

**RESIDENTS' AND ENVIRONMENTAL SERVICES
POLICY OVERVIEW COMMITTEE**

2009/10

DRAFT REVIEW SCOPING REPORT

Proposed review title:

**PLANNING ENFORCEMENT – CONSTRUCTION AND USE OF
DETACHED OUT-BUILDINGS (HOMES IN BACK GARDENS)**

Aim of review:

The committee will review the construction and use of unlawful detached out-buildings (Homes in Back Gardens) in the Borough and the enforcement role the Council plays tackling this.

Proposed outcome

A report summarising the Committee's findings would be completed and presented to the Council's Cabinet. The report will present recommendations in relation to the Council's enforcement role against unlawful detached outbuildings being used as homes.

Draft Terms of reference

1. To understand the Council's statutory duty enshrined in planning legislation in relation to the enforcement process in relation to illegal use of outbuildings as homes.
2. To examine how the owners of unlawful properties are identified and dealt with.
3. To review the timescales and processes dealing with unlawful properties by the council and other bodies involved, e.g. enforcement, private sector housing, council tax and building control.
4. To investigate whether existing legislation assist the council in tackling the problem effectively.
5. To seek out views from a number of key witnesses and stakeholders
6. To make recommendations to Cabinet, as appropriate.

Reasons for the review

To consider whether there are any improvements that can be made to the processes currently used to improve the enforcement action.

Key Issues

- Concerns about the length of time currently taken in identifying breaches in relation to homes in back gardens?
- What process are currently in place?
- The number of complaints/enquiries in relation to use of buildings in back gardens as homes?
- How can we improve the public perception of our enforcement function and partnership working?

Methodology

The committee will look at the information provided and receive evidence from Officers and other key witnesses, including case studies where there have been prosecutions.

Witnesses/Evidence providers

Officers from Enforcement, Environment, Private Sector Housing, Council Tax Collections, District Valuations Office, Local Police, Elected Members, Fire Brigade,

Connected work (recently completed, planned or ongoing)

Following a review of the Enforcement function undertaken in 2005, the need for an increase in resources was acknowledged by Members and officers alike. As a result, the formation of the Team was enhanced both in terms of management and number of case (Enforcement) officers.

In early 2008 Members agreed to a further increase in the number of permanently employed officers.

Since 2006 working procedures have progressively been evaluated against recognised Best Practice. As a consequence, a number of initiatives have been introduced both in terms of internal procedures and Partnership working. The improved effectiveness of the Enforcement function can be measured against a number of indicators, namely:

- Ability of the Team to investigate/process a marked increase in the number of complaints
- increased number of reports submitted to Planning Committees,
- The number of Enforcement Notices served

- The number of Enforcement Notices complied with
- Number of successful Court prosecutions - resulting in the imposition of substantial fines and awarding of costs,
- The significant number of cases resolved through negotiation - resulting in a financial saving to the Council, and a less combative approach

Proposed timeframe & milestones

Meeting	Action	Comments
15/12/09	Evidence session from officers and key stakeholders	2-4 witnesses
16/01/09	To receive a final draft report for consideration by the committee	Sign off the final report

Risk assessment

Inability of the Council to provide a resourced planning enforcement function capable of providing an adequate level of service may result in:

1. Aggrieved parties complaining to the local Ombudsman resulting in a finding of mal-administration
2. Legal Challenge on behalf of an aggrieved party by way of Judicial Review,
3. Inability to recruit & retain experienced staff.

The review needs to be resourced and to stay focused on its terms of reference in order to meet this deadline.

DOCUMENTS ATTACHED

Information on current position – Appendix A1

Example of a recent Enforcement Case setting out timescales – Appendix A2

Considerations for a way Forward – Appendix A3

Motion agreed at Council on 5 November 2009 – Appendix A4

APPENDIX A1

CURRENT PROCESS

Current Planning Enforcement resources do not enable the concentration of efforts upon individual area(s) of concern, one of which is the unauthorised erection and use of outbuildings within existing residential properties (dwellinghouses).

Primarily, the Council's Planning Enforcement section relies upon nearby residents/ neighbours to advise them of unauthorised outbuildings. Generally neighbours will advise the Enforcement team through emails, the internet or direct phone calls through to the Council's Call Centre.

The Enforcement team also work in co-operation with the Private Sector Housing Team who report potential unauthorised outbuildings. The Enforcement also has strong links with Council Tax Collections who advise of property owners having applied to obtain separate Council Tax rating on outbuildings. The District Valuations Office informs the Council where their officers have seen potential breaches of planning control on site.

The Enforcement team liaise with the local Police who contact the Council where they suspect person(s) to be living in outbuildings. Elected Members, via PCS Enquiries, contact the Enforcement in circumstances where local constituents complain to them direct or where Members have identified outbuildings during their ward walks.

The workload of the Enforcement Team has risen significantly in recent months. Officers contribute the increase to both a heightened awareness on the part of the public of the Enforcement function within the Borough and an overall trend toward non-compliant behaviour resulting from the 'down-turn' in the national economy. This situation, which according to a number of reliable sources is likely to continue for the foreseeable future.

In addition to the above together with the effects of both legislative constraints imposed upon Planning Authorities and the complexity of certain of the cases, concern has been expressed over the ability of the Council to provide an adequate and robust response.

APPENDIX A2

CASE STUDY LARGE OUT BUILDING BUILT IN REAR GARDEN OF 3 BEDROOM SEMI DETACHED HOUSE IN THE SIPSON AREA.

