

Agenda item:

[No.]

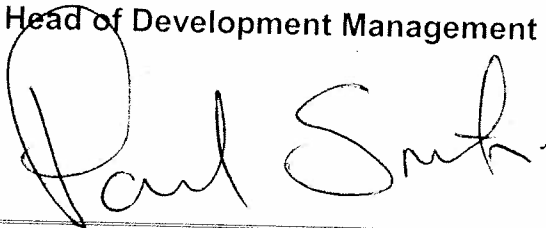
Regulatory Committee

On 24th November 2012

Report Title. **Planning Enforcement Update- Half Year Report April 1st-September 20th 2012**

Report of **Head of Development Management**

Signed :



Contact Officer : **Myles Joyce, Team Leader, Planning Enforcement and Appeals**
Telephone 020 8489 5102

Wards(s) affected: **All**

Report for: **Non-Key Decision**

1. Purpose of the report

1.1. To inform Members on Planning Enforcement's progress in maintaining service delivery during the first half of 2012-13.

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.
- 2.3. The Appeal process is a reflection of the strength of planning policies and planning decisions taken within PRE. Its effective management and ability to defend the above policies and decisions is a clear indication of the health of the Business Unit.

3. Recommendation

- 3.1. That member's note the first half of the year performance for 2012/13 for Planning Enforcement and Appeals.

4. Reason for recommendation

- 4.1. Good progress continues with maintaining the number of open cases remaining at a manageable level, which were 399 at 30th September 2012. The first half of the year continues to see a significant increase in the enforcement notices issued (64 so far in 2012--13 more than the 63 issued in the whole of 2010-2011) and Appeal lodged (30 compared to 23 in the whole of 2010-11).

5. Other options considered

- 5.1. Not applicable

6. Summary

- 6.1. This report advises members on service performance for April –Sept 2012

7. Chief Financial Officer Comments

7. The cost of preparing this report have been contained within existing budgets.

8. Head of Legal Services Comments

- 8.1 The Head of Legal Services notes the contents of this report

9. Equalities & Community Cohesion Comments

- 9.1 There are no equalities, and community cohesion issues raised by this report as it updates members on Planning Enforcement's performance April-September 2012 inclusive.

10. Consultation

10.1 The report identifies steps to consult service users.

11. Use of appendices /Tables and photographs

Appendix 1 - The number of open cases received April-September 2012
Appendix 2 –April-Sept 2012 Breakdown of Cases by Breach
Appendix 3 - April-Sept 2012- Enforcement action and Appeals by Type of Breach
Appendix 4- April-Sept 2012-Planning and Enforcement Appeals Received and Determined
Appendix 5- April-Sept 2012 Planning and Enforcement Appeal by type
Appendix 6- April-Sept 2012 Planning and Enforcement Appeals by way of determination
Appendix 4 –April-March 2011-12 Planning Enforcement Performance indicators
Appendix 5 -April-Sept 2011 Outcomes of Planning Enforcement Closed Cases
Appendix 6–Table showing planning enforcement prosecution & caution outcomes

12. Local Government (Access to Information) Act 1985

12.1 Planning Enforcement Case files held by the Team Leader for Planning Enforcement, and Appeal case files by the Head of DMPE

13. Planning Enforcement Performance

13.1 Appendix 1 provides a table showing cases still open by the year the case was opened. Our current caseload is 394. These include 52 cases received up to 2010/11 which remain open or 13% of the total. Only 18 cases remain open from before 1st April 2009 which are the more complex cases (5% of total live cases). All of these cases are at an advanced stage and actions against these are ongoing. The overall caseload is somewhat higher than the 280 logged at the end of 2011-12. However the first half of 2012-13 has seen 452 cases received, more than 100 more than those received for the same period last year. In addition, the very high enforcement and appeal caseload at 64 Notices and 30 enforcement appeals respectively has focussed much of the team's focus. For the remainder of 2012-13 the focus will shift toward case closures and prosecution cases and it is anticipated that the overall caseload will be substantially reduced by the end of 2012-13.

