

Agenda item:

**Regulatory Committee**

**On 5<sup>th</sup> February 2013**

Report Title. **Planning Enforcement Update- Year Report**

Report of **Director of Place and Sustainability**

Signed :

Contact Officer : Myles Joyce **020 8489 5570**

Wards(s) affected: **All**

Report for: **Non-Key Decision**

• **Purpose of the report**

- To inform Members on Planning Enforcement's progress in maintaining service delivery in 2012/13.

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

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

- **Recommendation**

- That Members note the year performance for 2012/13 for Planning Enforcement and Appeals.

- **Reason for recommendation**

- Good progress continues with maintaining the number of open cases at a manageable level, which were 390 at 1<sup>st</sup> January 2013. This year has seen a significant increase in the enforcement notices issued (87 up from 84 from 11-12) and Enforcement Appeals lodged 45 up from 43 for all of 2011-12). In all PE caseloads are on course to be 25% higher with a corresponding rise in formal action and appeals.

- **Other options considered**

- Not applicable

- **Summary**

- This report advises members on service performance in both Planning Enforcement and Appeals for the first three quarters of 2012-13

## **7. Financial Implications**

7.1 No Financial implications. .

## **8. Legal Implications**

8.1 No legal implications.

## **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-June 2011 inclusive.

## **10. Consultation**

- The report identifies steps to consult service users.

## **11. Use of appendices /Tables and photographs**

Appendix 1 - The number of open cases by the year received  
Appendix 2 – April-Dec 2012 Breakdown of Cases by Breach  
Appendix 3 - April-Dec 2012- Enforcement action and Appeals by Type of Breach  
Appendix 4- All Appeals Received and Determined April-Dec 2012  
Appendix 5 – April-Dec2012 Planning Enforcement Performance indicators  
Appendix 6 - April-Dec 2012 Outcomes of Planning Enforcement Closed Cases  
Appendix 7 – 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 and Appeals Performance**

- 13.1 Appendix 1 provides a table showing cases still open by the year the case was opened. Our current caseload is 380. These include 142 cases received up to **2011/12** which remain open or 36% of the total. Only 15 cases remain open from before 1st April 2009 which are the more complex cases (4% of total live cases). All of these cases are at an advanced stage and actions against these are ongoing. The overall caseload compares favourably with the previous years, when one considers the increase in Notices issued and subsequent appeals lodged against them.
- 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% as some of the breaches alleged on investigation turn out to be a different type of breach. One of the most common is where an extension is logged as unauthorised development. 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 41% of the whole caseload. However of note is 16% of cases are for alleged HMO/flat conversion.
- 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 these account for 35% of all Notices issued. Where appeals are lodged the numbers are even more dominant with 30 Notices or 62% of appeals lodged for this type of breach. Breaches of Article 4 directions, attracted only five appeals (10%) despite 18 Notices (21%) being served to date. Satellite dishes (four Notices) and Adverts (two Notices) breaches of condition or satellite dishes did not attract any appeal at all. General unauthorised development made up the remaining 10 (24%) of appeals.
- 13.4 With regard to Appeals performance, Planning Appeals indicate good returns with 32% of appeals determined allowed out of 87 received and compares well when set against the National PI (35%) and on par with the London average. Planning

Enforcement appeals also recorded excellent returns with only 4% or one appeal upheld by the Planning Inspectorate. This compares well with 15% upheld in 2010-11 and 11% in 2011-12. (Appendix 4). With regard to numbers, planning appeals have increased slightly up on last year (from xxx to yyy) . Planning enforcement appeals have already exceeded the number of appeal lodged in 2011-12 and are on course to be 25% up on last year by year end.

