

Briefing paper – Planning Enforcement Team

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REASON FOR ITEM

At the November meeting members of the Committee asked that officers provide a briefing paper on the Planning Enforcement Team.

OPTIONS AVAILABLE TO THE COMMITTEE

1. The committee is asked to note the report and to raise any questions it has with the officers present, the Head of Audit and Enforcement and Planning Enforcement Manager.
2. The committee is asked to consider any further information or areas it may wish to raise with the officers.

INFORMATION

1. Background

1.1. The committee asked for a paper on the Planning Enforcement Team, however this team within Central Services is only one aspect of the Council's planning enforcement service and relevant details have been provided to give a rounded view and a context in which to place the Planning Enforcement Team.

1.2. Until October 2010 planning enforcement in Hillingdon was dealt with by a single team reporting to the Head of Planning and Community Services, within the Planning Directorate. The team comprised a Manager, a Deputy Manager, 5 Enforcement Officers and a Technical Support Officer, equating to 8 FTE posts.

1.3. Following a BID review, the team was divided into two to enable focus on two separate functions of the service. The current system has been in force since October 2010. The initial investigation of reports of alleged breaches of planning control is now undertaken by the Anti Social Behaviour Investigation Team (ASBI Team) within Planning, Environment, Education and Community Services (PEECS).

1.4. Where breaches of planning control are confirmed and remain unresolved, they are passed to the Planning Enforcement Team in Central Services. Decisions to take enforcement action are made by Members of the relevant Area Planning Committee based on the recommendations in the Planning Enforcement Team reports.

1.5. There are three full time Investigating Officers within the PEECS ASBI Team trained in planning enforcement investigations.

1.6. The Planning Enforcement Team within Central Services comprises a Manager (part time), and 2 Enforcement Officers. The Managers post was vacant for about a year prior to being filled in January 2012. The current complement of officers undertaking planning enforcement work across the Council is therefore 5.6 FTE posts.

1.7. This briefing paper concentrates on the work of the Planning Enforcement Team within Central Services. It explains the tools available to the team to deal with alleged breaches of planning control and the procedures they follow.

2. Breaches of planning control

2.1. Unauthorised building and engineering work, and changes in the use of land and buildings, can be a cause for considerable public concern.

2.2. Possible breaches of planning control include:

- Building work, engineering operations and changes of use of land or buildings without proper planning permission,;
- Development that has planning permission but not carried out as approved
- Failure to comply with the conditions of a planning permission
- Demolition of a wall or building within a conservation area without conservation area consent
- Works carried out to a Listed building without proper consent
- Removal or pruning of protected trees and hedgerows without consent
- Advertisements which require express consent under the Advertisement Regulations, but which are displayed without consent
- Fly posting
- Failure to comply with the requirements of existing planning legal notices, such as enforcement notices and breach of condition notices

2.3. The Council has been asked by the public to investigate the following number of alleged breaches of planning control over the past five calendar years:

- 2007 – 1055
- 2008 – 820
- 2009 – 820
- 2010 – 600
- 2011 – 665
- 2012 – 115 to date (end February 2012)

2.4. Planning enforcement action can only be pursued where works have taken place without the benefit of, or being consistent with, planning permission. Enforcement action is not possible in the following cases:

- If the work does not need permission. This could include extensions built under a householder's right to undertake some home improvements without Council permission (also called 'permitted development'), or the use of part of a house for the owner's hobby or in connection with their business, as long as the property is still mainly used as a home. It also includes many garden out buildings, provided they are not regularly lived in.
- If the work has become legal because time has passed and no enforcement action has been taken, even if it did not have permission in the first place. The timescale for this is four years for building work, and changing the use of a building to a home; and 10 years for other changes of use or for breaches of planning conditions. If the owner can prove the dates when the change took place, we cannot take enforcement action.

2.5 Accordingly, many of the alleged complaints that the council is asked to investigate each year do not require any further action other than letting the complainant know the outcome of the investigation.

2.6 Whilst a LPA has a duty to investigate allegations of planning breaches, enforcement powers are discretionary. Government guidance clearly states that LPAs must not take action simply to regularise a breach. Consequently some complainants will be disappointed with outcomes. The planning system is designed to achieve a balance between competing demands in the public interest, and so enforcement of planning control reflects this, focussing on proportionate resolution rather than punishing those who have acted in breach, sometimes unknowingly.

3. Work of the Anti Social Behaviour Team (ASBI Team)

3.1. Officers in the ASBI Team within PEECS undertake the initial investigation of complaints.

3.2. The identity of complainants is confidential, and is not revealed to those being investigated. Complainants may be invited to provide a witness statement to help the Council. However, this is entirely voluntary.

3.3. Complaints are given a unique identity number. At the time of writing, the ASBI Team have around 725 cases under investigation.

3.4 Following the initial investigation by the ASBI Team, which will normally include research into any background to the case and a site visit, a decision will be made as to what further action (if any) needs to be taken.

3.5 By deciding what priority should be given to the matter, officers in the ASBI Team help ensure we use taxpayers' money efficiently.

