

Agenda item:

[No.]

**Regulatory Committee**

**On 21<sup>st</sup> February 2012**

Report Title. **Planning Enforcement - expediency**

Report of **Director of Place and Sustainability**

Signed :

Contact Officer : **Marc Dorfman, Assistant Director, Planning and Regeneration**  
**Telephone 020 8489 5538**

Wards(s) affected: **All**

Report for: **Non-Key Decision**

**1. Purpose of the report**

1.1. To explain to members the issue of expediency with regard to appraising formal planning enforcement action.

**2. State link(s) with Council Plan Priorities and actions and /or other Strategies:**

2.1. Enforcement of planning control plays a role in delivering policy objectives of the Council's Unitary Development Plan and the future Local Development Framework

2.2. The Council's Enforcement Strategy has an explicit objective to prevent unauthorised use and non permitted development and seek to reverse this when it occurs taking formal enforcement action when expedient to do so.

**3. Recommendation**

3.1. That member's note the contents contained therein.

#### **4. Reason for recommendation**

4.1. This report seeks to explain the issue of expediency compare rate of cases closed for reason of being not expedient in the context of the Planning Enforcement service at London Borough of Haringey.

#### **5. Other options considered**

5.1. Not applicable

#### **6. Summary**

6.1. This reports seek to explain the issue of expediency compare rate of cases closed for reason of being not expedient in the context of the Planning Enforcement service at London Borough of Haringey .

#### **7. Chief Financial Officer Comments**

7.1 Not applicable

#### **8. Head of Legal Services Comments**

8.1 Not applicable

#### **9. Equalities & Community Cohesion Comments**

9.1 There are no equalities, and community cohesion issues raised by this report as it deals with the concept of expediency in the Planning Enforcement context.

## **10. Consultation**

10.1 Not applicable.

## **11. Service Financial Comments**

11.1 Not applicable.

## **12. Use of appendices**

- Appendix 1 – DoE Part of Circular 10/97
- Appendix 2 – Planning Policy Guidance PPG18-Enforcing Planning Control
- Appendix 3 – Guiding Principles of Planning Enforcement
- Appendix 4 – Sample case closure letter where further action is considered not expedient
- Appendix 5 - Planning Enforcement Service standards
- Appendix 6 - A Guide to Planning Enforcement
- Table 2- Benchmarking reports of Planning Enforcement for London LAs
- Table 3- Planning Enforcement: Ward breakdown for 2009-2011

## **13. Local Government (Access to Information) Act 1985**

13.1 Case files held by the Team Leader for Planning Enforcement

## **14. The Issue of Expediency**

- 14.1 The Enforcement of Planning Control is a discretionary function under the proviso of the relevant legislation the Town and Country Planning Act 1990 (as amended). An important point is that unauthorised development or a change of use is not a criminal offence in most instances. In the majority of cases it only becomes an offence when an Enforcement Notice has been issued, has come into effect and the time for compliance stipulated in the Notice has since expired.
- 14.2 The two strands of Central Government guidance with regard to Planning Enforcement are DoE Circular 10/97 and Planning Policy Guidance Note (PPG) 18 'Enforcing Planning Control (**Appendices 1 and 2**).
- 14.3 With regard to Local Authority Enforcement good principles for local authorities to protect the public, environment and consumers but at the same time carry out enforcement action in a clear, open consistent, proportionate and effective manner

which do not unnecessarily interfere with economic development and in that way commit to the principles of Best Value as set out in the Enforcement Concordat.

- 14.4 Paragraphs 5-7 of PPG18 sets out that it is the primary responsibility to take whatever enforcement action is necessary in the public interest, proportionate to the severity of the breach and to negotiation wherever possible but that said negotiations should not hamper or unduly delay any necessary enforcement action
- 14.5 PPG 18 also reminds LPAs that unauthorised development or use is not a criminal offence and that where a breach does is broadly in accordance with planning policy and guidance and other planning considerations then the LPA should invite a planning application to regularise the unauthorised use or development. The lack of submission of such an application is not in itself should a reason along to issue an Enforcement Notice.

