

MEETING:	Planning and Licensing Committee
DATE:	Tuesday, 8 October, 2002
SUBJECT:	Fitzmaurice Garages, Fitzmaurice Avenue, Eastbourne
REPORT OF:	Head of Planning and Head of Legal 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 in respect of the breach of planning control referred to in this report.
1.	<u>Planning History/Introduction/Background</u>

1.1	The authorised use of the garages is for domestic garage use and the storage of domestic vehicles or chattels. Within the garage area there are a total of 44 garages, however some have been knocked through to form larger garages. Residents in the area of the garages have complained that some of the garages are being used for repair of motor vehicles.
1.2	Various garages have sought permission in the past for a continuation of use. These uses have been for the servicing of lawnmowers, motor vehicle repair and servicing and engine and gearbox reconditioning. All have been refused and subsequent appeals dismissed. Enforcement Notices were served on five operators of garages at this time (1985) and the notices are still current.
1.3	One of the larger garages within the site was recently destroyed by fire. It is strongly felt that the fire was assisted by the presence of equipment and gas bottles contained within the garage.
2.	<u>Alleged Breach</u>
2.1	Garages are being used individually and in blocks for the servicing and repair of motor vehicles either for trade or business or on a scale that is materially different from that of use for domestic garages and the storage of domestic vehicles or chattels.
3.	<u>Issues</u>
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.
4.	<u>Additional Information</u>
4.1	Two Planning Contravention Notices have been served on the owner of the garages. The first was issued in August 1999 and the second in May 2002. The owner stated that the garages were used for "garages and stores".
4.2	The residents in the immediate vicinity have complained on numerous occasions in regard to the frequency of traffic experienced in and out of the side road. However, this road is shared by the adjoining garages that have permitted usage as businesses and cannot be wholly attributed to the garages in question.
4.3	Residents' fears have increased since the fire that the situation is potentially dangerous. The flats to the rear of the garages where the fire was situated had to be evacuated as the gas cylinders inside required cooling over a period of hours in order to render them safe.
4.4	Visits to the garages have been made since April 2002. On each occasion there were garages being used for the repair of motor vehicles. Evidence of car repair equipment could be seen within the garages. It is not the opinion that repairs are solely carried out on vehicles owned by users of the garages.
5.	<u>Appraisal</u>
5.1	Applications for the continuation of uses on some of the garages for car repair and similar have been refused in the past. Five Enforcement Notices were served on the operators of these garages at the time and are still current.

5.2	The residents near to the garages have complained on numerous occasions in regard to the traffic flow to and from the garages, the work undertaken within some of them and the associated risk involved. This has been highlighted by the fire in April and the perceived risk to residents of a nearby block of flats.
5.3	Visits to the garages support the claim that some garages are being used for the repair of motor vehicles and are in breach of the conditions of use.
6.	<u>Human Rights</u>
6.1	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.
6.2	It is considered that the breach outlined above affects the rights of the nearby residents in the peaceful enjoyment of possessions and protection of property.
7.	<u>Conclusion</u>
7.1	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.
7.2	The harm can be remedied by the ceasing of all unauthorised uses of garages within the site in question.
<p>Background Papers: Letters of complaint dated as follows – 04/04/2000; 25/04/2000; 03/04/2002; 05/04/2002; 08/04/2002; 10/04/2002; 18/04/2002. Planning Contravention Notice dated 26 August 1999; Planning Contravention Notice dated 7 May 2002.</p> <p>To inspect or obtain copies of background papers contact: - Ian Hayes on Ext. 5215</p>	