

Agenda item:

[No.]

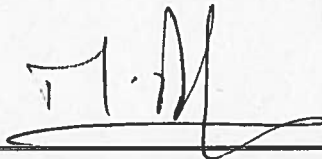
Regulatory Committee

On 23rd May 2013

Report Title. **Planning Enforcement Update- Year Report 2012-13**

Report of **Director of Place and Sustainability**

Signed :

PP  **MARC DORFMAN**

Contact Officer : Myles Joyce Team Leader Planning Appeal, Enforcement and East Team 020 8489 5570

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 in 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 Local Development Framework and the recently adopted Local Plan: Strategic Policies.

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 Members note 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 enforcement cases at a manageable level, which were 415 at 1st April 2013. This year has seen a significant increase in the enforcement notices issued (116 up from 84 from 11-12 a 38% increase) and Enforcement Appeals lodged 55 up from 45 for all of 2011-12 a 22% increase). In all Planning Enforcement received 846 cases in 2012/13, an 18% increase on the 718 recorded in 2011-12.

5. Other options considered

5.1. Not applicable

6. Summary

6.1. 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 and Appeal performance for 2012-13

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 by the year received

Appendix 2 – 2012-13 Breakdown of Cases by Breach

Appendix 3 - 2012-13 Enforcement action and Appeals by Type of Breach

Appendix 4- 2012-13 All Appeals Received and Determined

Appendix 5 – 2012-13 Planning Enforcement Performance indicators

Appendix 6 - 2012-13 Outcomes of Planning Enforcement Closed Cases

Appendix 7 – 2012-13 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 Interim 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. The current caseload is 415. This includes 115 cases received up to 1st April 2012 (more than 1 year old) which remain open or 28% of the total. Only 14 cases remain open from before 1st April 2009 (more than 4 years old) which are the more complex cases (3% of total live cases). All of these cases are at an advanced stage and actions against these are ongoing with some close to completion and others involving confiscation proceedings under the Proceeds of Crime Act. The overall caseload represents something of an increase on previous year. However this is set against the significant increase in complaints received and formal action and enforcement appeals and no significant increases in older cases a sustained number of older cases. Work will be done to reduce and maintain the live caseload below the 400 number during the forthcoming year, 2013-14.

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 directions may also be underrepresented due to the reporting of cases. This in part explains the high return for general unauthorised development cases at 42% of the complaints received in 2012-13. However of note is 15% 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 34% of all Notices issued. Where appeals are lodged these cases are even more dominant with 33 Notices appealed or 63% of appeals lodged for this type of breach. However this is less dominant than the 77% of all appeals lodged last year which fell in this category. Breaches of Article 4 directions, attracted only six appeals (11%) despite 20 Notices (17%) being served to date. Cases involving satellite dishes, Adverts and breaches of condition did not attract any appeals at all. General unauthorised development made up the bulk of the remaining 15 appeals (26%).
- 13.4 114 appeals were received in 2012-13, a 19% increase from 2011-12 when 96 were received. With regard to Appeals performance, 38% of all planning appeals determined were allowed which is just above the National Performance Indicator (NPI) level of 35% and the London average of 32%. In terms of numbers, this is a 10% increase on the 89 determined appeals in 2011-12. The number of appeals dismissed declined from 65 to 60 (-9%) and those allowed up from 22 to 38 (58%). However when set against the returns from last year they make disappointing reading as in 2011-12 only 23% of appeals determined were allowed.
- 13.5 A calculation of the ratio of appeals dismissed to those allowed provided interesting reading with 64% of planning appeals dismissed, the same proportion as last year but with the outstanding return of 89% of householder appeals upheld in 2011-12 falling to a much more modest 48% (a small increase in 28 to 31 householder planning appeals determined). However all 6 conservation area appeals were dismissed this year compared with only 1 out of the two determined last year. The only Lawful Development Certificate appeal received this year was subsequently withdrawn set against the four determined in 2011.
- 13.6 Appendix 4A shows that 96% of all planning appeals were determined by written representation with only two each being determined by public inquiry and informal hearing. Of those not determined by written representations three out of 4 were dismissed. For planning enforcement a higher return of inquiries (5) plus two determined by informal hearing lead to 35% being determined by methods other than written representations. Of those that went to public inquiry all were dismissed, These were all for alleged unauthorised flat conversions or HMOs and the appeals were on the basis of these uses being established.
- 13.7 The above paragraph demonstrates that continued focus on the quality of appeal resources and decision making is required to understand the relative decline in the appeals performance, especially with regard to householder appeals where no statement in support of the appeal case can be submitted. Focus on the quality of decision making is anticipated to assist with improving the performance on this type of appeal.
- 13.8 The lack of certificate lawfulness appeals suggests that the increased rigour that is being put into their processing is leading to better quality applications. The 100% success on conservation area appeals is similarly encouraging.
- 13.9 For Planning Enforcement appeals, the statistics in Appendix 4 show that only 2 appeals were allowed out of 34 determined or 18 out of 20 appeal heard (10% upheld).