- 13.5 There were four applications for costs applied for against the Council with regard to planning appeals. Two of these were upheld (state the cases). The reason for the award of costs was that the Inspectors considered the local authority did not sufficiently justify its reasons for refusal nor did not willingly co-operate with the appellant (state the case) (cost here? If 143 Northumberland Park goes this way, I want Councillors to understand this). With regard to planning appeals, one cost application was upheld. This was due to insufficient reason being for issuing the enforcement notice. Feedback on appeal decisions is being given to officers so that any learning points can be absorbed and awards of costs can be avoided in future.
- 13.6 However, with regard to planning enforcement appeals, costs were awarded for four appeals, three partially and one full award of costs. Given that the three partial awards were for appeals determined by public inquiry, the costs awarded are likely to be considerable
- 13.7 Appendix 5 deals with Planning Enforcement's performance indicators. Performance remains broadly consistent across the suite of indicators. 46% of cases were resolved within 8 weeks, an increase from 41% for 2010-11 and 42% from 2011-12. With regard to 6 month closures this remains at 75%, 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 (Jargon. Change this!) both show high returns with regard to cases acknowledgement and initial site visit within timescale.
- 13.8 Customer feedback response rates remained very low and do 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.
- 13.9 Again in must be acknowledged that the caseload is considerable up on last year with 639 cases already received compared to 718 for all of 2011-12 on course to be 20—25% up on last year by year end. This year the number of notices issued are already up with the whole of last year (88 Notices) itself an increase on the numbers issued in each of the previous 2 years.
- 13.10 Appendix 6 is a table of closed cases at the three quarter stage in 2012-13. Of the cases closed 55% were due to no breach, consistent with previous returns. Of the cases closed, only 7% was due to immunity from enforcement action. Only 105 of cases closed were due to reasons of expediency, this compares very well with 18% for 2011-12, and better still with the 19% in terms of proportion for 2010-11. The proportion of cases closed through remediation regularisation or compliance increased significantly to 28% up from 22% for 2011-12 and 20% recorded for 2010-11.
- 13.11 Appendix 7 is a table of planning enforcement prosecution and caution outcomes. Good process through prosecution cases has been made. Four completed prosecutions (including any appeals against sentence or conviction have attracted fines of **£34,765** and costs of **£4,555**. Of the six completed cases where simple

cautions were accepted in lieu of prosecution **£5,223** of Council costs have been paid. A total of 13 prosecutions have been lodged so far in 2012-13.

### **Proceeds of Crime Act 2002**

- 13.12 The first case to be determined concerned two properties converted into 8 self contained flats and 5 self-contained flats at 9 Heybourne Road N17 and 1 Bruce Castle Road N17 respectively. Enforcement Notices were issued and not complied with. The defendants were convicted and the matter was referred to the Crown Court for confiscation under s70 of the Proceeds of Crime Act 2002 (POCA).
- 13.13 On 26<sup>th</sup> 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
- 13.14 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.
- 13.15 Another POCA case to be heard on 3<sup>rd</sup> April 2013 is regarding the conversion of 2 Goodwyns Vale N10 to 6 flats and as above has been referred on conviction to Wood Green Crown Court.
- 13.16 Two cases of unauthorised flat conversions at 23 Hewitt Road and 89 Burgoyne Road, (both in the Harringay Ladder) with the same landlord were brought before the Magistrates Court for the third time for a breach of an enforcement notices. The owner was convicted again in January 2013 and the matter has been referred to the Crown Court for confiscation under section 70 of the Proceeds of Crime Act 2002.

### **Fees received from appeals lodged against enforcement notice**

- 13.17 The enforcement appeals to date where a fee was applicable have attracted net fees of **£5,480**. Along with the **£9,778** garnered from prosecution and caution costs and excluding those from applications generated by planning enforcement action, the service has accrued income of **£15,258**. Officers have been briefed on the importance of securing costs in enforcement appeals and can typically do so if the party against which and enforcement notice has been served has not been cooperative.

## Appendix 1 – Table demonstrating Planning Enforcement Caseload

<b>Year</b>	<b>No. cases opened for investigation</b>	<b>No. of cases remaining open</b>
2001/2002	401	0
2002/2003	782	0
2003/2004	881	0
<b>sub total 2001/2 - 2003/4</b>	<b>2064</b>	<b>0</b>
2004/2005	899	1
2005/2006	941	3
2006/2007	687	1
<b>sub total 2004/5- 2006/7</b>	<b>2527</b>	<b>5*</b>
2007/2008	919	2
2008/2009	1062	8
<b>sub total 2007/8 - 2008/9</b>	<b>1981</b>	<b>10</b>
2009-2010	881	9
2010-2011	760	21
2011-2012	718	97
2012-31.12.12	639	248
<b>Total for all years</b>	<b>9570</b>	<b>390</b>

