can be lost where a new planning unit is created. If a new planning unit was created within the 10 year period that has clear implications for establishing 10 years continuity of use.
6. The evidence indicates that the appeal site was once part of a greater area of land encompassing the now separately owned land at Keepers Cottage. The appeal site is now physically and functionally separate from this land.
7. When the appellant's previous LDC application was submitted, his then agents, Bell Cornwell, stated that the land within the red line of that application (essentially the same land outlined in black in the enforcement notice plan) passed into separate ownership from Keepers Cottage in 1998. They also stated that the land had been a planning unit since 1990 and certainly since 1996 [1998?]. There was no suggestion on the part of the Council prior to the Inquiry that they had any issue concerning the history of the planning unit.
8. Although it is clear that the owner of Keepers Cottage (Mr Fogerty) has had use of at least a part of the appeal site since he sold the land, including within the last 10 years, there is insufficient evidence to show that the two sites (Keepers Cottage and Keepers Lodge), on which different uses take place, were not physically and functionally separate throughout this latter period. Thus, it cannot be concluded that the appeal site has not been a single planning unit, separate from the Keepers Cottage land, throughout the 10 year period.

been a breach of planning control, but that it is now immune from enforcement.

17. In making an appeal on ground (d) the onus of proof is on the appellant who must provide sufficient precise and unambiguous evidence to justify a finding that the mixed use is lawful through the passage of time. To be successful at appeal the appellant must prove, on the balance of probability, that all elements of the mixed use have subsisted alongside each other for 10 years. In this respect, the relevant material date is 6 March 2002, 10 years before the date of the enforcement notice.
18. The appellant claims that he moved onto the site in early February 2002, taking over occupation of a former caravan that was located in the wooded area there. He states that his electricity and water is supplied by meters, from a connection at Keepers Cottage. He has no receipts for this, nor has he supplied any other documentation relating to his residential use of the site.
19. In support of his appeal he has provided sworn statements from himself and his former wife (now Mrs Hewett), both dated 15 March 2010. These state that he left the former matrimonial home ('Muscarri', Heath Lane, Ewshot) to live at the site in 2002. Neither statement gives any specific date in 2002, but another more recent sworn statement, provided by Mr Fogerty, states that this was in February 2002. At the Inquiry the appellant also stated that he moved into a caravan on the site in early February 2002.
20. A sworn statement has been provided by Clynt Wellington, the former owner of the Four Seasons Hotel in Dogmersfield, who states that he has visited the appellant at the site on 2 or 3 occasions during the winter months over the past 10 years and that on every occasion Mr Lambert was in or about his caravan. At the Inquiry Mr Wellington advised that the reference to 2 or 3 occasions was to such visits per year, not to a total number of visits in the 10 year period. He also stated that the reference to '2001/2' was to the winter season and that the first visit would have been in 2002.
21. The Council refer to records of telephone conversations with the appellant and with his former wife and her new partner. These records contradict the 2010 sworn statements by the appellant and Mrs Hewett that he was living in the caravan from 2002. It seems odd that the appellant would have stated, as the Council have recorded, that he advised them in a telephone conversation on 2 July 2008 that he had lived in the caravan for '18 years', whereas in another conversation that same month (apparently on 8 July 2008) he is stated to have said that he moved out of Muscarri 'a couple of years ago'. This suggests that the records might not be totally accurate in noting what was actually said.
22. However, there is an earlier record of a telephone call from Mrs Hewett on 22 June 2007 in which she advised a member of staff that the appellant had left in the summer of 2006. This ties in with the recorded reference by the appellant in July 2008 that he had left Muscarri 'a couple of years ago'. This contradictory evidence casts doubt on the reliability of the sworn statements that the appellant left Muscarri to live in the caravan in 2002.
23. In noting the above, it is not the case, as stated in the evidence of Janine Raine-Cooper, that on 9 July 2008, the Council Tax Department received a call from Mr Hewett confirming that he was now Mrs Lambert's partner and that 'Mr Lambert' would be leaving Muscarri in due course. What the Council's email

Car Storage – Ground (c)