### **Principles of Planning Enforcement**

- 14.6 In a nutshell the Guiding Principles of Planning Enforcement should be: Expediency, Proportionality and Consistency
- 14.7 With regard to harm the local authority should be able to demonstrate this when justifying further or no further action. **Appendix 3** fleshes out the Guiding Principles of Planning Enforcement which was developed for LB Haringey and lists various matters which could be considered factors which could result in demonstrable harm to amenity being caused:
- Significant Loss of privacy
  - Noise and/or disturbance
  - Loss of/harm to protected trees
  - Loss of/harm to Listed Buildings
  - Unacceptable departure from Local and/or National Planning Policy
  - Visual harm due to poor design or use of materials
  - Unacceptable degree of overshadowing due to unauthorised development
- 14.8 Once harm has been established the enforcement action taken should be proportionate. One example of this would be where a breach of permitted hours of business is considered to cause harm rather than the use itself then enforcement action to discourage the breach of hours rather than cease the use altogether would be the most appropriate approach.
- 14.9 Finally consistency and quality in terms of investigations before any formal enforcement action can be optimised through frequent liaising with other service providers, researching past actions against similar breaches of planning within a given area and liaising with other authorities or service providers to try and ensure consistency in response to any alleged breach of planning investigated. **Appendix 4** give an example of a closure letter for a case closed as not expedient sent out by LB Haringey Planning Enforcement team.
- 14.10 In 2008 the Council set out to improve Planning Enforcement function within the local authority. Whilst this dealt with the overall improvement of the service key to this was

developing a set of service standards and guidance with regard to work and procedures which would be of assistance for officers and customers alike. Thus the Planning Enforcement Service Standards and A Guide to Planning Enforcement were both published in February 2009. Both of these are attached as **Appendices 5 and 6**.

14.11 Both appendices are important sources of advice with regard to the following:

- What the service does;
- What the service cannot do;
- That most breach of planning control are not a criminal offence;
- Timescales and Priorities for investigating alleged breaches of planning control;
- That some infringements are minor and action is not in these cases appropriate;
- Timescales and priorities;
- Glossary of terms;
- Contact details.

14.12 A Guide to Planning Enforcement is an online publication which can also be provide in A5 hard copy format. Similar publications have been found in Larger Authorities such as LB Camden and Westminster City Council but does not appear to be present in this format at LB Enfield or Newham.

### **Planning Enforcement In Haringey**

14.13 Since its inception as a dedicated service function in 2004 the Planning Enforcement service sought as a priority to improve the service through a reduction in the Planning Enforcement Backlog, a improvement in the turn around time for cases and an improvement in the quality of enforcement investigation and action. The table 1 below shows a comparison of the number of cases received for 2008-9 up until the third quarter of 2011-12.

14.14 The figures clearly show that the number of planning enforcement cases received as declined. The 2008-9 figures for cases received and enforcement notices issued being unusually high given that two dedicated projects were undertaken at this time in Tower Gardens. The large number of cases closed indicated the drive to reduce the backlog to

<b>Year</b>	<b>2008-9</b>	<b>2009-10</b>	<b>2010-11</b>	<b>2011 to 31.12.11</b>
<b>No. of staff</b>	9	6	5	4
<b>Cases Received</b>	1056	878	758	563
<b>Cases Closed</b>	1567	1012	806	488
<b>Live cases</b>	425	301	241	299
<b>Closed No Breach</b>	571 (37%)	465 (46%)	440 (53%)	268 (55%)
<b>Closed Remediated</b>	360 (23%)	215 (21%)	155 (20%)	99 (20%)
<b>Closed as Immune</b>	209 (13%)	115 (12%)	60 (7%)	33 (7%)
<b>Closed as Not Expedient</b>	<b>427 (27%)</b>	<b>217 (21%)</b>	<b>151 (20%)</b>	<b>99 (20%)</b>
<b>Enforcement</b>	165	63	68	66

Notices served				
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**Table1: Planning Enforcement Activity from 2008-9**

- 14.15 More manageable levels in advance of a significant reduction in the team workforce from 9 to 5. In addition, the level of cases closed as not expedient was in real terms and proportionally rather high. In part reflecting the large number of older cases which had not been progressed.
- 14.16 Aside from 2008-9 it can be demonstrated that although the number of live cases has declined, the level of formal enforcement action has started to increase. More relevantly, the cases closed as not expedient in terms of proportion has stayed relatively constant although with lower caseloads the overall numbers have continued to decline. The stark reduction in 'backlog' or more than 1 year old cases is indicated in the significant decline in cases closed for reason of immunity
- 14.17 These figures are encouraging as they indicate the maintenance of a manageable caseload level without leading to an increase in the proportion of cases closed as not expedient as well as maintaining a high level of formal enforcement action. Indeed in terms of numbers the numbers closed for this reason continues to decline.
- 14.18 Overall Table 2 shows the results of a benchmarking exercise by LB Brent for 10-11 where Haringey performs well in comparison with other London LAs not least in terms of a low backlog and high level of enforcement including prosecution activity.
- 14.19 If one looks at cases closed as not expedient by ward no clear pattern emerges a ward level. Table 3 looks at this for the years 2009-10 and 2010-11. However what is encouraging is that the number of cases closed for reasons of expediency registers a decline. In addition, there is an increase in case closures as not expedient but referred to other departments who may be better placed to take action. The majority of these referrals were to Development Management, Building Control Private Sector Housing and Frontline Services.