13.2 Appendices 2 and 3 break down the cases by nature of the breach and formal enforcement action taken. There is likely to be some error estimated at 5-10% as some

of the breaches alleged on investigation turn out to be a different type of breach, most notably alleged breaches which are established as flat conversions or HMOs are often initially lodged as unauthorised development as are extensions. Hence the UNW code is likely to be over-represented in this breakdown. It is also considered that breaches of Article 4 direction may also be underrepresented due to the reporting of cases. This in part explains the high return for general unauthorised development cases at 48% of the whole caseload. The lower proportion of cases for alleged HMO/flat conversion can also in part be explained by the recent focus of cases in the Tottenham Area mainly due to shopfront and unauthorised development issues.

- 13.3 With regard to formal enforcement action (where Enforcement Notices are issued), the dominance of cases regarding unauthorised conversions to flats or unauthorised HMOs are found is reflected in the fact that although these account for 38% of all Notices issued. Where appeals are lodged the numbers are even more dominant with 21/30 or 70% of appeals lodged for this type of breach. Breaches of Article 4 directions, breaches of condition or satellite dishes did not attract an appeal at all despite some 14 Notices being issued for these types of breach.
- 13.4 With regard to Appeals performance, Planning Appeals indicate satisfactory returns with 35% of appeals upheld by the Planning Inspectorate, roughly in keeping with the London wide and nationwide averages. The figure for Householder appeals at 0% is disappointing but as this is accounted for by only 2 appeals it is considered that the year end figure will be a more reliable yardstick. Planning Enforcement appeals also recorded a good return with only 7% or 1 appeal upheld by the Planning Inspectorate. This compares well with 15% upheld in 2010-11. (Appendices 4, 5 and 6)
- 13.5 Appendix 7 deals with Planning Enforcement's performance indicators. Performance remains broadly consistent across the suite of indicators. It is noted that 47% of cases were resolved within 8 weeks, an increase from 42% for 2011-12. With regard to 6 month closures this remains at 77%, slightly below the 80% PI. This is explained in part by the high degree of formal enforcement action and number of quite difficult cases which could not be resolved within this timeframe. ENFPLAN 5 and ENFPLAN 6 both show continued high returns with regard to cases acknowledgement and initial site visit within timescale.
- 13.6 Customer feedback response remained very low and did not provide any real insight into general perception by service users. It is considered necessary to discuss with Service Management how the response rate could be improved going forward.
- 13.7 Appendix 8 is a table of closed cases in the first half of 2011/12 by outcomes. Of the cases closed 54% were due to no breach, or those allowed under permitted development rights. Of the cases closed, only 9% was due to immunity from enforcement action. However the number of cases closed as not expedient has fallen to only 10% of the total, down from 18% in 2011-12, and lower than the 19% recorded in 2010-11. The proportion of cases closed through remediation regularisation or compliance however was very pleasing with 27% of 87 cases resolved this way. This is well up on the 22% recorded for 2011-12 and the 20% recorded for 2010-11.
- 13.8 Appendix 9 is a table of planning enforcement prosecution and caution outcomes. Good process through prosecution cases has been made with 13 cases submitted to legal for prosecution and 6 prosecution outcomes: 3 prosecutions and convictions and 3 simple

cautions accepted in lieu of prosecution. For April-September 2012, the total fines accrued for convictions was £22,065 and the total costs awarded to the Council was £2,940. Costs recovered by the Council when defendants accepted a simple caution in lieu of prosecution was £2,400.