9. In his statement in support of ground (d) the appellant makes the following comment: 'The various vehicles and other items on the site are mine or belong to family and friends and are on the site ancillary to my residential occupation of the caravan and business use of the site, as such this does not amount to a change of use from the pattern of activity that has taken place since I first occupied the appeal site in 2002.'
10. The implications of this statement were considered at the Inquiry. The statement is a response to the references in the enforcement notice to 'car storage.' Although no appeal was made on that ground, it is, in effect, a ground (c) argument. Ground (c) is that there has not been a breach of planning control.
11. The 'car storage' referred to in the notice is to a primary use of the land as part of the various mixed uses referred to. It does not concern any parking that would ordinarily be ancillary to the residential and business uses described in the notice. Also, clearly, the reference to 'car' storage, does not concern the parking of any vans, lorries or other large vehicles on the site.
12. There was no evidence of any 'car storage' at the time of the site visit on the day of the Inquiry. However, as shown in photographs within the Council's proof of evidence, significant numbers of cars were on the site when the Council visited on 17 June 2008 and on 17 November 2011 (LPA references JRC 6 and JRC 7). Further photographs have been submitted by a local resident, Ian Sargeant, stated to have been taken on 25 August 2011, when again many cars are shown to be on the site. Mr Sargeant's evidence is that these cars were, at that time, being offered for sale by a car dealer identified as Mr Stangroom.
13. The number of cars noted in the various photographs is clearly not consistent with any ancillary use of the land by the appellant in connection with any of the uses identified in the notice. As a matter of fact and degree, the car storage use that has taken place on the site is not an ancillary use, but a separate primary and unauthorised use forming part of the mixed use of the land.
14. At the Inquiry the appellant stated that he allowed his neighbour at Keepers Cottage, Mr Fogerty, to use the site for parking. He considered that the cars shown in the Council's photographs could have been parked there in connection with equestrian events taking place at the manège at Keepers Cottage. However, most of the cars shown in the submitted photographs are double parked and some are tightly fitted into areas of the site close to structures and other items. Photograph JRC 155 shows a car jack in front of one of the cars. Clearly, the cars shown were not being parked in connection with an equestrian event. However, even if they were, this would not be an ancillary use of the land.
15. The 'hidden' appeal on ground (c) fails.

Ground (d)

16. This ground of appeal is that, at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice. Thus, this ground of appeal assumes that at some stage there has

record actually states is that it is 'they' who would be leaving Muscari in due course. The reference to 'they' is clearly to Mr Hewett and the then Mrs Lambert. In this respect, in her sworn statement Mrs Hewett states that in 2008 her husband Mr Hewett assisted her in sorting out her affairs including the letting of the property and 'our move to another property'. In his sworn statement the appellant confirms that his former wife moved out in 2008, with the house then being let to tenants.

24. The Council's records of the other telephone conversations concerning council tax payments do not provide contradictory evidence to anything in the sworn statements by the appellant and his former wife. The fact that the appellant remained registered for council tax purposes at Muscari is explained in his former wife's sworn statement. In this she states that she was unaware that she could get a discount for single occupancy of the property. The appellant has explained his presence at Muscari on 18 December 2006 in connection with an application for a replacement conservatory. He remained at that time a joint owner of the property and his former wife had asked him to undertake the work, given his skills as a builder.
25. On the other hand, there is evidence from a third party, John Harvey, that the appellant remained on the electoral roll for Muscari until at least the autumn of 2006. Electoral rolls contain the names of those living at an address and all such occupiers are required by law to provide accurate updated information annually. Providing false information on a register of electors form is an offence. The fact that the appellant's name continued to appear on the electoral roll for Muscari in 2006 is further evidence that contradicts his claim that he was living on the site on the material date.
26. A statutory declaration in support of the appeal has been submitted by Mr Hills, but this concerns sale of logs and does not specifically mention the caravan or any residential use of the land. Neither that statement nor anything stated in evidence by Mr Hills at the Inquiry assists the appellant's case in relation to residential occupation.
27. A further statement and evidence was provided by a former land owner, Mr Kemm. He confirmed at the Inquiry that his knowledge of the site before he purchased it in 2007 was not significant. It is therefore of limited weight in establishing lawful residential use. Mr Kemm's evidence is nevertheless significant in so far as it contradicts the erroneous statement in paragraph 4.5 of the submission made at the time of the LDC application by the appellant's former agent, Bell Cornwell, in 2009 that the current twin unit caravan was on the site in 2002. That incorrect statement was evidently a significant factor in the Council's conclusion that lawfulness of the residential use had not been established in 2009. It was also relied upon in connection with the Council's decision to issue the current enforcement notice. As Mr Kemm and the appellant confirm, the twin unit was not on the site until 2008.
28. There is evidence of another caravan on the land prior to the current twin unit. The appellant describes this as green and mossy. Mr Kemm states that this caravan was replaced by the current unit and was similarly located within the wooded area of the site. He told the Inquiry that he was not aware, when his interest in the land began, that this caravan was being lived in, believing, at first, that it was a tea room.

