

Agenda item:

Report for:	Regulatory Committee 9 September 2014	Item Number:	
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Title:	Planning Enforcement Annual Update Report
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Report Authorised by:	Stephen Kelly/Emma Williamson
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Lead Officer:	Myles Joyce
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Ward(s) affected: All	Report for Key/Non Key Decisions:
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1. **Describe the issue under consideration**
 - 1.1 To advise the Regulatory Committee of performance on Planning Enforcement in 2013/14.
2. **Recommendations**
 - 2.1 That the report be noted.
3. **Background information**
 - 3.1 The service continues to effectively manage the live caseload (464 on 1st January 2014). The first three-quarters nevertheless saw a continued and significant increase in reported cases with 730 cases received, compared to 846 for the whole of 2012-13 and 718 for 2011-12. Returns with regard to enforcement notices issued (59) and enforcement appeals determined (36) also remain high.

3.2 Planning Appeals show an improvement in the number of appeals allowed (29% compared to (38% in 2012-13). However Enforcement Appeals have seen a relative decline in importance from 10% allowed in 2012-13 to 23% allowed so far in 2013-14. However this year has seen an enforcement appeal backlog at the Planning Inspectorate (PINS) cleared which explains the much higher number of determined appeals this year (36 up from 20 for the whole of last year)

4. Planning Enforcement and Appeals Performance

- 4.1 Appendix 1 provides a table showing cases still open at 1 April 2014. The current caseload at that point was 464. These include 43 cases received prior to 1st April 2012. Only 18 cases remain open from before 1st April 2011(4% of total live cases). All of these cases have been subject to formal action and includes cases for prosecution, re-prosecution, where appeals against enforcement notices have been determined and the Notice upheld and where notices have been issued and are now in breach. 113 cases remain live which are more than one year old at 31st March 2013, 24% of the live case total. This is comparable to 115 cases 1 or more years old at the end of 2012-13 which was 27% of the total.
- 4.2 The overall caseload continues to increase since 2011-12 and the live caseload correspondingly has increased. In addition, formal action and enforcement appeals have also increased. However the number of older cases and therefore case backlog remains relatively low. Nevertheless some 299 or 64% of live cases remain open from those received in 2013-14. Whilst this is an improvement on the 300 out of 415 cases returned at the end of 2012-13 for cases received in 2012-13 (72%), the service is putting into place new procedures which aim to provide support to officers to make decisions on investigations earlier (or to escalate such cases to senior managers) and to increase the support provided by the Council's IT systems to ensure that management of cases requires less (manual) handling.
- 4.3 Appendix 2 breaks down the cases by nature of the breach and formal enforcement action taken. An increase in the number of cases for departures from approved plans (DEP) and changes of use (COU) is noted. Other complaints such as cases received for flats conversions (FCV) and HMOs (HMO) seem set to be of similar magnitude by the end of 2013-14 as for the previous year.
- 4.4 In addition, a new code for cases specific to enforcement projects has been added (PRJ). This is considered useful as such cases are often open for comparatively long periods of time and therefore should not be used with regard to calculating PIs for case closures.
- 4.5 Appendix 3 is a new table which breaks down cases received and notices served by ward. This table is useful in providing an area focus and indicates

that whilst the caseload continues to rise overall, the increase is concentrated in the east of the borough and the south-eastern wards in particular.

Planning Enforcement Appeals:

- 4.6 Planning Appeals are reported elsewhere. Planning Enforcement appeals shown in Table 4 reflect a relative decline in performance. With 7 appeals allowed and one split decision out of 36 (compared to 2 out of 20 in all of 2012-13. However a considerable caveat is that a backlog at the Inspectorate was 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 years. In addition, three of these appeals were marginal decisions based on planning merits. Reviewing the unsuccessful appeal decisions in more detail indicates;
- 4.7 The enforcement notice appeals were allowed on the following grounds:
- Ground a) that planning permission ought to be granted (2 allowed and one split)
 - Grounds b) that the breaches alleged in the notice have not occurred (2 allowed and notices quashed)
 - Ground d) that at the time the enforcement notices are issued no enforcement action could be taken (2 allowed and Notices quashed)
 - Ground e) service not in accordance with legislative requirements (one allowed and notice quashed)
 - Other: Notice quashed as description of the alleged breach differed from the actual breach and Notice could not be amended without injustice to either party. Notice quashed.
- 4.8 As has been mentioned, the three appeals allowed under ground a) were all marginal and whilst two were for residential development (roof terrace, and boundary and window shutters respectively, one was for a change of use from lass A1 retail to Class A2 (financial and professional services). Whilst planning permission was granted as part of this appeal, the Inspector concluded that there was a change of use to A2 when the case lending business in question was trying to argue that because there was some retail that no change of use from A1 had occurred. Thus the appeal has given a clear Independent decision on this matter which can be applied to future similar cases.
- 4.9 More unusually, two appeals have been allowed under ground b). Both appeals at the time of the Inspector's site visit differed in terms of use from when the case officers visited and considered the breaches (change of use to repair of vehicles in a block of residential garages the first instance and nature of conversion of a residential property in the latter). The first appeal therefore provides a useful reference for where a change of use has occurred with regard