The outbuilding in question first came to the attention of the planning department in November 2006 via complaints from nearby residents. A site visit was made by the planning Enforcement officer on the 30 November 2006. Investigations revealed that a large out building had been constructed in the rear garden which was twice the ground floor area of the parent building being 99 sq m in area.

Letters were sent out to the owner in both December 2006 and February 2007 advising the owner of the planning breach and requesting that they contact Planning Services. A telephone call was received from the owner on the 3 May 2007; the owner was advised to reduce the size and height of the building. The owner advised officers that he would be submitting a planning application to retain the building as built. Further phone calls from the owner were received on the 10 May and 5 June 2007.

An application for planning permission for retention of the outbuilding, submitted on the 10 December 2007, was refused by the Council on the 19 May 2008 and the matter passed back to the Enforcement.

A subsequent enquiry of H M Land Registry established details of parties with an interest in the land. Liaison with Public Sector Housing officers revealed prior knowledge of the outbuilding/use as a separate dwelling. The Council Tax Collections were also advised of the breach in planning control.

On 30 September 2008 a further site visit undertaken by the Enforcement case officer provided evidence (including photographic) of both sleeping and kitchen facilities were present and in use. With the assistance of the Building Control Surveyors, plans submitted as part of an application for approval under Building Regulations were inspected.

On 9 October 2008, in an effort to ascertain further information: when the outbuilding was built and details of person(s) resident, a PCN was issued/served. A further check of the site revealed a lady (a North Korean national) to be residing in the outbuilding.

Subsequently, the land-owner submitted an application for the grant of a Certificate of Lawfulness of Existing Development (CLUED) - later to be withdrawn.

The PCN questionnaire, having been completed, was received on the 21 October 2008.

On 6 January 2009 a report was placed in front of the Planning Committee, as a result of which Members authorised the taking of formal Enforcement action. On 29 January 2009 a Notice was served upon both the owner and person

with an interest in the property. Subsequently, the land-owner submitted an Appeal against the service of the Notice which resulted in a hearing taking place on 3 September 2009.

On 17 September 2009 the Decision letter was published, dismissing the Appeal and upholding the Notice. As a consequence of the Appeal process, the date for compliance with the requirements of the Enforcement Notice has been re-scheduled until 17 December 2009 by which time the outbuilding is to be demolished and all materials, plant and machinery associated with the works removed from the site.

APPENDIX A3

CONSIDERATIONS FOR A WAY FORWARD

- A review of IT systems to identify ready access/exchange of intelligence,
- Put in place a mechanism for inter-Service working - forum for Team Managers to discuss cases/strategy,
- Encourage a Corporate approach in terms of both speed and level of response.

The ability to efficiently access information would not only minimise the time taken to progress investigations, Services/officers would be encourage to adopt a 'corporate approach'. All too often the public are frustrated by the time taken to bring about a resolution to matters perceived to impact adversely upon their lives.

Several of the legal/procedural processes Planning Enforcement have to adhere to, are both complex and time consuming. Although, in terms of securing a long-term planning solution this would remain to be the case, in order to bring about a more immediate and tangible improvement a 'lateral' approach could be adopted.

By encouraging a corporate approach as a result of which robust and timely action is taken against the abuse of statutory controls, the Council would both enhance its image in the eyes of the public and provide a deterrent to all those intent upon non-compliant behaviour.

Proposal for working closely/what would work well

As stated above, the ability for officers to readily access (share) intelligence would constitute a major step forward, likely to result in enhanced inter-departmental working and the more efficient use of resources (officer time/effort).

Such facility would have benefits across the Council, lessening the time taken to progress investigations and instigate the taking of action as appropriate.

Although a number of officers (particularly those with an investigatory background) seek assistance from colleagues within other disciplines, current Council processes not encourage the taking of a corporate approach.

In addition to the introduction of compatible IT systems, other improvements to working practices need to be considered: agreed protocols for inter-Directorate working, regular case review meetings and a forum for Managers to explore further initiatives/partnership working.

Some, if not all, of the regulatory controls administered by the Council are complex, particularly in terms of legislation and Governmental guidance. In order that complaints (and other matters) are thoroughly investigated and action taken, it is essential that officers are employed appropriate to their given area of expertise/qualifications.

It is recognised that some form of 'over-arching' management would be required to enable the various Teams within the Council to function efficiently. However, the Council should avoid the trap of bringing all regulatory functions/staff within one centralised Team. In the case of other Local Authorities, experience has shown such an approach to have been unsuccessful, resulting in the re-creation to specialist Teams with counter-productive consequences i.e. loss of staff and expertise.

APPENDIX A4

MOTION FROM COUNCIL – 5 NOVEMBER 2009

This Council is aware that there is strong public concern about the development of out buildings in back gardens particularly for use as rented homes.

This Council notes that it is a growing problem not helped by the government's changes to the planning system with regard to permitted development rights. It is pleased to note that officers for Planning Enforcement, Private Sector Housing and the Councils Tax collection teams are now working together on this issue and that this issue will be given full scrutiny through the RESPOC and through the HIP process.

This Council calls upon the Cabinet Member for Planning & Transportation to look at this issue in depth and then take appropriate action including lobbying Central Government to review this long ignored area of Planning Legislation to give it more teeth to prevent this spread of what is often un-neighbourly development.