## Appendix 2: Breakdown of Investigations by Type of Breach

<b>Type of Case</b>	<b>No of Cases</b>	<b>Percentage</b>
<b>AT4-Breach of Article 4 direction</b>	28	4
<b>ADV-Advertisement</b>	28	4
<b>CON-Breach of Condition</b>	8	1
<b>COU-Change of Use</b>	40	6
<b>DEM</b>	2	1
<b>DEP-Departure from Plans</b>	50	8
<b>EXT-Extension</b>	34	5
<b>FCV-Conversion to flats</b>	86	14
<b>HMO-House in Multiple Occupation</b>	14	2
<b>LBW-Listed Building</b>	7	1
<b>SAT-Satellite Dish</b>	42	7
<b>SOC-Social Club</b>	6	1

TPC- Works to Trees	19	3
UNT-Untidy Land	4	1
UPW-Place of Worship	6	1
UNW-Unauthorised Development	265	41
<b>TOTAL</b>	<b>639</b>	<b>100</b>

**Appendix 3: Enforcement Action by Case and Appeals Lodged 2011-12**

Type of Breach	Number	Percentage	Appealed	Percentage
<b>CON</b>	2	1	1	2
<b>AT4</b>	18	21	5	10
<b>FCV/HMO</b>	30	35	28	62
<b>LBW</b>	0	0	0	0
<b>SAT</b>	4	6	0	0
<b>COU</b>	2	2	1	2
<b>ADV</b>	2	2	0	0
<b>UNW/EXT</b>	29	33	10	24
<b>TOTAL</b>	<b>87</b>	<b>100</b>	<b>45</b>	<b>100</b>

**Appendix 4: Planning and Enforcement Appeals Received and Determined 2011-12**

	Planning Appeals	%	Planning Enforcement Appeals	%
<b>Received</b>	89	100	45	100
<b>Determined</b>	78	100	27	100
<b>Dismissed</b>	45	58	16	60
<b>Allowed</b>	25	32	1	4
<b>Withdrawn</b>	-	-	1	4
<b>Turned Away</b>	8	10	4	14
<b>Notice withdrawn</b>	n/a	n/a	5	18

**Appendix 5 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 Dec 2012
ENF PLAN 1	Successful resolution of a case after 8 weeks	40%	46% (256 from 559)

			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%	75% (422 out of 559 cases closed)
ENF PLAN 5	Cases acknowledged within 3 working days	90%	95% (602 out of 632 cases)
ENF PLAN 6	Planning Enforcement Initial site inspections 3, 10, 15 working days	90%	96% (281 from 294) cases initial visit within the time period)
<b>Performance Indicator Number</b>	<b>Performance Indicator description</b>	<b>Performance output April 2012 –Sep</b>	
ENF PLAN 7	Number of Planning Contravention Notices served	71	
ENF PLAN 8	Number of Enforcement Notices Served	87	
ENF PLAN 9	Number of enforcement notices appealed	45	
ENF PLAN 10	Number of enforcement notices withdrawn by Council	7	
ENF PLAN 10a	Number of Enforcement Appeals Allowed	1	
ENF PLAN 10b	Number of Withdrawn Appeals	1	
ENF PLAN 10C	Number of Notice Appealed withdrawn	5	
ENF PLAN 11	Number of prosecutions for non-compliance with enforcement notice	13	
ENF PLAN 12	Number of Notices (Other) served	5	

**Appendix 6 – Table showing Outcomes of Planning Enforcement Closed Cases April-September 11**

<b>Closure reason</b>	<b>Output April-Dec 2012</b>
No breach/Permitted Development	308(55%)
Not expedient	55(10%)

Compliance/ Remediation/Regularisation	158(28%)
Immune from enforcement action	38(7%)
<b>Total</b>	<b>559(100%)</b>