This compares well with 15% upheld in 2010-11 and 11% in 2011-12.. With regard to numbers, planning enforcement appeals have also increased by 25% from 43 in 2011/12 to 54 in 2012/13.

- 13.10 It is worth noting that for all appeals, and particularly enforcement appeals, the numbers determined are less than those received: for planning appeals 114 were received compared to 105 determined and for enforcement appeals 54 were received compared to 34 determined. This backlog is beyond the control of the Council but is likely to filter into next year's returns with regard to determined appeals
- 13.11 There were four applications for costs to be awarded against the Council with regard to planning appeals. Two of these were upheld at 22 Hermitage Road N4 and 41 Palace Road N11.. To date no invoices for these costs have been submitted to the Council. With regard to planning enforcement appeals, one cost application was upheld at 71 High Cross Road. Feedback on appeal decisions is being given to officers so that any learning points can be absorbed and the risk of awards of costs can be minimised in the future.
- 13.12 However, with regard to planning enforcement appeals, costs were awarded to the Council 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
- 13.13 Appendix 5 deals with Planning Enforcement's performance indicators (PIs). Performance remains broadly consistent across the suite of indicators. 42% of cases were resolved within 8 weeks, an increase from 41% for 2010-11 and the same as for 2011-12. With regard to 6 month closures this remains at 73%, 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. Returns for sites visited on time and initial acknowledgement of complaints as cases continue to come in at well over the 90% PI at 96%.
- 13.14 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.
- 13.15 Again, it must be acknowledged that the caseload is considerably up on last year with 846 cases received compared to 718 for all of 2011-12, an 18% increase. This year the number of notices issued, at 116, is the highest since 2008-9 when the team had a much larger number of staff and is well above the 84 Notices issued in 2011-12 itself an increase on the numbers issued in each of the previous 2 years.
- 13.16 Appendix 6 is a table of closed cases at the three quarter stage in 2012-13. Of the cases closed 52% were due to no breach, consistent with previous returns. Of the cases closed, only 8% was due to immunity from enforcement action. Only 11% of cases closed were due to reasons of expediency, this compares very well with 18% for 2011-12 and 19% in terms of proportion for 2010-11. The proportion of cases closed through remediation regularisation or compliance increased significantly to 29% up from 22% for 2011-12 and the 20% recorded for 2010-11.

- 13.17 Appendix 7 is a table of planning enforcement prosecution and caution outcomes. Good process through prosecution cases has been made. Six completed prosecutions (including any appeals against sentence or conviction) have attracted fines of **£48,765** and costs of **£6,008**. Of the seven completed cases where simple cautions were accepted in lieu of prosecution, **£6,600** of Council costs has been paid. A total of 14 prosecutions have been lodged so far in 2012-13.