Other matters

- 13.9 Some of the more difficult cases involving problematic landlords have seen progress made during 2010-11. At present the current status is as follows:
- 11 Burgoyne Road Enforcement Notice upheld on appeal. Notice complied with
 - 69 Effingham Road Enforcement Notice upheld on appeal. Notice complied With
 - 13 Harringay Gardens Enforcement Appeal withdrawn. Compliance works Commenced.
 - 10 Woollaston Road Enforcement Appeal upheld on appeal. Implementing planning permission for 2 flats. Ground floor completed
- 13.10 It is worth noting that all of the above can be prosecuted further should compliance works which have been agreed stall for insufficient reason. However it is anticipated that the considerable previous work should realise full compliance before the end of

Stop Press: Confiscation under Proceeds of Crime Act 2002

- 13.11 This concerns breaches of enforcement notice at two properties: 9 Heybourne Road and 1 Bruce Castle Road. These were converted into 8 self-contained flats and 5 self-contained flats respectively. Enforcement Notices were issued but were not complied with. On 15th December 2010, convictions were secured against both the Director and the offending company who owned the properties. Confiscation proceedings were requested under s70 of the Proceeds of Crime Act 2002.
- 13.12 On 26th October 2012 in Wood Green Crown Court, the Recorder made a confiscation order in the following terms:
- Benefit: £222,536.51
 - Available Amount: £141,782.87
 - Order for: £141,782.87
- 13.13. The defendant has been given six months to pay the order in full. The term of imprisonment in default of payment was set at 2 years. In addition both defendants were fined £500 for each offence.

Appendix 1 – Table demonstrating Planning Enforcement Caseload 2001-12

Year	No. cases opened for investigation	No. of cases remaining open
2001/2002	401	0
2002/2003	782	0
2003/2004	881	0
sub total 2001/2 - 2003/4	2064	0
2004/2005	899	1
2005/2006	941	3
2006/2007	687	1
sub total 2004/5- 2006/7	2527	5*
2007/2008	919	2
2008/2009	1062	11
sub total 2007/8 - 2008/9	1975	13
2009-2010	881	14
2010-2011	760	28
2011-2012	718	126
2012-30.09.12	452	208
Total for all years	9366	394

Appendix 2: Breakdown of Investigations by Type of Breach April-Sept 2012

Type of Case	No of Cases	Percentage
AT4-Breach of Article 4 direction	23	5
ADV-Advertisement	26	6
CON-Breach of Condition	6	1
COU-Change of Use	25	6
DEP-Departure from Plans	34	8
EXT-Extension	22	5
FCV-Conversion to flats	37	8
HMO-House in Multiple Occupation	7	2
LBW-Listed Building	2	0
SAT-Satellite Dish	26	6
SOC-Social Club	2	0
TPC- Works to Trees	14	3
UNT-Untidy Land	3	1
UPW-Place of Worship	4	1
UNW-Unauthorised Development	211	48
TOTAL	442	100

Appendix 3: Enforcement Action by Case and Appeals Lodged April-Sept 2012

Type of Breach	Number	Percentage	Appealed	Percentage
CON	2	3	0	0
AT4	11	17	3	10
FCV/HMO	24	38	21	70
LBW	0	0	0	0
SAT	4	6	0	0
COU	1	2	1	3
ADV	2	3	0	0
UNW/EXT	20	31	5	17
TOTAL	64	100	30	100

Appendix 4: Planning and Enforcement Appeals Received and Determined April-Sept 2012

	Planning Appeals	%	Planning Enforcement Appeals	%
Received	53	100	30	100
Determined	23	100	14	100
Dismissed	13	57	10	72
Allowed	8	35	1	7
Withdrawn	2	8	1	7
Notice withdrawn	n/a	n/a	2	14

Appendix 5: Determination of Planning Appeals by Type April-Sept 2012

	Planning Appeals	%	Householder Appeals	%	Conservation and LB Appeals	%	LDC Appeals	%	Tree Appeals	%	Total
Received	35	66	13	25	4	7	1	2	0	0	100
Determined	19	83	2	8	1	4	1	4	0	0	100
Dismissed	12	92	0	0	1	8	0	0	0	0	100
Allowed	6	75	2	25	0	0	0	0	0	0	100
Withdrawn	1	50	0	0	0	0	1	50	0	0	100