### Appendix 7: Prosecutions and Outcomes 2011-12

<b>No</b>	<b>Client Department, address and Lead Officer)</b>	<b>Legislation (inc section) prosecution under</b>	<b>Breach Address</b>	<b>Latest Action</b>	<b>Successful result (Y/N)</b>
<b>1</b>	<b>Fortune Gumbo</b>	<b>S179TCA Act 1990</b>	<b>153 Gospatrick Road N17</b>	<b>Convicted £2000 fined and£760 costs</b>	
<b>2</b>	<b>Fortune Gumbo</b>	<b>S179TCA Act 1990</b>	<b>123 Risley Avenue N17</b>	<b>Convicted fined £265 and £220 costs</b>	
<b>3</b>	<b>Myles Joyce</b>	<b>S179 TCP Act 1990</b>	<b>10 Woodstock Road</b>	<b>Convicted and fined £13500 and £1980 costs</b>	
<b>4</b>	<i>Myles Joyce</i>	<i>S179 TCP Act 1990</i>	<i>316 Philip Lane</i>	<i>Complied and caution signed along with 28 Waldegrave for £1800 costs overall</i>	
<b>5</b>	<i>Myles Joyce</i>	<i>S179 TCP Act 1990</i>	<i>28 Waldegrave Road</i>	<i>See above</i>	

6	Fortune Gumbo	S179 TCP Act 1990	13 Bounds Green Road (outbuilding)	Complied and £710 costs paid	
7	Fortune Gumbo	S179 TCP Act 1990	32 Park Avenue N17	Complied Caution accepted and costs paid £685	
8	Abby Oloyede	108 Cranley Gardens	108 Cranley Gardens N10	Trial 30.1.13	
9	Myles Joyce	S179 TCP Act 1990	374 Alexandra Park Road N22	Complied and Caution accepted. Costs £1358 paid	
10	Myles Joyce	S179 TCPA 1990	636a Green Lanes	Complied and Caution accepted. Costs £770 paid	
11	Myles Joyce	S179 TCPA 1990	76 Scales Road	Prosecuted and fined £20000 reduced to £18000 on appeal. costs to Council awarded	
12	Fortune Gumbo	S179 TCPA 1990	60 St Pauls Road n17	Complied with and Caution accepted and £650 costs paid	
13	Abby Oloyede	S179 TCPA 1990	143-5 Philip Lane	Prosecuted and Convicted £1250 Fine £902 costs. Negotiation with Conservation and	

				application submitted. LBA sent.	
14	Abby Oloyede	S179 TCPA 1990	2 Moorefield Road	Convicted and fined £2000 and £2073 cots. LBA sent	
15	Myles Joyce	s181 TCPA 1990	13 Bounds Green Road	Found guilty- Fined £5000 and costs £2073. Defendants have case stated in high court	
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 <sup>st</sup> May 2012. PP granted overcome EN Resolved	
17	Myles Joyce	s179 TCPA 1990	38 Thackerary Avenue	Convicted and fined £15000 costs £645. Compliance visit required	
18	Fortune Gumbo	s179 TCPA 1990	100 Myddleton Road	Prosecuted and Convicted. Further action required as no compliance	Y
19	Fortune Gumbo	s179 TCPA 1990	22 Cumberton Road	To comply Feb 13	

20	Myles Joyce	s179 TCPA 1990	2 Goodwyns Vale	Found guilty. Case in Crown Court for Confiscation under Proceeds of Crime Act. Matter listed in Wood Green Crown Court for final hearing on 18 <sup>th</sup> January 2013.	Y
21	Myles Joyce	s179 TCPA 1990	9 Heybourne Road	Pleaded of guilty and convicted. Confiscation order of £143000 made October 2012	Y
22	Myles Joyce	s179 TCPA 1990	1 Bruce Castle Road	Pleaded of guilty and convicted. Confiscation order of £143000 made October 2012	Y
23	Myles Joyce	s179 TCPA 1990	98 Hewitt Avenue	Already convicted. LBA for 2 <sup>nd</sup> prosecution trial 30 <sup>th</sup> January 2012	
24	Myles Joyce	s179 TCPA 1990	23 Hewitt Road	Convicted for 3 <sup>rd</sup> time. Transferred to Crown Court for confiscation proceedings	

				<b>under POCA</b>	
<b>25</b>	<b>Myles Joyce</b>	<b>s179 TCPA 1990</b>	<b>89 Burgoyne Road</b>	<b>Convicted for 3<sup>rd</sup> time. Transferred to Crown Court for confiscation proceedings under POCA</b>	