**Some examples of cases closed as not expedient**

- 14.21 Reasons for not taking enforcement action where a breach of planning control is confirmed can vary considerably. Although the decision should follow the planning enforcement principles outlined above these can be for a number of reasons:
- Where the breach is minor despite being located in a conservation area.
  - Where site redevelopment is of a height in excess of approved plans but no harm results.
  - Where there is a breach of planning control but it is part of the re-use of a long vacant site
  - Where there is a breach of condition but this is minor and does not go to the heart of the planning permission.
  - Rear elevation not in accordance to approved plans but similar to existing adjoining development
  - Where a fence is of a height in excess of permitted development rights but is considered not to cause harm

- Tree not protected but in conservation area felled
- Porch height in excess of permitted development but does not cause harm

14.22 These are a variety of cases from around the borough which have been closed in the last 2-3 years

1. UPVC windows inserted in a property within a Conservation Area

14.22 These works did not benefit from permitted development rights as the property had been converted into self-contained flats. Other properties has similar types of UPVC windows and there was evidence that these had replaced previous UPVC windows rather than original timber windows. The degree of harm was considered to be minor and therefore no further action was recommended.

2. Breach of control on long vacant shop site

14.23 A corner shop which had been vacant for a number of years was re-opened in 2010. However the shopfront materials were not in accordance with the Conservation Area Guidance in terms of the materials employed. The signage was in excess of that allowed under the provisions of Class 5 of the Advertisement Regulations and was subject to external illumination. However, further action was not considered appropriate as the use refurbished and brought a long vacant property back into use and resulted in the removal of established and very unsightly roller shutters and satellite dishes.

3. Height of boundary garden fence in excess of permitted development allowance

14.24 A fence some 15cm above the 2m height allowed for boundaries under Part 2 of the Town and Country Planning (General Permitted Development) Order 1995 was considered to not result in any significant harm in terms of overshadowing of the adjoining properties. So no further action was taken. The property was not in a Conservation Area.

4. Porch height slightly above permitted development allowances

14.25 An application for a more substantial brick built enclosed porch was refused and was not built. Instead in its place an open porch with a mixture of materials as built. The porch was 0.1meter above the 3m allowed for porches under the Part 1 Class D of the permitted development order. This was considered to be a very minor issue from which no harm arose and therefore further action was not recommended.

5. Single storey rear extension. Parapet walls in excess of approved height

14.26 Planning permission was granted for a single storey rear extension. However the parapet walls were 0.2m in excess of the height stipulated in the approved plans. A site visit confirmed this departure but this no harm in terms of visual appearance or overshadowing was judged to have resulted from this. Accordingly the case was closed.

6. Where the breach of a planning condition is minor

14.27 A premises had gained planning permission for a separate unit to the rear of the main parade in 2009. Complaints were raised and it was found that a condition for a sliding

door was required with details to be submitted. It was considered that an application should be investigated to submit this details as per the planning permission but that any harm that would arise from its non-implementation as being of a minor nature and nothing to do with the principle of the use. Accordingly the case was closed.

7. Where a technical breach with regard to works to a tree does not amount to harm

14.28 A cherry tree had been felled. The tree was not subject to a Tree Preservation Order (TPO) but was situated in a Conservation area. Consequently although no formal application was required the prior approval of the LPA was required before works could be commenced. Planning enforcement liaised with the arboriculturalist who confirmed the tree was dead and of no value. Consequently, no replacement was required and no further action was taken

8. Where there was departure to rear elevation which was largely similar to the existing elevation of the adjoining property

14.29 Planning permission was granted for a rear extension and new fenestration. Although it departs from the approved plans, the adjoining property had a largely similar appearance in terms of fenestration, balcony and railings. This work had benefited from planning permission. Accordingly it was considered that departures were acceptable and therefore no further action was taken.

9. Where the breach of a planning condition is minor

14.30 Re-development of site with the houses built with height at their eaves and ridge approximately 1m in excess of the dimensions stipulated in the approved plans. The breach was confirmed as a result of the site visit but the build was viewed from all possible angles to ascertain what if any harm arose. It was concluded that the departure did not give rise to demonstrable harm with regard to overshadowing, overlooking or an unacceptable visual appearance. The site being large enough and the instance and juxtaposition with the adjoining properties being such as to accommodate the departures without harm arising.

## **Conclusions**

14.31 In summation, the issue of expediency is applied through various criteria both in general and also on a case by case basis. Similar developments may be more acceptable in some locations than others both in terms of planning policy considerations but also on other matter which may be peculiar to any given site.

14.32 This report recognises the often controversial nature of closing cases for reason of expediency. However it is hoped that the examples given within this report shed light on the judgement applied to these cases and that with the number of cases closed as not expedient continuing to fall, suggests that the Council applies these judgements in a rigorous and consistent way.