29. The Council have supplied photographs from Google Earth bearing various dates. It was accepted at the Inquiry that the dates on the photographs were not those on which they were actually taken. However, the Council had ascertained that the photos dated 2000 and 2005 were actually from flights made on 19 June 1999 and 9 September 2004 respectively. Unlike a later photo, dating from 2009, which clearly shows the twin unit, neither of the earlier photos shows any sign of a caravan in the wooded area of the site. However, the 2000 (1999) photo is quite indistinct. The 2005 (2004) photo is clearer. Given its stated location within the well wooded area, it is possible that a small 'green and mossy' caravan would not be visible in the somewhat distant views shown in these aerial photos, if hidden beneath the tree canopy.
30. The appellant draws particular attention to the fact that, whilst many locals have been unaware of any caravan within the wooded area of the site prior to the current twin unit, Alan Smith, a local resident who opposes the appeal, made reference, in a letter to the Council dated 12 May 2010, to a small caravan that was placed on the land 'some years ago.' Mr Smith is one of the Directors of Ewshot Land Holdings Ltd (ELH) who own woodland and the private right of way adjacent to the site on behalf of local residents. However, as Mr Smith's evidence to the Inquiry made clear, it was not until 2005/2006 that this caravan was first seen and, due to its poor condition, it was not thought to be inhabited.
31. Two affidavits signed by the Directors of ELH refer, among other things, to working party visits to their woods on 24 February 2002 and in March 2003, when at neither time was a caravan observed within the wooded area of the site.
32. The appellant's evidence is that the former caravan was well hidden under the tree canopy. He states that he had to clear an area of land overgrown with rhododendrons to accommodate the larger replacement twin unit. On this basis it is possible that the small 'green' and dilapidated looking caravan, even though first spotted by local residents in 2005 or 2006, was nevertheless sufficiently well camouflaged and insignificant to have been noticed on the earlier ELH annual working party visits.
33. On the other hand, these visits were in winter when the predominantly silver birch trees on the site would not have been in leaf. Also, local residents pointed out at the Inquiry that, following significant damage to the woods caused by the great storms of 1987 and 1991, the land was formerly much more open and there were clear views into the appeal site from the adjacent woodland and private right of way. As a result, it is reasonable to conclude that any caravan on the site would, in fact, have been spotted from the ground had it been there earlier. Indeed, Mr Smith told the Inquiry that he was certain that the caravan would have been seen by those engaged in annual clearing work in the adjacent woodland in 2002 and 2003, had it been there then.
34. In a letter to the Planning Inspectorate, dated 14 May 2012, another of the Directors of ELH, Angela Johnson, has attached a copy of an earlier letter, dated 5 April 2009, to the Council in which reference is made to a 'single' caravan left on the site 'in recent months', but with no lights at night and nothing to suggest anyone is living there. However, there is no dispute that the appellant has lived only in the twin unit since its arrival on the site in 2008.

35. Drawing matters together, despite some concerns, noted above, about certain aspects of the evidence submitted by and in support of the Council, there is significant relevant contrary evidence to that advanced by the appellant. As noted above, the burden of proof rests with the appellant. However, there is no documentary evidence whatsoever from the appellant to support any residential use of the site for the disputed period prior to the arrival of the current twin unit mobile home. Moreover, there is contradictory evidence from him and his former wife about when he left the matrimonial home to live on the site. These inconsistencies in particular cast doubt on the appellant's assertion and on the evidence of others given in support of his appeal, that he has lived on the site continually since early in 2002.
36. In view of the above, the evidence submitted by and on behalf of the appellant is insufficient to demonstrate, on the balance of probability, that the residential use of the land is lawful.
37. Since the residential use has not been proven as lawful through the passage of time, all the elements of the mixed use set out in the enforcement notice have not subsisted alongside each other for the requisite 10 year period to establish lawfulness of the mixed use of the land.
38. The appeal on ground (d) therefore fails.