Appendix 6: Appeals by Method of Determination 2011-12

Appeals lodged	By Written Representations	By Hearing	By Public Inquiry	TOTAL
Planning	49	1	3	53
Enforcement	25	1	4	30
Appeals determined	By Written Representations	By Hearing	By Public Inquiry	TOTAL
Planning	21	0	3	23
Enforcement	9	1	4	14

Appendix 7 Table indicating Performance indicators for Planning Enforcement 2012-30.09.12

Table of performance indicators			
Performance Indicator Number	Performance Indicator description	Performance Indicator target	Performance Output April Sep 2012
ENF PLAN 1	Successful resolution of a case after 8 weeks	40%	47% (153 from 324 cases closed)
ENF PLAN 3	Customer satisfaction with the service received	To be determined	10% of closed cases to be contacted by the service manager
ENF PLAN 4	Cases closed within target time of 6 months	80%	77% (251 out of 324 cases closed)
ENF PLAN 5	Cases acknowledged within 3 working days	90%	94% (419 out of 447 cases)
ENF PLAN 6	Planning Enforcement Initial site inspections 3, 10, 15 working days	90%	95% (220 from 231) cases initial visit within the time period)
Performance Indicator Number	Performance Indicator description	Performance output April 2012 –Sep	
ENF PLAN 7	Number of Planning Contravention Notices served	46	
ENF PLAN 8	Number of Enforcement Notices Served (inc BCN)	64	
ENF PLAN 9	Number of enforcement notices appealed	30	
ENF PLAN 10	Number of enforcement notices withdrawn by Council	4	
ENF PLAN 10a	Number of Enforcement Appeals Allowed	1	
ENF PLAN 10b	Number of Withdrawn Appeals	1	
ENF PLAN 10C	Number of Notices Appealed withdrawn	2	
ENF PLAN 11	Number of prosecutions for non-compliance with enforcement notice	8	
ENF PLAN 12	Number of Notices (Other) served	5	

Appendix 8 – Table showing Outcomes of Planning Enforcement Closed Cases April-September 11

Closure reason	Output April-Sept 2011
No breach/Permitted Development	175 (54%)
Not expedient	32 (10%)
Compliance/ Remediation/Regularisation	87 (27%)
Immune from enforcement action	30 (9%)
Total	324 (100%)

Appendix 9: Prosecutions and Outcomes 2011-12

No	Client Department, address and Lead Officer)	Legislation (inc section) prosecution under	Breach Address	Latest Action	Details	Successful result (Y/N)
1	Fortune Gumbo	S179 TCP Act 1990	100 Myddleton Road N22	Prosecution and convicted fined £1000 with £ 952 costs. Look at re prosecution		
2	Fortune Gumbo	S179 TCP Act 1990	123 Risley Avenue N17	Prosecution and convicted fined £265 with £ 200 costs		
3	Fortune Gumbo	S179 TCP Act 1990	153 Gospatrick Road N17	Prosecution and convicted fined £ 2000 with £ 760 costs		
4	Myles Joyce	S179 TCP Act 1990	374 Alexandra Park Road N22	Compliance achieved. Caution to be accepted if complied.		

5	Fortune Gumbo	S179 TCP Act 1990	225 Tower Gardens Road N17	Compliance agreed adjourned in Court till Feb 13	
6	Myles Joyce	S179 TCP Act 1990	10 Woodstock Road	Changed plea to guilty. Fined £13,500 plus £1980 costs and £15 victim surcharge.	
7	Myles Joyce	S179 TCPA 1990	636a Green Lanes	Complied with simple caution signed £770 costs). Case closed	
8	Myles Joyce	S179 TCPA 1990	76 Scales Road	Prosecution and Convicted 12.9.12 Convicted and fined £20,000 plus £1595 costs. Appeal to Crown Court had fine reduced to £18000	
9	Fortune Gumbo	S179 TCPA 1990	60 St Pauls Road n17	Notice complied with and caution signed £660 costs paid	

