

London Borough of Hillingdon

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

2009/10

DRAFT SCOPING REPORT

Proposed review title:

**PLANNING ENFORCEMENT – IT'S INCREASING EFFECTIVENESS
IN A NON-COMPLIANT WORLD**

Aim of review:

In an increasingly non-complaint world planning Enforcement is becoming more high profile and is involving an ever increasing amount of partnership working. The aim of the review should be to consider how the planning Enforcement Team can work better with both internal and external partners to achieve Corporate Objectives.

Draft Terms of Reference:

- 1. To examine the effectiveness of the Planning Enforcement service in providing an adequate response to the increasing number and complexity of complaints/enquiries.**
- 2. To identify trends in partnership working in order to improve the Enforcement process,**
- 3. To investigate opportunities for increased partnership working.**
- 4. To examine the ability of the Enforcement Team to adhere to accepted Best Practice.**

Background and importance:

1. Two of the Councils key corporate objectives are:
 - (i) *'Making Hillingdon a cleaner, greener Borough'*.
 - (ii) *Ensuring the heritage and natural environment, especially the green belt, are both protected and enhanced.*

Planning Enforcement has a key role in protecting the natural and built environment.

2. Planning Enforcement and protecting the natural and built environment are high profile with respect to both resident interest and media coverage (the various editions of the gazette always have planning enforcement related stories).

3. The Planning Enforcement Team presently comprises: a Manager, a Deputy Manager, 1 x Admin/Technical Support officer and 5 x Enforcement officers (currently one (1) x vacant post) who process cases from receipt of complaint(s) until the files are closed. The team is larger than a few years ago. This reflects:
 - (i) Complexity of complaints
 - (ii) Increase number of Notices served and prosecutions
 - (iii) Increase in the number of complaints/enquiries received
 - (iv) Greater importance placed by customers upon Enforcement
 - (v) To address a perception that the Council did not put enough resources into planning Enforcement.

4. Planning Enforcement operates within a legislative boundary (Town and Country Planning Acts). Key functions of Planning Enforcement are:
 - (i) Investigation of alleged breaches of planning control
 - (ii) Regularising or remedying breaches

In over 90% of cases, the involvement of the Enforcement team does not result in the Council serving a formal notice(s). This is because complaints may not be breaches of planning control, there may be a negotiated solution to the issue or the activity or use(s) cease following the involvement of an Enforcement officer.
 - (iii) Determining whether breaches can be rectified through submission of a planning application.

In a high proportion of cases it will be identified that a planning application is required. It is recognised good practice, prior to consideration of serving an Enforcement Notice and unless it is clearly evident that an application is fundamentally contrary to development plan policy, to enable submission of a planning application,

5. Further important parameters under which the Planning Enforcement service operate are listed below:
 - (i) Undertaking development without planning permission is not a criminal offence.
 - (ii) The taking of formal Enforcement action is at the discretion of the Local Planning Authority.
 - (iii) There is a statutory requirement to consider whether it would be 'Expedient' to take formal Enforcement action. This means that the fact that something does not benefit from planning permission does not mean Enforcement action should always be taken.
 - (iv) Planning Enforcement should seek to safeguard matters of recognised importance:-
"Whether the breach of control unacceptably affects public amenity of the existing use of land or buildings meriting protection in the public interest"
 - (v) Planning Enforcement officers have to be mindful of the 'Considerations' defined by the Human Rights Act 2000.
 - (vi) Planning Enforcement must be proportionate in terms of the impact upon the recipient of a Notice(s) weighed against the public interest.

6. There are various legislative tools to Enforce against confirmed breaches of planning control where it is considered expedient to do so, these are listed below:
- (i) Enforcement notice - requiring steps to be taken to remedy the breach(es) of planning control within a prescribed period.
 - (ii) Stop Notice, served following the service of an Enforcement notice but prior to the 'effective' date. It is useful when the LPA consider something must be stopped urgently – there is the risk to the Council of compensation but only in circumstances where it is determined that a breach(es) of control had in fact not taken place.
 - (iii) Temporary Stop Notice - may be served without the need to serve an Enforcement Notice. It is useful when the LPA feel something must be stopped urgently – there is the risk to the Council of compensation with this type of notice.
 - (iv) Breach of Condition Notice - where there is a failure to comply with any condition or limitation imposed by the grant of planning permission or by Statute ('Permitted Development') e.g. not undertaking planting or landscaping.
 - (v) Injunction - by application to either High Court or County Court, to restrain any actual or expected breach of planning control.
 - (vi) Section 215 Notice – 'untidy land' – (Could use the example of Hayes gate with the tower block covered in graffiti and broken windows).
 - (vii) Section 11 Notices – under the London Local Authorities Act for advertisement hoardings
 - (viii) Direct Action – using Section 178 of the T&CP Act - only applicable if all other Enforcement routes have been exhausted.
7. Most local Authorities have the focus of their Enforcement work related to commercial or householder planning breaches. Hillingdon has a wider diversity of cases, often very complex cases related to:
- (i) Minerals - the Council is responsible for large areas of Green Belt land, in which mineral and waste operations are located.
 - (ii) Houses of Multiple Occupation (HMO's) associated with either the expanding University or College campuses or accommodation associated with illegal immigrants. This is a particular issue within the south of the Borough.
 - (iii) Airport related activities, such as, off-airport car parking. Again this is a particular issue within the south of the Borough.
8. The Enforcement team are increasingly involved in partnership working involving a broad range of both internal departments and external organisations. There is joint working with:
- (i) Environmental Protection Unit (EPU) on Licensing, noise and/or lighting nuisance, construction disturbance, rubbish/deposit of waste etc.
 - (ii) Building Control Surveyors on breaches of planning and/or Building Regulations and Dangerous structures,
 - (iii) Highway officers on highway safety matters, display of Advertisements, sale of motor vehicles from the public highway.