Urgent matters will include:

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- Work to a Listed Building or protected tree
- Those having a lasting and harmful effect on neighbours or the environment
- Non compliance with existing enforcement notices
- Time limited enforcement action
- Alleged breaches giving rise to widespread local concern

3.6 If the work does not need permission under the Planning Acts; already has permission; or the breach is deemed minor with no significant effects, no further action will be taken other than to let the complainant know the outcome of the investigation.

3.7 If the breach is exempt from enforcement action due to the passage of time, officers in the ASBI Team may advise the occupier to apply for a lawful development certificate.

3.8 If the work needs planning permission but appears to meet the objectives of our development plan policies, interested parties will be invited to make a planning application to retain the development so the matter can be considered formally, and neighbours can be asked what they think. This is called a 'Retrospective' planning application.

3.9 If permission is unlikely to be granted, the ASBI Team will informally ask for the unauthorised development to be removed or the use to cease. A suitable period of time is allowed depending on what needs to be done. For example, a business operation may need to find a new site or premises.

3.10 In this way, the vast majority of breaches in planning control are resolved informally.

3.11 In the few cases where the ASBI Team negotiations have been unsuccessful, the matter is passed to the Planning Enforcement Team in Central Services.

4. Work of the Planning Enforcement Team

4.1. Officers in the Planning Enforcement Team are responsible for taking forward the unresolved cases.

4.2. Cases are prioritised using similar criteria to those listed in 3.5 above. At the time of writing, the Planning Enforcement Team has 106 live cases requiring resolution.

4.3 The Planning Enforcement case officer may visit the site to familiarise himself with it. Enquiries may be made with Land Registry, those with an interest in the land, other Council departments and external agencies. Legal advice may also be sought. The aim is to gather sufficient information to

enable the case officer to draft a report with recommendations for the consideration of Members of the relevant Area Planning Committee.

4.4 The tools available to the Planning Enforcement Team include the following:

- **Enforcement Notice** –It imposes a legal duty on those with an interest in the land to take the remedial measures specified in the notice within a set time. The minimum is 28 days. Recipients may appeal to the Planning Inspectorate, effectively suspending the enforcement notice until the appeal is heard. Enforcement notices are entered on the Land Charges Register (LCR) and so attach to the land. Notices remaining effective even once complied with. Non-compliance constitutes a prosecutable criminal offence.
- **Listed Building Enforcement Notice** – this is the equivalent notice for listed buildings, with the advantage that action is not subject to the four-year or any rule.
- **Breach of Condition Notice** – available in the event of non-compliance with a condition imposed on a planning permission. There is no right of appeal. The penalty for non-compliance is a fine of up to £500, and it is not entered on the LCR.
- **Stop Notice** – requires cessation within as little as three days of specified activities causing serious harm to local amenity. In these cases the LPA considers the activities should not be allowed to continue even in the compliance period or where an appeal is pending. By attaching a statement of special reasons, the notice may come into effect within 3 days. Further, the duty to comply is universal and not limited to recipients. Its disadvantage is that it can only be served with an enforcement notice. Also, it cannot prohibit the use of a building as a dwelling nor a change of use that started more than 4 years before service. The principal difficulty is that the LPA risks a compensation claim from the recipient.
- **Temporary Stop Notice** – this recently-introduced measure has a number of advantages; it is effective immediately and does not require the prior service of an enforcement notice. However, it can subsist only for a maximum of 28 days (and cannot be renewed).
- **Court Injunction** – may be sought in the most serious of cases to restrain anticipated (uniquely) as well as actual breaches. Non-compliance, as contempt of court, may result (again uniquely) in imprisonment. However this remedy is both costly and (again uniquely) depends upon the discretion of the judge.
- **Untidy Land (s.215) Notice** – encompasses buildings as well as land. The LPA is required to show that the amenity of an area is adversely affected by the state of the land or premises. Appeals are to the

Magistrates' Court and not to the Secretary of State. Non-compliance constitutes a criminal offence for which recipients may be prosecuted.

- **Advertisements -**

- (1) **Obliteration/Removal Notice** – an immediate remedy for 'fly-posting' is the s10/11 notice under the London Local Authorities Act 1995 whereby the Council can require the obliteration and removal of unauthorised fly posting/advertising.
- (2) **Prosecution** – It is possible for a LPA to consider an immediate prosecution for the display of an advertisement without deemed or express consent. Prosecution will be used in those cases which result in the most serious harm to amenity or where danger is caused to members of the public.
- (3) **Enforcement Notice** – It is also possible to use a Planning Enforcement Notice as a tool to remedy breaches of advertisement control. Use of an Enforcement Notice can be an effective way of engaging with the contravener. Failure to comply with the enforcement notice constitutes a criminal offence for which recipients may be prosecuted.
- (4) **Discontinuance Notice** – where an advertisement benefits from "deemed consent" the LPA can take action to remedy a 'substantial injury' to amenity or where danger is caused to members of the public. . An example of the type of situation where they could be used would be for where an existing sign in a newly designated Conservation Area is considered to cause 'substantial injury' to amenity. These powers are rarely used as the recipient is entitled to compensation for loss of income from the advertisement.