10	Abby Oloyede	S179 TCPA 1990	143-5 Philip Lane	Prosecuted and Convicted £1250 Fine £902 costs. Application recently refused		
11	Abby Oloyede	S179 TCPA 1990	2 Moorefield Road	Convicted and fined £2000 and £2073 cots. Re-prosecution considered appropriate		
12	Myles Joyce	S179 TCPA 1990	19 Warham Road	Compliance- Caution to be accepted 28.3.12		
13	Fortune Gumbo	S179 TCPA 1990	181 Tower Garden Road N17	Simple caution accepted and £570 costs paid		
14	Fortune Gumbo	s181 TCPA 1990	13 Bounds Green Road	Found guilty- Fined £5000 and costs £2073. Defendants have case stated in High Court- Hearing June 2013	Compliance work to be undertaken. Hearing postponed until November	

15	Fortune Gumbo	s181 TCPA 1990	13 Bounds Green Road	Prosecution for outbuilding separate from above. Notice complied with an caution accepted plus £770 costs	Compliance work to be undertaken. Hearing postponed until November	
16	Myles Joyce	s179 TCPA 1990	13 Whitley Road	Trial 25.1.12 Found guilty and fined £5000x3 £2000 costs in total. Appeal lodged to be heard on 21 st May 2012. One defendant acquitted as not interested part ay time. Sentence upheld for two others. Planning application refused Planning appeals pending	Trial fixed for January 2012	
17	Fortune Gumbo	s179 TCPA 1990	38 Thackerary Avenue	Convicted and fined £15000 costs £645. Compliance visit required	Prosecuted and Convicted September 2011 £15,000 fine plus £642 costs	
18	Fortune Gumbo	s179 TCPA	100 Myddleton Road	Prosecuted and Convicted.	Fined £1000 and £956 costs	Y

19	Fortune Gumbo	1990	25 Cumberton Road	Further action required as no compliance	Prosecuted and Convicted £500 fines each plus £772 costs	
20	Fortune Gumbo	s179 TCPA 1990	22 Cumberton Road	Convicted and Fined £600 costs awarded. To close	Did not attend Court warrant for arrest issued.	
21	Myles Joyce	s179 TCPA 1990	2 Goodwyns Vale	Former Warrant Case .Owner given until February 2013 to comply Complied	Found guilty. Case in Crown Court for Confiscation under Proceeds of Crime Act. Matter listed in Wood Green Crown Court for final hearing on 3 rd December 2012.	Y

22	Myles Joyce	s179 TCPA 1990	9 Heybourne Road	Hearing 26 th October 2012. Benefit: £222,536.51 Available Amount: £141,782.87 Order for: £141,782.87 Also fined £500	Timetable- anticipate result end of 2011	Y
23	Myles Joyce	s179 TCPA 1990	1 Bruce Castle Road	Hearing 26 th October 2012 Benefit: £222,536.51 Available Amount: £141,782.87 Order for: £141,782.87 Also fined £500	Timetable- anticipate result Spring 2012	Y
24	Myles Joyce	s179 TCPA 1990	98 Hewitt Avenue	Already convicted. LBA for 2 nd prosecution sent and with legal	submit bundle end of November 2011	
25	Myles Joyce	s179 TCPA 1990	23 Hewitt Avenue	Convicted for 2 nd time £8000 fine £1617 costs. 3 rd prosecution in progress	Prosecuted and convicted for 2 nd time £8000 fine £1617 costs	

26	Myles Joyce	s179 TCPA 1990	89 Burgoyne Road	Convicted 2 nd time £8000 fine. 3 rd letter before action in progress	Prosecuted and convicted for 2 nd time £8000 fine £1617 costs	
----	-------------	----------------------	------------------	---	--	--