- (iv) Trees & Landscape officers on a variety of unauthorised Tree work, failure to undertake landscaping (Planning conditions/Legal Agreements).
 - (v) Land Charges - ensuring Enforcement related information is recorded and made available as required.
 - (vi) Conservation Officers regarding Listed buildings and Conservation Area Enforcement
 - (vii) Council Tax Collection/Business Rates and Benefit Fraud investigations
 - (viii) Private Sector Housing Team
 - (ix) External Partners for which assistance requested/notified as considered appropriate:
Police, Inland Revenue, Customs & Excise, Environment Agency, Housing Associations, HM Land Registry, DVLA, and Vehicle Inspectorate (VOSA) - all of which are contacted in circumstances considered appropriate.
9. A recent development in terms of Partnership working is a request made on behalf of the Border & Immigration Agency (BIA). The BIA seek information on cases of unauthorised residential occupation i.e. garages, detached buildings, conversion to HMOs, in particular, instances where there is information to suspect the occupants may be illegal immigrants. This initiative has yet to be explored.

Reasons for the review

1. 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.
2. 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.
3. 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.
4. In early 2008 Members agreed to a further increase in the number of permanently employed officers (see Background and importance).
5. 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.
6. 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,

Number of successful Court prosecutions - resulting in the imposition of substantial fines and awarding of costs,

A significant number of cases resolved through negotiation - resulting in a financial saving to the Council.

7. Despite the above improvements, and the increase in staff to the service over recent years, the calls on the Enforcement service are increasing putting pressure on the level of service provided.
8. The Government, in the guise of the Planning Inspectorate, has recognised the impact of current economic down-turn in terms of likely increase in the number of breaches of planning control. Experience gained during previous such periods indicates an increase in the region of 25%. Earlier this year in furtherance of canvassing opinion of Local Planning Authorities, the Planning Inspectorate confirmed the intention to recruit/train additional staff in order to process the expected rise in the number of Enforcement related Appeals.
9. A further statistic giving rise to concern is that of a decrease nationally in the submission of planning applications - Planning Portal recently reported a decline of some 30%, although this can be laid for the most part on the downturn in the economy.

Equalities

The Planning Enforcement service must at all times act reasonably and fairly in dealing with any alleged breach(es) of planning control, in accordance to their needs.

Who is this review covering?

1. All forms of development undertaken within the Borough
2. The ability of the Council's Enforcement service to respond effectively to the perceived increase in the number of complaints alleging breaches of Planning control
3. The current and future level of Partnership working, with particular regard to ensuring a corporate approach to Enforcement - in terms of Planning and other regulatory functions.

Key issues

1. Are the expectations of Members being met in terms of Council's ability in providing an effective Enforcement function,
2. The likely impact upon the level of service resulting from the anticipated increase in the number of complaints/enquiries,

3. Are their greater possibilities to enhance Partnership working and whether such an approach would have a beneficial impact upon both the level of service and the public perception of the Enforcement function?

Methodology

1. The Committee will examine background documents and receive evidence from officers.

Relevant Documents

To be added

Witnesses/evidence providers

The Head of Planning & Enforcement, The Manager of the Enforcement Team, officers representing various Council Divisions as cited in the body of the report.

Stakeholders and consultation plan

To be added

Connected work (recently completed, planned or ongoing)

The P & CS Whole Service Review was completed in March 2009.

Outcome

Recommendations to the Cabinet with particular reference to identifying what increased resources, if any, need to be provided in order to maintain an adequate Enforcement function capable of responding to the anticipated level of complaint.

Proposed timeframe & milestones

Review to be completed by the end of December 2009.

Risk assessment

Inability of the Council to provide an 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/award of compensation,
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.