Ground (g)

39. This ground of appeal is that the time given to comply with the notice is too short. The appellant states that in the event of the notice being upheld, he would lose both his livelihood and his home. He states that in the current difficult economic climate he would need at least a year to raise the necessary finance and to find alternative business and residential premises.
40. Having regard to the fact that a standard assured shorthold tenancy agreement requires only 2 months notice for termination, the 6 month period in the notice is more than adequate for the appellant to find alternative rented accommodation.
41. As regards the business use of the land, the amount of building materials and other stored items, including imported logs, is not so significant that it could not be readily moved to a reasonably modest-sized site elsewhere. The appellant has provided no evidence of any shortage of such sites in the area. The compliance period of 6 months should be sufficient for the appellant to find alternative business premises. In the event that this proves not to be possible, the Council have the power to grant an extension of time for compliance.
42. The appeal on ground (g) therefore fails.

David Leeming

INSPECTOR

APPEARANCES

For the Appellant

Gary Lambert – Appellant

Clynt Wellington – Former owner and developer of Four Seasons Hotel, Dogmersfield

John Hills – Local resident

Richard Kemm - A former owner of the appeal site

For the Council

Clare Parry of Counsel. She called:

Sarah Jane Castle – Interim Development Management Officer, Hart DC

Janine Raine-Cooper – Chartered Legal Executive, Hart DC

Interested Third Parties

Robert Taylor – Local resident

Alan Smith – Local resident

Ian Sargeant – Local resident

John Harvey – Local resident

DOCUMENTS

Doc. 1 – A bundle of documents entitled 'Additional information' (submitted by the Appellant).

Doc. 2 – An aerial photograph of the appeal site, dated 2005.

Doc 3. – Two Google Earth photographs, dated 31/12/2005 and 30/5/2009, with added information and accompanying notes (submitted by Alan Smith).

January 2016

Planning Enforcement Improvement Plan

Action	Findings	Recommendation	Timescale
<p>I. Management of planning enforcement</p>	<p>The enforcement priorities set by the Council in 2010 following the Silvester review have not been adhered to. There is no reference to planning enforcement in the current departmental service plan or the Corporate Plan</p>	<p>Oversight of the enforcement function be placed with the Planning Team Leader or Planning Manager.</p> <p>Day to day prioritisation of tasks and oversight against the agreed priorities (see Local Enforcement Plan) will remain with the Principal Planning Officer (PPO Enforcement)</p>	<p>Ongoing</p>
		<p>Cases are assigned priority by the Enforcement Team against standing guidance in the Local Enforcement Plan and passed to BSU to log onto database.</p> <p>Cases and priorities are reviewed by PPO and recorded in Enforcement database.</p>	<p>Daily</p> <p>Weekly</p>

<p>2. Parties not updated of progress of investigation</p>	<p>It was noted through the Ombudsman report that officers failed to suitable monitor the progress of cases and update the complainant of the progress made.</p>	<p>Regular and timely updates to all relevant parties including initial response time in line with Hart's Customer Care Standards. Site visits carried out in accordance with prioritization set out in Enforcement Plan. Routine updates on developments in case to key individuals/groups. Enterprise triggers to be configured to raise alerts where site visits not carried out in accordance with prioritization set out in Enforcement Plan.</p>	<p>3 months as Enterprise to be configured to provide officer reminders.</p> <p>Short term solution - manual reminders set up by individual officers</p>
		<p>The responsibility for updating parties of the progress of the investigation to remain with the Enforcement Officer (EO) and reviewed by PPO during weekly case update meetings.</p> <p>The responsibility for updating Members and Parish Councils of a new case will sit with BSU (system generated acknowledgement) and by the EO when the case is closed.</p> <p>PC/ Cllrs to have 2month trial once set up on system before adoption</p>	<p>Ongoing as relying on system generated information and customising system</p>

