

COMMITTEE:	PLANNING & LICENSING
DATE:	12 MARCH 2002
SUBJECT:	FINMERE AUTOSPARES, FINMERE CLOSE, EASTBOURNE
REPORT OF:	HEAD OF PLANNING AND ACTING HEAD OF LEGAL AND PROPERTY SERVICES
Ward(s):	St. Anthony's
Purpose:	This report requests authority to serve an Enforcement Notice under Section 172 of the Town and Country Planning Act 1990.
Contact:	Ian Hayes, Development Control Manager – tel: 01323 415215 or internally on ext. 5215.
Recommendations:	The Committee is requested to authorise service of an Enforcement Notice requiring that the steps to be taken are that the operation of the scrap yard shall cease except between the hours of 0800 and 1800 on Mondays to Saturdays inclusive, in respect of the breach of planning control referred to in this report.

1. Planning History/Introduction/Background

1.1 Temporary permission for the use of this land for the dismantling of cars and the sale of re-usable parts was first granted in 1979 (EB/79/579 - background paper) and was renewed on a yearly basis between 1983 and 1987. It was again renewed in 1989 and 1992. The latter permission granted consent for three years expiring on 30 June 1995 (EB/92/0175 - background paper).

1.2 The permission granted in 1992 was personal to Mr D Connell and contained a number of other conditions designed to safeguard the amenities of nearby residents and the appearance of the area.

2. Alleged Breach

2.1 The land is being used for dismantling motor vehicles and the storage and sale of parts without planning permission.

3. Issues

3.1 Enforcement of Planning Control is discretionary. The Council is empowered to issue enforcement notices, and it may do so when:

- a) it appears to the Council that there has been a breach of planning control; and
- b) it appears to the Council that it is EXPEDIENT to issue a notice, having regard to the development plan and to any other material considerations.

3.2 A summary of Government policy on enforcement, together with local policy is set out in the Council's Enforcement Policy Statement. Government policy is important and will be taken into account if an appeal is lodged against an Enforcement Notice.

3.3 The consents that have been given have been of a temporary nature. Use of Conditions in Planning Permissions (Circular .No. 11/1995) gives advice on whether a temporary permission is appropriate.

3.4 Three main factors should be taken into account. First, it will rarely be necessary to give a temporary permission to an applicant who wishes to carry out development which conforms with the provisions of the development plan.

3.5 Next, it is undesirable to impose a condition requiring the demolition after a stated period of a building that is clearly intended to be permanent.

3.6 Lastly, the material considerations to which regard must be had in granting any permission are not limited or made different by a decision to make the permission a temporary one. Thus, the reason for granting a temporary permission can never be that a time-limit is necessary because of the effect of the development on the amenities of the area. Where such objections to a development arise they should, if necessary, be met instead by conditions whose requirements will safeguard the amenities. If it is not possible to devise such conditions, and if the damage to amenity cannot be accepted, then the only course open is to refuse permission.

3.7 Where an application is made for permanent permission for a use which may be "potentially detrimental" to existing uses nearby, but there is insufficient evidence to enable the authority to be sure of its character or effect, it might be appropriate to grant a temporary permission in order to give the development a trial run, provided that such a permission would be reasonable having regard to the capital expenditure necessary to carry out the development.

3.8 **A second temporary permission should not normally be granted.** A trial period should be set that is sufficiently long for it to be clear by the end of the first permission whether permanent permission or a refusal is the right answer.

3.9 The temporary permission granted subsequent to 1979 should have been a permanent permission. Such permission would have been conditioned to protect the amenities of local residents.

4. Waste Licence Implications

4.1 A Waste Disposal Licence was issued by East Sussex County Council (the then Waste Regulation Authority) in 1993 and was amended as a Waste Management Licence by the Environment Agency (who now have responsibility) in 1997. The licence controls the movement, manner of storage, quantity and type of waste being processed.

4.2 The Environment Agency has informed the Council that an exemption from licensing may be applied for under the Waste Management Licensing Regulations 1994. The regulations detail the movement, manner of storage, quantity and type of waste that is permitted under any exemption. The Environment Agency still has control and will inspect annually. There are no restrictions on the hours of operation and the height limit for stored waste is 5 metres.

5. Consultations

5.1 Letters have been sent informing neighbouring residents and businesses that enforcement action was being considered and inviting comments.