to fact and degree i.e. is it material. The latter however was the Inspector considering that as some uses, garden, kitchen, sitting room outweighed the fact that the rooms were fully self-contained that is they had living, cooking and washing facilities. Whilst the decision was disappointing, compliance was achieved insofar as the use of the property reverted to a small HMO prior to 30th November 2013, the date the Article 4 direction affecting HMOs came into effect. However we continue to liaise with the Council's Private Sector Housing Team with regard to this site as the profitability of the former breach may tempt reversion to unauthorised use in the future.

- 4.10 Two further appeals were allowed under ground d) as it was considered no enforcement action could be taken at the time the Notice was issued as the use as self-contained flats was established (under the 4 year rule). One was determined by public inquiry and another by written representations. The written representations appeal under this ground provided evidence only once the Notice had been issued but was accepted by the Inspector as having been an established use. With regard to the latter appeal decision however, the evidence provided of the established use, whilst accepted by the Inspector was despite the lack of supporting council tax, planning or building records and was a rather more marginal decision. Being at public inquiry evidence given under oath will inevitably carry more weight and this was key in the appellant's evidence being considered sufficient to allow the appeal.
- 4.11 Furthermore, one appeal was allowed under ground e) which is an appeal alleging that there was a failure to correctly serve the Notice on all known parties as required by the Planning Acts. It is rare for such an appeal to succeed in fact only one other appeal has been allowed against the Council in the last six years. This decision centred on a process error in the lack of service of the notice to the occupiers of one of the flats. A review of the process for serving notices has taken place following this decision.
- 4.12 Finally one notice was quashed as the Inspector felt the alleged breach as described in the Notice did not reflect what she observed on an appeal site visit. At the time of her visit, there was an outbuilding, a reception with office, sofa storage and WC, bathroom kitchenette – at the time of the officer's visit this was residential and the Notice was issued accordingly. Like the appeal above on ground b the officer noted changes had been made from what was observed prior to issue the Notice 10 months previously and what was observed during the appeal site visit. The Inspector concluded that the notice could not be varied without causing injustice and quashed the Notice. .
- 4.13 *Key learning points:*
- The service continues to review the assignment and allocation of resources between enforcement and development management to ensure that enforcement function is managed with flexibility and responsiveness in mind.

- The service is beginning a review of the enforcement policy to enable timely and efficient service of notices and clarity about prosecution and POCA within the suite of enforcement tools when deliberate frustration is being pursued by applicants.
 - Enforcement Appeals are being used to inform the development of emerging planning policy documents.
 - Enforcement delegated reports are being reviewed to update the “checklist” for evidence and records to improve the consistency of assessment and delivery of cases for action.
 - A procedure note on service of enforcement notices is being updated.
- 4.14 The Inspectors decisions have argued on two issues which should assist planning enforcement action in the future: that a retail component to an A2 use should be significant to be material especially when applied to money lending uses and that the number of units can be varied without injustice. Previous case law had held that this was the case but that case was for a lesser number of units than what was alleged in the enforcement notice.
- 4.15 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 some officers with planning applications which are a priority. Staff turnover as well has not assisted the service with regard to this matter. The core focus going forward 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. Returns for initial site visits and case acknowledgement remain above the performance targets.