Proceeds of Crime Act 2002 (POCA)

- 13.18 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).
- 13.19 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
- 13.20 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. The Council's share of this confiscation will be **£26,584.29**.
- 13.21 Another POCA case is due its final hearing next month and concerns the conversion of 2 Goodwyns Vale N10 to 6 flats and as above has been referred on conviction to Wood Green Crown Court.
- 13.22 A further case for two properties within the same ownership within the Harringay Ladder at 23 Hewitt Road and 89 Burgoyne Road is now being referred for prosecution under S70 of the Proceeds of Crime Act. This action comes after the landlord's third conviction for breach of the enforcement notices in force on each property was upheld by the Crown Court last month.

Fees received from appeals lodged against enforcement notice

- 13.23 The enforcement appeals to date where a fee was applicable have attracted net fees of **£12,724**. Along with the **£12,608** garnered from prosecution and caution costs and excluding those from applications generated by planning enforcement action, the service has generated income of **£25,332**. Officers have been briefed on the importance of securing costs in enforcement appeals and can typically do so if the party against which an enforcement notice has been served has not been co-operative.

Appendix 1 – Table demonstrating Planning Enforcement Caseload 2012-13

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	898	1
2005/2006	939	3
2006/2007	686	1
sub total 2004/5- 2006/7	2523	5*
2007/2008	914	2
2008/2009	1052	7
sub total 2007/8 - 2008/9	1966	9
2009-2010	878	8
2010-2011	760	15
2011-2012	718	78
2012-2013	846	300
Total for all years	9755	415

Appendix 2: Breakdown of Investigations by Type of Breach 2012-13 (2011-12 figures in brackets)

Type of Case	No of Cases	Percentage
AT4-Breach of Article 4 direction	34 (18)	4(3)
ADV-Advertisement	34 (15)	4 (3)
CON-Breach of Condition	7 (24)	1 (3)
COU-Change of Use	47 (73)	5 (10)
DEM	2 (0)	1 (0)
DEP-Departure from Plans	58 (66)	8 (9)
EXT-Extension	47 (46)	5 (6)
FCV-Conversion to flats	107 (149)	13 (21)
HMO-House in Multiple Occupation	19 (13)	2 (2)
LBW-Listed Building	10 (11)	1 (2)
SAT-Satellite Dish	70 (29)	8 (4)
SOC-Social Club	6 (4)	1 (0)
TPC- Works to Trees	25 (26)	3 (4)
UNT-Untidy Land	4 (1)	1 (0)
UPW-Place of Worship	6 (5)	1(1)
UNW-Unauthorised Development	370 (230)	42 (32)
TOTAL	846	100

Appendix 3: Enforcement Action by Case and Appeals Lodged 2012-13 (2011-12 Figures)

Type of Breach	Number	Percentage	Appealed	Percentage
<i>CON-Breach of condition</i>	3 (3)	3 (4)	1 (0)	2 (0)
<i>AT4-Article 4 breach</i>	20 (2)	17(2)	6 (0)	11 (0_
<i>FCV/HMO-flat conversion HMO</i>	39 (54)	34 (64)	33 (33)	63 (77)
<i>LBW-listed buildings</i>	0(2)	0 (2)	0 (2)	0
<i>UPW-place of worship</i>	1 (0)	1	0	0
<i>SAT- Sat dish</i>	4 (6)	5 (8)	0	0
<i>SOC-social club</i>	1 (0)	1	1	2
<i>ADV-advert</i>	2 (2)	2 (3)	0 (1)	0 (2)
<i>UNW/EXT-unauthorised development or extension</i>	43 (12)	37	12 (6)	22 (15)
TOTAL	116 (84)	100	54(43)	100

Appendix 4: Planning and Enforcement Appeals Received and Determined 2012-13 (2011-12 figures in brackets)

	Planning Appeals	%	Planning Enforcement Appeals	%
Received	114 (89)	100	54	100
Determined	108 (89)	100	34	100
Dismissed	60 (65)	62	18	90
Allowed	38 (22)	38	2	10
Withdrawn	7 (n/a)	n/a	1	n/a
Turned Away	3 (3)	n/a	5	n/a
Notice withdrawn	n/a	n/a	8	n/a

