

Agenda item 8 – Housing and Regeneration Scrutiny Panel

Report for:	Regulatory Committee 9 September 2014	Item Number:	
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Title:	Planning Enforcement and Appeals Quarter One 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 and Appeals in Quarter One of 2014/15.

2. Recommendations

- 2.1 That the report be noted.

3. Background information

- 3.1 The service continues to receive a high number of cases with 246 received so far in 2014-15. The live caseload is 569. The first quarter of the year is on course to receive 984 cases by year end. This compares to 955 for 2013-14, 846 for the whole of 2012-13 and 718 for 2011-12. Returns with regard to enforcement notices issued (16) and enforcement appeals received (17) also remain high.
- 3.2 Planning Appeals show an improvement in the number of appeals allowed (19% for the first quarter compared to 29% in 2013-2014 and 38% in 2012-13). However Enforcement Appeals have also seen an improvement in performance from Appeal decisions have recovered with 0% so far allowed this year compared with 23% allowed in 2013-14 and 10% allowed in 2012-13.

4. Planning Enforcement and Appeals Performance

- 4.1 At 1st July 2014 569 planning enforcement cases are still open. Efforts to reduce the caseload to below 500 will be made in the second quarter of 2014-2015 as

officers have been dealing with the fallout from the high level of enforcement notices served on the final quarter of 2013-14

- 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. The service has now put in 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 it is intended to increase the support provided by the Council's IT systems to ensure that management of cases requires less (manual) handling.

Planning Enforcement Appeals:

- 4.4 The service has received 17 Planning Enforcement appeals for the first quarter of 2014-15. This is considered to be a consequence of the high formal enforcement activity in the last quarter of 2013-14 when a large number of enforcement notices were served. Not surprisingly, determined appeals show a more limited and typical return with 5 appeals determined and all dismissed. Whilst this is encouraging, given the above it is considered too early to be able to satisfactorily compare performance with 2013-14 and earlier years.
- 4.5 Appendix 2 deals with Planning Enforcement's performance indicators. Performance returns have improved in the first quarter of 2014-15 with 41% closed within 8 weeks and 81% in 6 months,. This compares favourably with 2013-14 with returns of 36% and 72% respectively. At the same time determinations on action to be taken being reached in 8 weeks for the first quarter of 2014-15 was recorded. The return of 45% is well below the PI for this return set at 65%. It is considered that this is in part due to the fact that officers are still getting used to the process and the approval of the associated 8 week decision correspondence.
- 4.6 However the improvement in the case closure performance suggests that the introduction of this new PI has focussed officer minds with more with regard to more prompt decision making and further improvement in the decision and closure PIs are anticipated at the half year stage.

Caseload Matters

- 4.7 The continued increase in caseload must be acknowledged which at present rates will return a caseload of c. 984 for 2014-15, representing a more modest increase on the 957 cases returned in 2013-14 but was in itself a 15% increase on 2012-13 which also was an 18% increase on 2011-12. Formal enforcement action is relatively high with 16 enforcement notices issued in the first quarter of 2014-15. Overall, it is anticipated that the number of notices issued will be roughly in line with last year.
- 4.8 Appendix 3 shows how cases were closed in four main categories. The returns are not dissimilar to earlier years with 55% due to no breach. However only 5%

were due to immunity and 7% due to not being expedient to enforce, both representing a further drop in proportion in comparison with previous years. 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

- 4.9 To 30th June 2014, the returns so far this year are 3 completed cases: 1 prosecution and convictions, and two accepted simple cautions and costs paid in lieu of prosecution and three completed confiscation hearings under the Proceeds of Crime Act.
- 4.10 In addition 8 planning enforcement appeals attracted fees as the planning merits (Ground a avenue of appeal against the Notice). To date appeal fees required with regard to enforcement appeals total £9,076.
- 4.11 To 30th June 2014 prosecutions had attracted fines in the Courts of £2,500 and £20,920 with the Council awarded £500 in costs (Two simple cautions yielded £1,585 during the same time period.
- 4.12 Appendix 4 is concerned with the prosecutions and is split into three, the three completed POCA cases in Table 4A, the cases where successful prosecutions and convictions have been made but are still unresolved in Table 4B and cases where prosecution action has led to compliance either after conviction or when the Council accepting a cuaiton in lieu of prosecution. . The total income therefore received this quarter with regard to appeals and prosecutions (excluding POCA) is **£11,161**.

Proceeds of Crime Act (POCA)

- 4.13 There have been no further cases referred for confiscation under the Proceeds of Crime Act (POCA).
- 4.14 The total below for the 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. Goodwyns Vale N10
 - £44,640 POCA to be paid by 25 April 14.
 - £2,500 costs has now been paid to LBH.
 - Planning Enforcement's share will be **£8,370**.
 2. 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**.

4.15 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.

4.16 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- Planning and Planning Enforcement appeals 1.4.14 to 30.6.14

Appendix 2 – Suite of Planning Enforcement Performance indicators 1.4.14 to 30.6.14

Appendix 3 - Outcomes of Planning Enforcement Cases Closed 1.4.14 to 30.6.14

Appendices 4 (7A-C) – Table showing planning enforcement prosecution & caution outcomes, including POCA cases, at 30.6.14

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