

Agenda item:

[No.]

Regulatory Committee

On 22nd October 2013

Report Title. **Planning Enforcement Update- Half Year Report 2013-14**

Report of **Director of Place and Sustainability**

Signed : 
Ransford Stewart
Interim Assistant Director of Planning Service

Contact Officer : Myles Joyce Team Leader Planning Appeals, 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 the first half of 2013-14

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 planning. Its effective management and ability to defend the above policies and decisions is a clear indication of the health of the Business Unit.

2.4. Both the Planning Appeals and Enforcement Process are embedded within the objectives of the Corporate Plan.

3. Recommendation

3.1. That Members note the half-year performance for 2013/14 for Planning Enforcement and Appeals.

4. Reason for recommendation

- 4.1. Good progress continues with maintaining the number of open cases at a manageable level, which was 470 on 1st October 2013. The first half of the year has seen a continued and significant increase in caseload with 489 cases received, compared to 846 for the whole of 2012-13 and 718 for 2011-12. Returns with regard to enforcement notices issued (47) and enforcement appeal determined (32) also remain high.
- 4.2. Planning Appeals show an improvement in the number of appeals allowed (35% compared to 38% in 2012-13).

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 half of 2013-14

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 1st April-30th September 2013

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 – Breakdown of Cases by Breach
- Appendix 3 - Enforcement investigation by Type of Breach
- Appendix 4- All Appeals Received and Determined
- Appendix 5 – Planning Enforcement Performance indicators
- Appendix 6 - 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 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. Our current caseload is 470. These include 43 cases received up to 1st April 2012. Only 25 cases remain open from before 1st April 2011(5% of total live cases). 107 cases remain live which are more than one year old at 1st October 2013, 23% of the live case total.
- 13.2 The overall caseload continues to increase since 2011-12 and the live caseload correspondingly has increased. However, formal action and enforcement appeals have also increased. However the number of older cases and therefore case backlog remains relatively low. Nevertheless some 263 or 54% of live cases remain open from those received within the last 6 months. This suggests work need to be done with regard to the timeliness of decision making in general which would help maintain the caseload at a lower number.
- 13.3 Appendix 2 breaks 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. The figures in brackets are for the whole of 2012-13. Whilst this report is concerned with the half year only, the comparison is useful to see trends.
- 13.4 The figures suggest that the investigations concerning works to trees, change of use and departures from approved plans and unauthorised development are increasing whilst those concerning advertisements have declined in number and no cases at all

have emerged so far in 2013-14 for works to Listed Buildings or uses as social clubs. Investigations in to flat conversion or HMOs and Article 4 directions remain broadly similar to last year.

- 13.5 Appendix 3 indicates that 37 planning appeals have been received so far this year, somewhat down proportionally on 2012-13 when 114 were received. With regard to Appeals performance, 35.5% of all planning appeals determined were allowed (one split decision shared between allowed and determined for statistical purposes), a fraction under the National PI (35%) and the London average (32%). Whilst this is an improvement on the 38% allowed in 2012-13, it is considered desirable to improve the figures further to the London average.
- 13.6 Appendices 4A and 4B provide an opportunity to look further into the figures one can see that 73% of planning appeals were dismissed, up from 64% last year. However householder appeals are still relatively disappointing with 50% of the 6 determined so far this year allowed, the same ratio as last year. One Certificate of Lawfulness appeal was determined which was dismissed.
- 13.7 Appendix 4A shows that 92% of all planning appeals were determined by written representation with only two each being determined by informal hearing and one by public inquiry. For planning enforcement a reduction in the number of inquiries to 1 (5 last year) is noted. In addition there were two challenges of appeal decisions to the High Court. Both of these were determined in the last 3 months and both decisions were to uphold the appeal decision and therefore the Notices. Both appellants have indicated an intention to comply with the Enforcement Notice.
- 13.7 The above paragraph demonstrates the need for a continued focus on the quality of appeal resources and decision making to understand how to bring about the small but significant improvement in the appeals performance to be at or better than the London average, 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 continued low level of certificate appeals suggests that for certificate applications more rigour is being put into their processing and consequent quality of decision making.
- 13.9 Planning Enforcement appeals reflect a relative decline in performance. With 7 appeals allowed and one split decision out of 32 so far (compared to 2 out of 20 in all of 2012-13). However a considerable caveat is that a backlog at the Inspectorate has now been resolved leading to the determination of many older appeals. It is therefore expected that the allowed appeals would have been shared between last year and this year. In addition, three of these appeals were marginal decisions based on planning merits. Notwithstanding this the allowed appeals will be subject to considerable scrutiny in an effort to tackle any ways in which the decision making and procedure could be improved.
- 13.10 Appendix 5 deals with Planning Enforcement's performance indicators. Performance has dipped slightly on determination of cases with 36% closed within 8 weeks and 72% in 6 months. There are two main reasons for this: a backlog of older cases filtering through and integration of caseload for some officers with planning applications which

are a priority. Staff turnover has also not assisted with this. The core focus for the second part of 2013-14 will be to focus on reducing the older cases and monitoring decision making times within the enforcement service as part of the general Development Management Improvement project. Returns for initial site visits and case acknowledgement remain above the performance targets.