Appendix 4A: All Appeals by Method of Determination 2012-13 92-11-12 in brackets)

	Planning Appeals	%	Allowed	Planning Enforcement Appeals	%	Allowed
Written Reps	94 (84)	94	37	13 (33)	65	1
Hearing	2 (2)	2	0	2 (0)	10	1
Public inquiry	2 (3)	2	1	5 (2)	25	0
TOTAL	98 (89)	100	38	20 (35)	100	2

Appendix 4B: Planning Appeals Determined by Type for 2012-13 (2011-12 figures in brackets)

Type	Planning		Householder		Conservation		Total
Determined	39 (35) Dismissed	23 (17) Allowed	15 (25) Dismissed	15(3)Allowed	6 (1) Dismissed	0 (1) Allowed	98 (89)
Withdrawn	4		2		0	1(LDC)	7

Appendix 5 Table indicating Performance indicators for Planning Enforcement 2012-13

Table of performance indicators			
Performance Indicator Number	Performance Indicator description	Performance Indicator target	Performance Output 2012-13
ENF PLAN 1	Successful resolution of a case after 8 weeks	40%	42% (315 from 747 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%	73% (547 out of 5747 cases closed)
ENF PLAN 5	Cases acknowledged within 3 working days	96%	95% (816 out of 847 cases)
ENF PLAN 6	Planning Enforcement Initial site inspections 3, 10, 15 working days	93%	96% (621 of 669) cases initial visit within the time period)
Performance Indicator Number	Performance Indicator description	Performance output 2012-13	
ENF PLAN 7	Number of Planning Contravention Notices served	109	
ENF PLAN 8	Number of Enforcement Notices Served	116	
ENF PLAN 9	Number of enforcement notices appealed	54	
ENF PLAN 10	Number of enforcement notices withdrawn by Council	11	
ENF PLAN 10a	Number of Enforcement Appeals Allowed	2	
ENF PLAN 10b	Number of Withdrawn Appeals	1	
ENF PLAN 10C	Number of Notice Appealed withdrawn	8	
ENF PLAN 11	Number of prosecutions submitted for non-compliance with enforcement notice	14	
ENF PLAN 12	Number of Notices (Other) served	6	

Appendix 6 – Table showing Outcomes of Planning Enforcement Closed Cases 2012-13 (2011-12 in brackets)

Closure reason	2011-12	2012-13
No breach/Permitted Development	363 (54%)	384(52%)
Not expedient	118 (18%)	86(11%)
Compliance/ Remediation/Regularisation	149 (22%)	214(29%)
Immune from enforcement action	43 (6%)	63(8%)
Total	673 (100%)	747(100%)

Appendix 7: Prosecutions and Outcomes 2011-12

No	Client Department, address and Lead Officer)	Legislation (inc section) prosecution under	Breach Address	Ward	Latest Action
1	Fortune Gumbo	S179TCA Act 1990	153 Gospatrick Road N17	White Hart Lane	Convicted £2000 fined and£760 costs
2	Fortune Gumbo	S179TCA Act 1990	123 Risley Avenue N17	White Hart Lane	Convicted fined £265 and £220 costs
3	Myles Joyce	S179 TCP Act 1990	10 Woodstock Road	Stroud Green	Convicted and fined £13500 and £1980 costs
4	<i>Myles Joyce</i>	<i>S179 TCP Act 1990</i>	<i>316 Philip Lane</i>	<i>West Green</i>	<i>Complied and caution signed along with 28 Wladegrave for £1800 costs overall See above</i>
5	<i>Myles Joyce</i>	<i>S179 TCP Act 1990</i>	<i>28 Waldegrave Road</i>	<i>Noel Park</i>	<i>See above</i>
6	<i>Fortune Gumbo</i>	<i>S179 TCP Act 1990</i>	<i>13 Bounds Green Road (outbuilding)</i>	<i>Bounds Green</i>	<i>Complied and £710 costs paid</i>
7	<i>Fortune Gumbo</i>	<i>S179 TCP Act 1990</i>	<i>32 Park Avenue N17</i>	<i>Woodside</i>	<i>Complied Caution accepted and costs paid £685</i>

