

**MINUTES OF A MEETING OF
THE SOUTHERN ENFORCEMENT OFFICERS GROUP
IMBER COURT, EAST MOLESEY,
FRIDAY 12TH JULY 2002**

09.55 – INTRODUCTION - Jim Lynn welcomed everyone and thanked them for their support. He also expressed his gratitude to SCC, Ian Gray and his colleagues for sponsoring the meeting and for all their help. He asked for another Authority to help act as sponsors for the 6th December meeting. Jim also mentioned the vacancy for an enforcement officer at Epping Forest BC.

10.00 – WELCOME ADDRESS – Surrey County Councillor James Maxwell, former Chairman of the Planning and Regulatory Committee, welcomed the officers to Imber Court and sympathised with the plight of enforcement officers. He also said that it was important to raise awareness, especially with landowners.

10.10 – MINUTES OF LAST MEETING - Jim Lynn invited comments on the minutes of the meeting held on 15th March 2002, hosted by Eastbourne Borough Council. No comments were received and the minutes were taken as read.

Since the last meeting, Paul Corbett, from Bracknell Forest BC, had volunteered to manage the website. Hertsmere BC appealed for any information on the use of digital photography in enforcement. Jim informed the meeting that Surrey Heath had called upon the Surrey Police helicopter unit for assistance with aerial photography, and they had been excellent.

10.15 – PROFESSOR MARTIN CHICK - Jim welcomed Professor Martin Chick, of the Faculty of Planning and Built Development at the University of West England. Martin gave a presentation on the importance of investigating and following up S106 agreements as an adjunct to planning permissions. Money secured by S106 agreements was often put into a Council ‘pot’, but was not ‘ring-fenced’ or kept available for its intended purpose. Martin highlighted the problems with the wordings and precision of the agreements and discussed enforcing them with either injunctions or direct action. He also discussed the complications and costs associated with those methods. Martin stressed the importance of challenging highways officers who requested S106s, in order to ascertain whether or not they were really necessary. Martin advocated the use of planning condition(s) in place of legal agreements wherever possible. S106 agreements should only deal with money.

Martin then talked about the ‘Condition culture’ and the need for Local Authorities to take a serious look at the type and number of conditions they are attaching to planning permissions. He stressed that the numbers of conditions should be reduced and that officers from the appropriate departments/authorities should be enforcing, there should not be an overlap of responsibilities. Conditions imposed in an effort to secure protection of amenity such as noise, hours of building operation, may be more for action via environmental health legislation. The meeting was informed that a ‘grampian’ condition could possibly be used instead of a S106. Even though it could not state an amount of money, it would state that ‘no development will take place until.....has happened’, therefore the condition would indirectly be ensuring

expenditure by the developer as opposed to the provision of funds. Martin then took questions relating to S106 agreements and general enforcement matters.

11.40 – THE PORTER JUDGEMENT: EXPLANATION AND IMPLICATION

– Jim introduced Mark Beard, a barrister specialising in planning enforcement. Mark had been involved in several cases involving Gypsy/Traveller incursion, requiring planning authorities to undertake enquiries into the human rights consideration as embodied in the now notorious ‘Porter’ judgement. Mark gave an explanation of the relevant planning law for the enforcement of travellers and talked through recent cases and the human rights issues in relation to Article 8 cases, his presentation was broken down into three parts, the position prior to ‘Porter’, the matters raised by the judgement and finally, life after Porter and its implications. He highlighted the questions that needed to be asked, for example ‘Is the interference with the human rights of the Gypsies/Travellers in accordance with the law?’, ‘Is there a legitimate aim?’ ‘Is it necessary and proportionate’. Mark discussed his handout on the Porter judgement and answered various questions on the judgement and injunctions.

Mark endeavoured to detail the individual points resulting from the Court of Appeal Judgement. He set out the manner in which the required information be sought and subsequently, the weight that may be given in assessing the balance between individual human rights and the onus upon the Local Planning Authority to protect the wider public interest.

(Copies of Mark’s handout available on request)

15.20 – CRIMINAL DEFENCES S179 SUB-SECTION 3 AND THE 10 YEAR RULE IN LIGHT OF THE THURROCK AND NICHOLSON JUDGEMENTS -

Richard Ground is a barrister at 2-3 Grays Inn Square. He focussed his presentation on both criminal defences: under S.179(3) to show that the recipient of an enforcement notice had done everything in his power to comply with the terms of the notice (land owner only) and immunity from enforcement under the 10 and 4 year rule.

Richard made reference to various stated cases including the recent Thurrock judgement. He also covered matters of dormant uses, abandonment and human rights challenge. Richard concluded his presentation by answering questions from delegates. In doing so, he stressed that cases in which there is more than one activity taking place within a planning unit, when assessing the impact of the 10 year rule, whether or not such activity constitutes a material change (thereby introducing a further use within the site), has to be based upon the ‘Fact and Degree’ test.

(Copies of Richard’s presentation available on request)

Jim reminded the officers present that the next meeting would be held on Friday 6th December 2002 in Bushey, Herts.

16.30 – CLOSE OF MEETING

SEE YOU AT BUSHEY!