- 13.11 Customer feedback response rates remain very low and do not provide any real insight into general perception by service users. This is being tackled through the above Improvement plan both in terms of encouraging greater complainant participation and quarterly follow up of complainants and where possible land owners with regard to alleged breaches of planning control.
- 13.12 The continued increase in caseload must be acknowledged which at present rates will mean a return to a caseload of close to 1,000 for 2013-14, representing a 17% increase on last year which itself was an 18% increase on 2011-12. Formal enforcement action remains high with 47 enforcement notices issued so far in 2013-14. The second half of the year is expected to bring if anything even higher returns, comparable with 2012-13.
- 13.16 Appendix 6 shows how cases were closed in four main categories. The returns are almost identical to 2012-13 with 52% closed due to no breach, 8% was due to immunity from enforcement action and only 12% 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% in 2012-13 and has been almost maintained in the first six months of this year at 28%.
- 13.17 Appendix 7 is a table of planning enforcement prosecution and caution outcomes. The returns so far this year are relatively low with three completed cases: one prosecution and two cautions with a further guilty plea in an adjourned prosecution. The three completed cases have all resulted in compliance and resolution of the breach prosecutions. The prosecution attracted a fine of £200 and £800 costs and the two cautions attracted £2575 in costs. 4 prosecutions have been lodged so far in 2012-13.

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	4
sub total 2007/8 - 2008/9	1966	6
2009-2010	878	7
2010-2011	760	7
2011-2012	718	43
2012-2013	846	139
2013-14 to date	498	263
Total for all years	10244	470

Appendix 2: Breakdown of Investigations by Type of Breach 1.4.13-30.9.13 (2012-13 figures in brackets)

Type of Case	No of Cases	Percentage
AT4-Breach of Article 4 direction	12 (34)	2 (4)
ADV-Advertisement	7 (34)	2 (4)
CON-Breach of Condition	3 (7)	1 (1)
COU-Change of Use	34 (47)	6 (5)
DEM	1 (2)	0(1)
DEP-Departure from Plans	47 (58)	10 (8)
EXT-Extension	17 (47)	4 (5)
FCV-Conversion to flats	48 (107)	10 (13)
HMO-House in Multiple Occupation	6 (19)	2 (2)
LBW-Listed Building	0 (10)	0 (1)
SAT-Satellite Dish	32 (70)	6(8)
SOC-Social Club	0 (6)	0 (1)
TPC- Works to Trees	18 (25)	4 (3)
UNT-Untidy Land	4 (4)	1(1)
UPW-Place of Worship	1 (6)	0(1)
UNW-Unauthorised Development	258 (370)	52 (42)
TOTAL	498 (846)	100

Appendix 3: Planning and Enforcement Appeals Received and Determined April 1st to September 30th (2013-14) (2012-13 figures in brackets)

	Planning Appeals	%	Planning Enforcement Appeals	%
Received	37 (114)	100	18 (54)	100
Determined	39 (108)	100	32 (34)	100
Dismissed	25 (65)	67 (62)	24.5 (18)	90 (68)
Allowed	12 (22)	35.5 (38)	7.5 (2)	10(23)
Split	1 (n/a)	2.5 (n/a)		
Withdrawn	1 (7)	n/a	(3)2	n/a
Turned Away	1(3)	n/a	1(5)	n/a
Notice withdrawn	n/a	n/a	2(8)	n/a

Appendix 4A: All Appeals by Method of Determination 1.4.13-30.9.13

	Planning Appeals	%	Allowed	Planning Enforcement Appeals	%	Allowed
Written Reps	36	92	11.5 (split)	31	97	6.5
Hearing	2	5	0	0	0	
Public inquiry	1	3	1	1	3	1
TOTAL	39	100	38	20 (35)	100	2