5.2 Two replies have been received. An adjacent resident states that the "...proposal is an offensive insult to those who have to tolerate the toxic fumes and the noise of "boy racers" with their heavy bass car radios who frequent this type of business....." (Letter dated 6 February 2002 - [background paper](#)). The occupier of 5 Finmere Road supports the proposal stating that "...have no complaints about the use of their yard. The problem is the use of heavy artic lorries visiting West End Studios..."(Letter dated 7 February 2002 - [background paper](#)).

5.3 The Environment Agency has responded with comment which is summarised in section 4 of this report.

5.4 When the functions of a local planning authority, of issuing enforcement notices under section 172, relate to county matters they shall only be exercisable by the district planning authority after first consulting the county planning authority.

5.5 East Sussex County Council were consulted and have responded "...the activities at Finmere Close are not considered to be a waste activity and cannot be dealt with by the County Council as a County Matter"....

"The County Council would be unwilling to defend any Enforcement Notice Appeal under ground (a)the matter should be dealt with by the Borough"...

"In the circumstancesdo not feel it would be appropriate for the County Council as Waste Planning Authority to offer any views on the continuation of the present use of the site" (Letter dated 3 December 2001 - [background paper](#)).

5.6 The Principal Highway Engineer (Planning) has indicated that the Highway Authority would not seek to comment on the planning enforcement issues in respect of this site.

6. Appraisal

6.1 There are complaints that the use is being carried out:

- (a) beyond the hours stipulated in the previous permission.
- (b) on the highway.

6.2 The previous permission was conditioned to restrict operating hours from 0800 hrs (8.00.a.m.) to 1800 hrs (6.00.p.m.) on weekdays. The use has also continued on a Saturday, but within those hours.

6.3 The use has continued on the land for about 25 years and during that time there have been one or two complaints each of which seem to relate to hours of operation and highways matters.

6.4 The 'Saturday use' is a breach of planning control. That breach has existed for many years. There is no evidence to indicate when the breach started and action against Saturday opening is possibly immune.

6.5 The present boundary fencing was erected as a result of the 1992 permission and its retention is required for the good management of the site.

6.6 Applications for waste disposal sites, including waste transfer stations and similar facilities for treating, storing, processing or disposing of refuse or waste materials will be dealt with as county matters. East Sussex County Council has refused to consider dealing with the matter. The resultant inaction continues to cause a loss of amenity to the neighbourhood. Accordingly action is being taken by this authority

6.7 The height of surrounding buildings is greater than the proposed storage height. However the permitted storage height in the yard of Hall & Co, which is adjacent, is 4.5 metres.

6.8 The matters relating to the highway are not planning considerations and are within the province of the Highway Authority.

7. Human Rights Act

7.1 The fundamental principle of the Act is that the intervention by the Council must be justified and proportionate. The conclusions of this report lead one to accept that enforcement action is justified. The Council should then determine if it is proportionate.

7.2 To require the cessation of all activity on this land would cause the business to close. It is unlikely that the business could be relocated within the Borough. Closure would also result in four persons becoming unemployed.

7.3 The surrounding businesses do not have a control on operating hours and can and do operate at night, weekends and bank holidays. The businesses will still be in a position to operate.

7.4 The restriction of hours and further development will prevent further harm to the residents closest to the site. It should be borne in mind that the site is on an industrial estate and that a certain amount of noise and disturbance is to be expected.

7.5 On balance therefore it would seem appropriate to prevent disturbance on the edge of the industrial area by the imposition of hours of operation conditions and the proposal is proportionate given all the circumstances.

8. Conclusion

8.1 There is a breach of planning control that is causing serious harm to the amenity of the neighbourhood. Enforcement action is required to remedy the harm.

8.2 The harm can be remedied by the controlling of the hours of operation and restricting the height of stored waste. This can be achieved by the service of an enforcement notice requiring that the steps to be taken are that:

(i) the operation of the scrap yard shall cease except between the hours of 0800 and 1800 on Mondays to Saturdays inclusive;

and provided that:

(ii) the existing fence is retained and maintained at 2.4 metres high; and

(iii) no scrap is stored above 2.4 metres in height unless it is in a container; and

(iv) the highest part of any storage container shall not be greater than 5 metres

Background Papers: The background papers used in compiling this report are as follows:- EB/92/0175, 2002/ENF/0301

To inspect or obtain copies of background papers contact: - Ian Hayes on Ext. 5215