

**MEETING:
Committee**

Planning & Licensing

DATE:

Tuesday, 16 April 2002

SUBJECT: Finmere Autospares, Finmere Close, Eastbourne

REPORT OF: Head of Planning and Acting Head of Legal & Property Services

Ward: St. Anthony's

Purpose: This report requests authority to serve an Enforcement Notice under Section 172 of the Town and Country Planning Act 1990.

Contacts: Ian Hayes, Development Control
Manager, on 415215 or internally on extension 5215

Recommendations: The Committee is requested to authorise service of an Enforcement Notice requiring the steps to be taken as set out in paragraph 3.3, below, in respect of the breach of planning control referred to in this report.

1. Background

1.1 This matter was deferred at your last meeting to enable further consultation to take place with the Environment Agency, the Fire Brigade and the Health and Safety Executive. At the time of writing this report (9 April) no responses had been received.

1.2 I am hopeful that responses will be received before the meeting and I will report these verbally.

1.3 Details of the alleged breach, issues and waste licence implications were set out in the last report

2. Consultations

2.1 At the last meeting three letters from local residents were reported. The occupier of 84 Northbourne Road objected to the continued use on the grounds that the noise and toxic fumes from cars belonging to 'boy racers' who frequent this type of business disrupt the peaceful enjoyment of their property (letter dated 6 February 2002 - background paper). The occupier of 82 Northbourne Road also objected to the further permission because of their fear about a further fire and the anti social activities of those who frequent the yard (letter dated 3 March 2002 - background paper). The occupier of 5 Finmere Road supported the proposal stating that they "...have no complaints about the use of their yard. The problemis the use of heavy artic lorries visiting West End

Studios...” (letter dated 7 February 2002 - background paper).

2.2.1 The Council’s Pollution Services Manager stated that he had no record of any complaints about the premises since September 2001, although he does comment that the premises has attracted periodic complaints over the years, primarily to appearance, vehicular congestion, parking on pavements, etc, untaxed vehicles, oil on the road and working in the highway, none of which are issues over which Environmental Health has direct control over ((internal memorandum dated 20 November 2000 – background paper).

2.3 Since the last meeting a further letter of objection has been received from the occupier of 84 Northbourne Road. She states that her main objections are as follows:-

- Vehicles used as scrap stores both on the road and on the verges
- The use of a diesel powered vehicle to move and dismantle cars on the highway
- The deposit of oil and grease on the highway
- The danger of cars stacked alongside the perimeter fence
- The high level of exhaust emission from the use of breaker lorries

(Letter dated 23 March 2002 - background paper).

2.4 As mentioned above, further observations are awaited from the Environment Agency, Fire Brigade and Health and Safety Executive.

3. Appraisal

3.1.1 The relevant considerations were detailed in the previous report.

3.1.2 The conclusion was that enforcement action is required to remedy the harm to the amenity of the neighbourhood caused by the breach of planning control.

3.1.3 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

4. Human Rights Act

4.3 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.

4.4 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.

4.5 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.

4.6 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.

4.7 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.

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