Appendix 4B: Planning Appeals Determined by Type for 1.4.13-30.9.13

Type	Planning		Householder		Certificate		Total
Determined	22 (73%)Dismissed	9 (27%) Allowed	3 Dismissed (50%)	3 Allowed (50%)	1 Dismissed	0 allowed	38 (89)
Split			1	1			1
Withdrawn	1		0		0		1

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%	36% (152 from 426 cases closed)
ENF PLAN 3	Customer satisfaction with the service received	To be determined	Feedback TBA
ENF PLAN 4	Cases closed within target time of 6 months	80%	72% (308 out of 426 cases closed)
ENF PLAN 5	Cases acknowledged within 3 working days	90%	96% (384 out of 398 cases)
ENF PLAN 6	Planning Enforcement Initial site inspections 3, 10, 15 working days	90%	91% cases initial visit within the time period)
Performance Indicator Number	Performance Indicator description	Performance output 2013-14 (1 st half)	
ENF PLAN 7	Number of Planning Contravention Notices served	56	
ENF PLAN 8	Number of Enforcement Notices Served	47	
ENF PLAN 9	Number of enforcement notices appealed	18	
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	3	
ENF PLAN 10C	Number of Notice Appealed withdrawn	2	
ENF PLAN 11	Number of prosecutions submitted for non-compliance with enforcement notice	4	
ENF PLAN 12	Number of Notices (Other) served	7	

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

Closure reason	2011-12	2012-13	2013-14 (first half)
No breach/Permitted Development	363 (54%)	384(52%)	234 (52%)
Not expedient	118 (18%)	86(11%)	49 (12%)
Compliance/ Remediation/Regularisation	149 (22%)	214(29%)	111 (28%)
Immune from enforcement action	43 (6%)	63(8%)	32 (8%)
Total	673	747	426

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</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	Bundle for 2nd prosecution submitted. Hearing November
9	<i>Myles Joyce</i>	<i>S179 TCP Act 1990</i>	<i>374 Alexandra Park Road N22</i>	<i>Alexandra</i>	<i>Complied and Caution accepted. Costs £1358 paid</i>
10	<i>Myles Joyce</i>	<i>S179 TCPA 1990</i>	<i>636a Green Lanes</i>	<i>Harringay</i>	<i>Complied and Caution accepted. Costs £770 paid</i>
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	<i>Fortune Gumbo</i>	<i>S179 TCPA 1990</i>	<i>60 St Pauls Road n17</i>	<i>Tottenham Hale</i>	<i>Complied with and Caution accepted and £650 costs paid</i>
13	Abby Oloyede	S179 TCPA 1990	143-5 Philip Lane	Tottenham Green	To instruct Legal to commence 2nd prosecution
14	Abby Oloyede	S179 TCPA 1990	2 Moorefield Road	Bruce Grove	Convicted and fined £2000 and £2073 cots. LBA sent 2nd prosecution
15	<i>Myles Joyce</i>	<i>s181 TCPA 1990</i>	<i>13 Bounds Green Road</i>	<i>Bounds Green</i>	<i>Complied with</i>

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	POCA case completed
21	Myles Joyce	s179 TCPA 1990	9 Heybourne Road	Northumberland Park	POCA completed

22	Myles Joyce	s179 TCPA 1990	1 Bruce Castle Road	Northumberland Park	POCA completed
23	Myles Joyce	s179 TCPA 1990	98 Hewitt Avenue	Noel Park	Convicted 2nd time. £14000 fine and £1455 costs Appeal 29.4 WGCC
24	Myles Joyce	s179 TCPA 1990	23 Hewitt Road	Harringay	Final confiscation hearing under POCA November 2013
25	Myles Joyce	s179 TCPA 1990	89 Burgoyne Road	Harringay	Final confiscation hearing under POCA November 2013
26	<i>Lorcan Lynch</i>	<i>s179 TCPA 1990</i>	<i>136 Castlewood Road</i>	<i>Seven Sisters</i>	<i>Caution accepted and costs paid.</i>
26	<i>Lorcan Lynch</i>	<i>s179 TCPA 1990</i>	<i>89-91 Wargrave Avenue</i>	<i>Seven Sisters</i>	<i>Caution accepted and costs paid</i>
25	<i>Lorcan Lynch</i>	<i>s179 TCPA 1990</i>	<i>Upper Tollington Road (Car Wash)</i>	<i>Stroud Green</i>	<i>Convicted. Fined £200 and £800 costs. Complied</i>
26	Lorcan Lynch	s179 TCPA 1990	63 Gladesmore Road	Seven Sisters	Entered guilty plea. Adjourned for sentencing November

26 Lorcan Lynch s179 TCPA 232 Philip Lane West Green Caution accepted £775 paid
Act 1990 N15