<p>3. Communication & cooperation with Shared Building Control Partnership</p>	<p>With the recent merger of Building Control services with Rushmoor the arrangements for communication and co-operation need to be maintained.</p>	<p>Arrangements should be in place for building regulation applications submitted to the Council to be randomly cross-checked for compliance with those approved under planning. This should be as a sample of the total number of applications on a risk basis. The percentage assessed will be dependent on available resources.</p> <p>PPO to set up meeting with Building Control and Business Support to agree way forward for reviewing a risk based sample of building control apps against planning apps.</p> <p>Agree process to monitor/ to set up procedure of how sample is selected and assessed.</p>	<p>To complete by 31.3.16</p>
<p>4. Adoption of an Enforcement Plan</p>	<p>Need for clarity as to the objectives of the enforcement function for staff within the planning service, the wider council including members, and the broader community.</p>	<p>Developing an Enforcement Plan will assist in making enforcement decisions and matching resources to expectations for planning enforcement. Performance can be measured against key performance indicators identified in the Enforcement. An adopted Enforcement Plan will give clarity as to how complaints will be handled and how those who are being investigated will be dealt with.</p>	<p>Adoption of a Local Enforcement Plan (LEP)</p>

		<p>Enforcement Plan agreed by Enforcement Sub Committee</p> <p>Consultation and publication of document</p>	<p>Consultation Period Expired 28.2.16</p> <p>Adoption 31.3.16</p>
<p>5. Enforcement Action</p>	<p>The importance of ensuring enforcement action is fully considered, appropriate and consistent cannot be understated.</p> <p>Communication from the service must provide timely clear and concise information along with indications of timescales and how to approach the council. This applies to communications all parties engaged in an investigation</p>	<p>All documentation used by Planning Enforcement including statutory notices, acknowledgement letters and initial contact letters are reviewed</p>	<p>To complete by 31.3.16</p>

		<p>Standard Letter templates and forms already being updated. PPO and EOs working with BSU.</p> <p>Statutory notices to be checked by Legal including contents of instructions to Legal</p>	<p>Currently in consultation with Legal</p>
6. Complaint Investigation	<p>All investigations must be carried out expediently and reach a suitable conclusion within a reasonable timescale.</p>	<p>Procedures must be established to ensure that complaints are investigated through to an appropriate conclusion and follow the investigation timescales set out in the Draft Enforcement Plan. This will be monitored through performance indicators, revised enforcement activity reports being brought before the Enforcement Sub-Committee and the implementation of Enterprise tasks.</p>	<p>0 - 6 months Enterprise to be configured to provide officer reminders and to provide statistical information for monitoring purposes. Case review audit document to be devised and utilised by manager/supervisor of lead officer.</p>
		<p>Monitoring & challenge of investigation to be carried out by manager of lead officer. Individuals to monitor their own progress via Enterprise. 12 Week review to be detailed on database.</p>	
		<p>Procedures to be reviewed in conjunction with legal services and confirm they are in line with BDBC</p>	<p>To complete by 31.3.16</p>

		<p>The following procedures and templates to be written by PPO in conjunction with EOs:</p> <p>Site visit procedure - complete</p> <p>Instructions to legal currently being reviewed</p> <p>Report templates – complete</p> <p>Closure of cases</p> <p>Audit/ monitoring form to be drawn up and used by PPO. Case review audit to be carried out quarterly.</p>	
7. Process review	A review of the administrative processes in place within Planning Enforcement is required	That planning enforcement activities are processed mapped and where practicable simplified to reduce administrative time whilst still demonstrating considered and robust enforcement decisions.	
		<p>Via Uniform and Enterprise. Use of IVA screen in Uniform instead of inspections and actions screen</p> <p>No longer using case user defined screen as duplicating work. Instead update lists for members and parish council's sent via consultation screen.</p> <p>Speaking letters to be sent via neighbour screen – system generated</p>	<p>In progress</p> <p>December 2015 – January 2016</p> <p>On line public speaking form completed January 2016. On going as relying on system generated information and customising system</p>

		<p>No need to upload all of case as now input into Uniform</p> <p>Old closed cases need to be sifted and uploaded in accordance with retention policy – photos, PCNs and notices should be kept but not all other paperwork. Old cases uploaded by end Dec 2016 depending on resources)</p> <p>Documents scanned, compressed and uploaded as one in accordance with retention policy (responsibility of EO).</p>	<p>Scanning to be completed by December 2016</p>
8. Proactive Enforcement Investigations	<p>The Councils adopted Enforcement policy from 2010 focuses on a reactive approach to enforcement. Since 2010 the District has seen a significant increase in the new development.</p> <p>There is no systematic checking of compliance with permissions.</p>	<p>The Draft Enforcement Plan be worded to incorporate a proactive approach to compliance in line with current level of resource.</p>	.
		<p>Proactive investigations to be linked to monitoring of conditions and legal agreements. Reliant on additional resources to carry out this effectively. This could be planning officer led for large schemes (Majors) and a working group set up involving enforcement, planning officer, parish council and</p>	<p>To complete by 30.6.16</p> <p>This is resource intensive and is achievable with resources in place</p>

