

FREEDOM OF INFORMATION REVIEW

Held Friday 1 May 2009 10.00 am

Reviewing Officer: Andy Radford (Director of Finance, Property and IT)

Legal Adviser: Tamsin Eddison (Principal Solicitor)

1. Background

Review of request by Mr C P Elliott for information relating to enforcement notices issued by South Norfolk Council.

- 1.1. On 9 March 2009 a Freedom of Information request was received by South Norfolk Council from Mr C P Elliott requesting information around enforcement notices, which is reproduced below:
- "1) How many times has South Norfolk district Council entered enforcement notices in its local land charge registers that have not been authorised by the Chair or Deputy Chair of the Planning Committee. as required by its constitution.*
 - 2) How long does it take the Head of Planning Services according to the SNDC Service standards to respond to a complaint that the Council has introduced about 24 stop and enforcement notices related to a single property in its local land charge registers, and used some of its flawed notices to authorise sale of land.*
 - 3) On how many occasions have the Leader of the Council and Cabinet Member for the Planning Committee (either individually or collectively) been identified as having authorising enforcement action by officers contrary to the SNDC constitution.*
 - 4) What are the likely costs to the SNDC of these ultra vires acts by the SNDC staff."*
- 1.2. On 17 March 2009, after receiving advice from the Planning Enforcement Officer, the Scrutiny and Information Rights Officer emailed Mr Elliott. She advised we did hold the information in relation to Q1, but that such instances are not recorded centrally, and it would be necessary to go through every single record where enforcement action has been authorised. Mr Elliott's request for information would not therefore be processed as the cost would exceed the appropriate limit. This limit is 2.5 days work. She further advised that if he was interested in a particular planning enforcement notice, this information is reasonably accessible as all such notices are published on our website.
- 1.3. In terms of the further questions 2 to 4, the Scrutiny and Information Rights Officer advised under section 14(1), the Freedom of Information Act 2000 states that "Section 1(1) does not oblige a public authority to comply with a

request for information if the request is vexatious." In her opinion, those three questions were designed to cause disruption or annoyance and they all lacked any serious purpose or value and thus they fell under section 14(1) and would not be answered.

- 1.4. On 27 April 2009, an email was received from Mr Elliott asking for an internal review of this decision, and the panel was convened for Friday 1 May 2009 at 10.00 am.

2. Considerations

- 2.1 The panel considered that by applying a very narrow and strict approach to the request, then the Council's response should be that all the enforcement notices which have been entered on its local land charges registers, have not been authorised by the Chair or Deputy Chair of the Planning Committee. This is because the Council's constitution provides that the planning committees itself authorises the taking of enforcement action, not the individual Chair or Deputy Chair of the Committee. Furthermore the constitution provides delegation to certain officers who may authorise enforcement action to be taken if they consider that it is urgent.
- 2.2 However the panel went on to agree that if Mr Elliot wanted to know how many enforcement notices have been entered on the land charges register for which an officer has authorised the notice then the reply to that request would be the response the Council gave, in that the time it would take would exceed 2.5 days. The only amendment to that statement is that those notices are not published on the council's website as only those reports which are decided at Committee are published on the website.
- 2.3 Moving on, the panel considered that question 2 is written in such a way that it cannot reasonably be responded to and it does appear to lack any serious purpose or value to it. For that reason, the panel agreed it could be classed as vexatious, although the Council can say however that it does not accept it has used any flawed notices to authorise the sale of land.
- 2.4 Finally, the panel felt that question 3 can be responded to by saying the Council is unaware of any authorisation for enforcement which is contrary to the constitution, which means that question 4 is not relevant.

3. Decision

- 3.1 The panel wished to make clear that the constitution provides delegation to certain officers who may authorise enforcement action to be taken if they consider that it is urgent and thus the actual response to this question is none. However, the panel did uphold the Information Rights Officer's decision that to locate and retrieve the number of enforcement notices which have been entered on the land charges register for which an officer has authorised the notice, would greatly exceed the maximum of working days and cost quoted in the Act.

- 3.2 The panel upheld the Information Rights Officer's decision that question 2 is vexatious.
- 3.3 The panel did not uphold the Information Rights Officer's decision that question 3 and 4 are vexatious and advised that a response should be given, that of stating the Council is unaware of any authorisation for enforcement which is contrary to the constitution, which means that question 4 is not relevant.

Dated 7 May 2009

Signed

Andy Radford (Director of Finance, Property and IT)