Customer Satisfaction

- 4.16 The service has recently undertaken an enforcement customer satisfaction survey for users and is currently completing a survey of enforcement action recipients. A telephone survey of all complainants who raised concerns between 1 April 2013 - 30 June 2013 (261 cases) was carried out by an external provider Virtual leads limited. Of the 261 cases contacted 82 surveys were completed. (31.4%). The overall service satisfaction rate is 56.1%. This is mirrored by the level of satisfaction for keeping clients informed about their complaints (57%). The level of satisfaction for staff politeness/ helpfulness (71.3%), explaining decisions, (60%) and returning phone calls/emails, (61.5%) indicates that the service needs to improve on communication with clients. Some 23 responses were received on how the service could improve. Lack of

communicating with the client during investigation of cases and on the outcomes accounts for 19/23 responses received and improvement in this area of work is key to improving the overall satisfaction rate.

- 4.17 Appendix 6 shows how cases were closed in four main categories. The returns are almost identical to 2012-13 with 52% were due to no breach, 9% was due to immunity from enforcement action and only 12% of cases closed were due to reasons of expediency. This return for those closed as not expedient 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 continues at a comparatively high level at 27%, reduced slightly from 29% in 2012-13 but a significant increase from the 22% in returned in 2011-12..

Incomes and Prosecutions

- 4.18 The returns this year are 10 completed cases: 5 prosecution and convictions, two accepted simple cautions and costs paid in lieu of prosecution and three completed confiscation hearings under the Proceeds of Crime Act. In addition 8 planning enforcement appeals attracted fees as the planning merits (Ground a avenue of appeal against the Notice)
- 4.19 To 31st March 2014 prosecutions had attracted fines in the Courts of £20,920 with the Council awarded £15,975 in costs (including POCA convictions). Two simple cautions yielded £2416.75 during the same time period. Enforcement appeal fees brought in £10,576 a grand total of £28,977.75 in income.
- 4.20 Table 7 has been split into four components- the three completed POCA cases in Table 7A, the cases where successful prosecutions and convictions have been made but are still unresolved in Table 7B (11 cases) and cases where prosecution and conviction has resulted in compliance in table 7C and lastly where prosecution has led to compliance and the Council accepting a caution in lieu of prosecution in table 2 (two cases)

Proceeds of Crime Act (POCA)

- 4.21 Five breaches of planning control have been referred for confiscation under the Proceeds of Crime Act (POCA) cases involving three since October 2010. All had their final hearing with confiscation awarded and sentences handed down by 31st December 2013.
- 4.22 Three final hearings were heard with regard to POCA cases. This has resulted in the following confiscations for which LBH gets an 18.75% share. I am grateful to the Council's Legal Services for their assistance in compiling the outcomes for these three cases. The figures in bold are outlined below:

1. Adams- 2 Goodwyns Vale N10

- £44,640 POCA to be paid by 25 April 14.
- £2,500 costs is to be paid by 25 April 14.
- Planning Enforcement's share will be **£8,370**. If he sells the property and pays up in time the Council should receive it by 30 Sep 14 (the Home Office sends it to us at the end of the next quarter after the quarter in which the defendant paid).

2. Pakkos- 9 Heybourne Road and 1 Bruce Castle Road

- £44,640 POCA has been paid by the defendant to the Home Office.
- £8,771.78 costs have been paid to the legal service.
- Planning Enforcement's share will be **£4,687.50** should be paid by the Home Office to your department by 31 March 2014.

3. Izzet-

- £312,315 POCA to be paid by 22 June 2014.
- £6,900 costs to be paid by 22 June 2014.
- Planning Enforcement's share will be **£58,559.07**.

4.23 Legal Services advise us as a general note members should be aware that in recent times the Proceeds of Crime Act has been criticised in the press for not having sufficient teeth when it comes to recovery. It can be effective though if used selectively.

4.24 Should full recovery be achieved a total of **£71,616.57** from the above Council's Proceeds of Crime cases.

5. Use of appendices /Tables and photographs

Appendix 1 - The number of open cases 1.4.13 to 31.3.14

Appendix 2 – Breakdown of Cases received by Breach 1.4.13 to 31.3.14 (2012-13 comparator)

Appendix 3 - Breakdown of Cases received and notices served by Ward 1.4.13 to 31.3.14 (2012-13 comparator)

Appendix 4- Planning Enforcement appeals 1.4.13 to 31.3.14

Appendix 5 – Suite of Planning Enforcement Performance indicators 1.4.13 to 31.3.14

Appendix 6 - Outcomes of Planning Enforcement Cases Closed 1.4.13 to 31.3.14

Appendices 7 (7A-D) – Table showing planning enforcement prosecution & caution outcomes, including POCA cases.at 31.3.14

6. Local Government (Access to Information) Act 1985

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