		<p>developer including main consultees (e.g. trees).</p> <p>Smaller schemes – Emphasis on Parish Council to make contact with Enforcement Team (to be set up under no. 11) and to work with enforcement in monitoring. There is a need to improve public access to approved plans, NMMAs and condition details as currently not all under one reference number or send e-links to Parish Council. (Agreed process for smaller schemes Enforcement led)</p>	<p>Monitoring conditions in line with Enforcement Plan via the system</p> <p>– Ongoing due to customisation</p> <p>Potential addition to obligations for pre-commencement contact for all parties – currently seeking legal advice.</p>
9. Monitoring Performance	Once the 2010 Enforcement Policy had been adopted it appears that it was left with the service.	Once the Draft Enforcement Plan has been agreed it is important that the Planning Service reports on enforcement to Planning Enforcement Sub-Committee and Service Board with enforcement reports and performance reports respectively.	
		<p>Monitoring Reports set up.</p> <p>To include case audit review</p> <p>Enf sub committee – quarterly</p> <p>Service board – covalent quarterly</p>	<p>December 2015 - ongoing</p>
10. Corporate Plan	The Regulatory Service Plan and Hart Corporate Plan 2014 – 17 do not make reference to Planning Enforcement	The Draft Enforcement Plan to be incorporated in to the Regulatory Service Plan and 2017 Corporate Plan where applicable.	

		<p>Regulatory Service Plan (agreed by Cabinet April 2015)</p> <p>RS1503 Customer Service and Core Values. To ensure that the Core Values are fully integrated into the service to improve the level of customer service provided.</p> <p>Implementation of Enterprise system to trigger customer updates (Jan 2016). Performance triggers to be included in staff PDRs.</p> <p>RS1505 Uniform database reconfiguration. To redesign the Uniform database to ensure it is fit for purpose, utilising all functionality and simplifying processes. (Dec 2015/ Jan 2016)</p>	Ongoing
II. Member training	Managing expectations of planning enforcement by district and local councillors.	Continue to provide training for District, Town and Parish Councillors (and Clerks to those Councils) on planning and planning enforcement matters.	
		<p>Set up basic enforcement training for Parish Council and members</p> <p>Arrange in house training through TRA (by end 2016)</p> <p>Presentations to Parish Councils</p>	<p>TRA PC training 27.7.16</p> <p>Presentations will depend on uptake of training</p>

<p>12. Engaging with key stakeholders</p>	<p>Mechanisms should be in place to ensure engagement with stakeholders</p>	<p>It is recommended that customer engagement be reviewed to ensure residents, agents, developers and town/parish councils are encouraged to provide stakeholder feedback to influence service improvements.</p>	
		<p>Customer feedback form to go on web site/ add to existing one and link sent to complainants on closure of case</p> <p>Introduce drop in sessions for parish councils and members on ongoing cases (EO to hold session once a month)</p> <p>For public awareness add Enforcement article to local newspaper</p> <p>Attend parish association meetings to gain feed back</p>	<p>To form part of corporate feedback form</p> <p>Article in March edition of Hart News.</p> <p>Article in February Parish Link magazine</p> <p>Ongoing</p>
<p>13. Cross and Inter-departmental working</p>	<p>Inter-departmental sharing of knowledge or joint working should be strengthened to improve the effectiveness of the enforcement service.</p>	<p>That representatives of planning enforcement, environmental health, licensing, housing, community safety and building control liaise where there are matters which require a multi-disciplinary approach. Greater understanding of service functions within the local authority required through attendance at service meetings.</p>	

		<p>Set up a liaison group (Enforcement, EH, Community Safety, Licensing, Housing and Building Control) to discuss cross departmental issues with particular cases once a month. Make contact January 2016 to set up monthly meetings. The frequency of meeting may increase depending on issues involved.</p>	<p>Completed</p> <p>Attend monthly Community Safety meetings (VOG)</p> <p>Liaison meeting (BC, Housing, EH, Licensing & Enforcement) set up to be held monthly.</p>
<p>14. Improved accessibility to information on the Councils web site</p>	<p>Planning Enforcement information provided on the website was found to be good, however there is clear opportunity to improve.</p>	<p>Undertake a review the information available on line, its ease of accessibility, and the use of plain English. This review could extend to other areas of the Hart web site planning pages.</p>	
		<p>Public speaking for committee – add form to web site</p> <p>Public access already allows information re notices</p> <p>Policies etc added/ amended to web site</p>	<p>Completed</p> <p>Updated annually</p>