- **Prosecution** – is an immediate deterrent option in the cases of unauthorised works to Listed Buildings and trees subject to Tree Preservation Orders (TPO) and unauthorised advertisements. Additionally, offenders may be prosecuted on non-compliance with a temporary stop notice, stop notice, enforcement notice and breach of condition notice. Defendants may thus be deterred from continued non-compliance, as well as punished for proven breaches.

- **Direct Action (with costs recovery)** – These powers arise in the event of non-compliance with enforcement and untidy land notices but not breach of condition notices; They allow the LPA to remedy the breach and allow for costs to be recovered from offenders. Dale Farm is an example of Direct Action. The power has not been used in Hillingdon.

- **Information/gathering** – in order to confirm the existence and nature of a breach, the LPA may serve notices to get information from owners and occupiers of land such as names and addresses of

those with an interest. Failure to respond within time or at all, or replying with false or misleading information, constitutes a criminal offence.

4.5 Once authorised by Planning Committee, notices are produced by Legal Services and served on those with an interest in the land. Enforcement officers, check for compliance at the end of the compliance period unless there is an appeal

4.6 Appeals against Planning Enforcement Notices to the Planning Inspectorate are handled by the Appeals Officer within Planning,

4.7 Whilst an enforcement notice is being appealed, the matter is effectively 'frozen' until the outcome of the Planning Inspectors decision. It may uphold or dismiss the appeal, or vary the enforcement notice including the steps that need to be taken to remedy the breach and the time allowed for compliance. The compliance period runs from the date of the Planning Inspector's decision letter, and not the date the enforcement notice was originally served by the Council.

4.8 Where a notice has not been complied with prosecution is considered. Prosecution is unlikely to be expedient where it appears that a contravener is making progress towards compliance, and further negotiations are likely to be effective in fully remedying the breach of planning control.

4.9 Officers in the Planning Enforcement Team are trained in Interviews under Caution and Police and Criminal Evidence Act (PACE) procedures and the taking of Witness Statements.

4.10 Legal Services review the case to decide if there is enough evidence to justify a prosecution. They may ask for additional information to make sure a good legal case is presented to court. Legal Services will then obtain a court date.

4.11. The Planning Enforcement case officer will attend at court as necessary. The contravener will often return a 'not guilty' plea, and opt for trial, resulting in several appearances in court for the Planning Case Officer and Legal Team representative.

4.12. It may be necessary to mount several prosecutions, and possibly consider an injunction in order to finally obtain compliance with an enforcement notice. Tactics and costs in such cases are discussed with Legal Services to ensure effective use of Council Tax payer's money

5. Achievements

5.1. **Enforcement notices** – The following table shows the number of sites receiving one or more notices (All types of Enforcement Notice (Operational Development, Material Change of Use, Breach of Condition and S125 (Untidy Site) Notices), plus the total number of notices served, for the year before and

the year after the planning enforcement service was split into two as part of the BID 'Lift and Shift' process. The final row shows notices served from November 2011 to date.

Period	Number of sites receiving a Notice	Total number of Notices served
November 2009 – October 2010 (prior to 'Lift and Shift')	54	58
November 2010 – October 2011 (after 'Lift and Shift')	64	74
November 2011 to present	10	10

5.2 Enforcement appeals – The following table shows the outcome of appeals against planning enforcement notices, for the year before and the year after the planning enforcement service was split into two as part of the BID 'Lift and Shift' process. The final row shows appeal outcomes from November 2011 to date.

Period	Appeals upheld (%)		Notices quashed (%)		Notices varied by the Inspector (%)		Total number of appeals
November 2009 – October 2010 (prior to 'Lift and Shift')	14	(88%)	1	(6%)	1	(6%)	16
November 2010 – October 2011 (after 'Lift and Shift')	23	(68%)	5	(15%)	6	(17%)	34
November 2011 to present	7	(50%)	2	(14%)	5	(36%)	14

6. Planned Service Improvements

6.1 The planning enforcement service adopted a Policy Statement in November 2005 as a protocol for operating the service. The Planning Enforcement Manager is working with the ABSI Team Manager to update the Policy Statement to reflect the new ways of working since the BID 'Lift and Shift' process.

6.2 Following from this, the Customer Guide, a user friendly version of the Policy Statement which informs customers what they can expect from our planning enforcement service, is also in the process of being updated. The revised guide will be published on the Council's web page.

6.3 The appointment of the Planning Enforcement Manager in January 2012 provides further opportunity to investigate and implement changes to streamline processes within the Planning Enforcement Team, and to devise improved reporting systems to monitor performance. She will also have the capacity to take on a small case load appropriate to the part time position to broaden the case work capacity of the Planning Enforcement team.

7. Summary

7.1 Since the BID 'Lift and Shift' exercise in October 2010 the planning enforcement service has bedded down, and has been able to demonstrate improved performance and better value for money with a smaller staff complement.

7.2 The Planning Enforcement Team continues to work towards service improvement. This needs to be underpinned by improvements to the ability to report and monitor performance.