8	Abby Oloyede	108 Cranley Gardens	108 Cranley Gardens N10	Muswell Hill	Convicted 30.1.13 Costs £600 awarded
9	Myles Joyce	S179 TCP Act 1990	374 Alexandra Park Road N22	Alexandra	Complied and Caution accepted. Costs £1358 paid
10	Myles Joyce	S179 TCPA 1990	636a Green Lanes	Harringay	Complied and Caution accepted. Costs £770 paid
11	Myles Joyce	S179 TCPA 1990	76 Scales Road	Tottenham Hale	Prosecuted and fined £20000 reduced to £18000 on appeal. costs to Council awarded
12	Fortune Gumbo	S179 TCPA 1990	60 St Pauls Road n17	Tottenham Hale	Complied with and Caution accepted and £650 costs paid
13	Abby Oloyede	S179 TCPA 1990	143-5 Philip Lane	Tottenham Green	Prosecuted and Convicted £1250 Fine £902 costs. Negotiation with Conservation and application submitted. LBA sent.
14	Abby Oloyede	S179 TCPA 1990	2 Moorefield Road	Bruce Grove	Convicted and fined £2000 and £2073 cots. LBA sent 2 nd prosecution

15	Myles Joyce	s181 TCPA 1990	13 Bounds Green Road	Bounds Green	Found guilty- Fined £5000 and costs £2073. Defendants have case stated in High Court June 13
16	<i>Myles Joyce</i>	<i>s179 TCPA 1990</i>	<i>13 Whitley Road</i>	<i>Bruce Grove</i>	<i>Trial 25.1.12 Found guilty and fined £5000x3 £2000 costs in total. Appeal lodged to be heard on 21st May 2012. PP granted overcome EN Resolved</i>
17	Myles Joyce	s179 TCPA 1990	38 Thackerary Avenue	Bruce Grove	Convicted and fined £15000 costs £645. Compliance visit required
18	Fortune Gumbo	s179 TCPA 1990	100 Myddleton Road	Bounds Green	Prosecuted and Convicted. Further action required as no compliance
19	<i>Fortune Gumbo</i>	<i>s179 TCPA 1990</i>	<i>22 Cumberton Road</i>	<i>White Hart Lane</i>	<i>Notice complied with. Withdrawn</i>
20	Myles Joyce	s179 TCPA 1990	2 Goodwyns Vale	Muswell Hill	Found guilty. Case in Crown Court for Confiscation under Proceeds of Crime Act. Matter listed in Wood Green Crown Court for final hearing April

2013.

21	Myles Joyce	s179 TCPA 1990	9 Heybourne Road	Northumberland Park	Pleaded of guilty and convicted. Confiscation order of £143000 made October 2012
22	Myles Joyce	s179 TCPA 1990	1 Bruce Castle Road	Northumberland Park	Pleaded of guilty and convicted. Confiscation order of £143000 made October 2012
23	Myles Joyce	s179 TCPA 1990	98 Hewitt Avenue	Noel Park	Convicted 2 nd time. £14000 fine and £1455 costs Appeal 29.4 WGCC
24	Myles Joyce	s179 TCPA 1990	23 Hewitt Road	Harringay	Convicted for 3 rd time. Transferred to Crown Court for confiscation proceedings under POCA
25	Myles Joyce	s179 TCPA 1990	89 Burgoyne Road	Harringay	Convicted for 3 rd time. Transferred to

**Crown Court
for
confiscation
proceedings
under POCA**

26 Lorcan Lynch

*s179 TCPA
Act 1990*

*232 Philip Lane
N15*

West Green

*Caution accepted
£775 paid*