<p>15. Out of hours service</p>	<p>The ability to provide an out of hours emergency response was raised in the recommendations of the Silvester report but was not implemented.</p>	<p>That the Environmental Health (EH) Emergency Out of Hours Noise service be utilised to cover enforcement complaints where the breach of condition occurs outside of normal office hours.</p>	
		<p>PPO to set up procedure to be agreed with EH</p> <p>Agree what information/ form is passed to EH for investigation. EO responsible for liaising with EH and for placing form on case file</p>	<p>Completed</p>

PLANNING (ENFORCEMENT) SUB-COMMITTEE

Date and Time: 7 March 2016 at 10am

Place: Council Chamber, Civic Offices, Fleet

Present:

COUNCILLORS

Blewett, Morris (substitute Gorys), Oliver, Southern (Chairman)

Officers:

Nick Steevens	Head of Regulatory Services
Emma Whittaker	Planning Manager
Sarah Castle	Principal Planning Officer
Sharon Whittaker	Enforcement Officer
Sylvia O'Connor	Enforcement Officer
Wendi Batteson	Shared Legal Services
Alison Cottrell	Committee Services

The Meeting commenced at 10.05 am

15 MINUTES OF PREVIOUS MEETING

The Minutes of the meeting held on 7 December 2015 were confirmed and signed as a correct record.

16 APOLOGIES FOR ABSENCE

Apologies for absence had been received from Councillor Gorys (substitute Morris).

17 CHAIRMAN'S ANNOUNCEMENTS

None.

18 DECLARATIONS OF INTEREST

None declared.

19 LAND AT KEEPERS COTTAGE (KEEPERS LODGE), FARNHAM ROAD, FARNHAM, SURREY.

Members considered the requirement to consider taking direct planning enforcement action as a way of carrying out works in default to remedy a breach of planning control and a failure to comply with an Enforcement Notice.

Members discussed:

- The history of the site.

- Whether there was an owner or an occupier on the land.
- Whether there was anyone in occupation on the land.
- The current state of the land.

RESOLVED

To delegate to the Head of Regulatory Services the authority to take direct planning enforcement action to remove all structures and items connected with the unauthorised use of the land for residential purposes including the mobile home, and to make good the land at Keepers Cottage (Keepers Lodge), Farnham Road, Farnham, Surrey, the requirements of which are set out in the Enforcement Notice dated 6 March 2012.

20 IMPROVEMENT PLAN

Members received a verbal update on the Improvement Plan.

Members discussed:

- Enforcement Training for Parish Councils together with the cost of the training.
- The benefits of using an external trainer.
- Whether the District Councillors can be asked via the next Council meeting to encourage their Parish Council's to attend the Enforcement Training.
- The way in which enforcement updates are provided to Councillors.
- Whether it is possible to proactively enforce that builders do not work on a Saturday and Sunday (out of hours working) causing a nuisance to neighbours close to a site together with what out of hours work is acceptable and what is not acceptable.
- The Out of Hours service for breaches of planning conditions by a builder and how it works.
- That a first call to the Out of Hours service will result in the problem being logged. That subsequent calls in relation to an issue that has already been logged will result in an officer attending the site (in relation to planning enforcement breaches).
- Whether the improvement plan could be brought back to the next meeting with final details to be made available at that time.

Following the previous item being proposed and seconded it was

RESOLVED

That the Improvement Plan would be brought back to the next meeting with final details being made available at that time.

21 PLANNING ENFORCEMENT PLAN

Members received a verbal update on the Planning Enforcement Plan and noted Consultee responses.

Members discussed:

- That minor amendments to the Planning Enforcement Plan could be passed to the Head of Regulatory Services to be made and then be published as soon as possible.

Following the previous item being proposed and seconded it was

RESOLVED

That the Planning Enforcement Plan would be passed to the Head of Regulatory Services to make the minor amendments and then publish the Plan.

The meeting closed at 11.10 am