



HILLINGDON

LONDON

RESIDENTS' AND ENVIRONMENTAL SERVICES POLICY OVERVIEW COMMITTEE

2009/2010

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

Members of the Committee

Councillor Michael Markham (Chairman)
Councillor Kay Willmott-Denbeigh (Vice-Chairman)
Councillor Lynne Allen
Councillor Paul Buttivant
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Planning Enforcement – Construction and Use of Detached Out-Buildings (homes in back gardens)

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Backing Documents:

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- Case Study – Large outbuilding built in the rear garden of 3 bedroom detached semi-detached house in the Sipson area - Page 18

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- Motion from Council – 5 November 2009 – Page 21

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- Primary Planning Legislation – Page 20

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- Contact details for Service/Teams on receipt of complaint /involvement in subsequent investigation – Page 25

CHAIRMAN'S FOREWORD



The construction and use of detached buildings in back gardens is a growing problem that is set to worsen in the current economic climate and is an issue that residents across the borough are continually raising with councillors.

The Committee, therefore, felt that it would be timely to undertake a review that took stock of the current situation, the key issues we are faced with and that looked at future policies and action that might be undertaken by the Council in relation to the Planning Enforcement of outbuildings in back gardens,

To assist our deliberations, we received a number of comprehensive reports and took evidence from officers of the Council.

Our conclusions are presented at the end of the report. Overall, the Committee was satisfied with the processes and performance of the Planning Department. However, we have proposed several recommendations to improve current processes. If agreed, our recommendations will reduce the timescales for the taking action against the construction and use of unauthorised detached out-buildings thereby reducing enforcement costs.

The remit of the review did not include an investigation into the Planning service, but sought to assist the Committee to better understand the processes and timescales necessary in order to take effective enforcement action.(with regards to the construction and use of detached out-buildings) .

Our recommendations cover three main areas:

- Networking and information sharing of best practice
- New technology and improved efficiency
- Legislative changes that might be considered

The recommendations are not the result of a comprehensive review.

Cllr Michael Markham

Summary of Recommendations

This review examines the construction and use of unauthorised detached out-buildings (homes in back gardens) in the Borough and the enforcement role the Council plays in tackling this. Following the evidence received, we make the following recommendations.

- 1. That the Planning Enforcement Team continue its inter departmental forum involving Private Sector Housing, Council Tax, Housing Benefits and Building Control departments and meets on a regular basis to exchange views, intelligence and to work more closely in dealing with unauthorised outbuildings corporately. That officers continue to update the working protocol.**
- 2. That the Planning Enforcement Team continues to work with various outside bodies, such as the District Valuer, the Border Agency, Fire Service and Local Police to share intelligence where appropriate.**
- 3. That the Planning Enforcement Team continues to seek changes to the working protocol between Planning Enforcement and Planning Officers dealing with retrospective planning applications, in particular to make changes to the Ocella Database¹ to identify enforcement concerns to planning officers and investigate a corporate joint IT system.**
- 4. Where appropriate, if retrospective planning applications for retention of outbuildings or separate residential dwellings are submitted to the Planning Committee with recommendations to refuse planning permission, officers should be required to write enforcement reports under Part 2 of the agenda on the same Planning Committee with recommendations for the taking of enforcement action.**
- 5. The improvements currently being undertaken under the Ocella Enforcement database system are continued to enable enforcement officers to work more effectively.**
- 6. That officers identify other Local Authorities in England and Wales with similar problems (construction of buildings in back gardens) with a view to seeking their support in establishing a joint campaign to lobby for changes to the law and relevant regulations and criminalisation. In addition to seek support for such lobbying from London Councils, the Local Government Association and other groups.**

¹ A Planning and Building Control database used by Local Government Departments

Recommended Changes

- i) An amendment requiring owners to apply for planning permission for outbuildings with a floor area greater than 25 sq. metres. (measured externally).**
 - ii) Changes to Class VI 'Small Detached Buildings' of Part II 'Control of Building Work' of the Statutory Instrument 2000 No. 2531 'The Building Regulations 2000' to remove the option for uncontrolled detached buildings with a floor area in excess of 15 sq. metres.**
- 7. That consideration be given to the imposition of Article 4 Directions on certain areas in the Borough, in particular those wards where the problem of outbuildings is most prevalent, and to submit a formal application to the Department of Communities and Local Government for confirmation of Article 4 status in these particular wards.**

Introduction

Background and Importance

Overview: The current economic climate and factors contributing to the increase in the numbers of homes in back gardens

The Government, in the guise of the Planning Inspectorate, has recognised the impact of the current economic down-turn in terms of a 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.

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% in the number of planning applications being submitted. Although this could be in most part due to the downturn in the economy.

The potential size of the problem

Structures in rear gardens

The erection of structures in gardens without Planning or Building Control regulation is a particularly challenging issue. This is a London wide matter and reflects demand for rented accommodation and gaps in current Planning legislation. Based on observations during the Houses in Multiple Occupation (HMO) survey, and counts in a number of streets in Hayes, officers estimate there are between 2000 and 3000 such structures, numbers of which are privately rented, either singly or in multiple- occupation. These structures do not tend to show up in HMO counts or censuses and, where occupied, are likely to be on cash basis.

The current process and remedial actions available

Current Planning Enforcement does 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 (dwelling houses).

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 Contact Centre.

The Enforcement Team also work in co-operation with the Private Sector Housing Team who report potential unauthorised outbuildings. The Enforcement Team 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 Members' Enquiries, contact the Enforcement Team 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 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 local authorities to provide an adequate and robust response.

Reasons for the review

To consider whether there are any improvements that can be made to the processes currently used to enforcement construction and the use of detached out-buildings.

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

Aim of the Committee's Review

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

Key issues and Terms of Reference

Key Issues addressed by the Committee

- Why does it appear to take so long to identify breaches in relation to homes in back gardens?
- What processes are currently in place?
- What is the level 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?

What legislative changes might be needed to reduce the construction of such buildings?

Terms of Reference of the Review

1. To understand the Council's statutory duty enshrined in planning legislation in relation to the enforcement process in relation to unauthorised use of outbuildings as homes.
2. To examine how the owners of unauthorised properties are identified and dealt with.
3. To review the timescales and processes dealing with unauthorised 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.

Methodology

We decided to investigate this issue as a single meeting review topic.

Officers provided the Committee with a background paper which provided information on the following issues:

- Where are we now?
- The issues faced
- Criminalisation of the Planning Process
- Current Professional Advice
- What needs to be done and possible changes to the law
- Planning Enforcement Legislation (see Annex C)
- A Case History (See Annex A)
- Motion to Council (See Annex B)

Using this information to inform the witness session, the Committee took evidence from the following officers:

- *James Rodger* - Head of Planning and Enforcement - London Borough of Hillingdon
- *Jim Lynn* – Enforcement Manager, London Borough of Hillingdon
- *Eddie Adamzyck* – Deputy Enforcement Manager, London Borough of Hillingdon

The issues highlighted in the background report are detailed below:

Residents' & Environmental Services Policy Overview Committee Review
Planning Enforcement – Construction and Use of Detached Out-Buildings
February 2010

Findings

WHERE ARE WE NOW?

The Planning Enforcement Team currently comprises of one part time Enforcement Team Manager, one full time deputy team manager, five full time enforcement officers and one full time technical support officer to the team. In the period of the 1 January 2009 to 30 November 2009, the team has received 786 enforcement cases, of these 63 related to complaints regarding outbuildings within the Borough.

ISSUES FACED

The Enforcement Team deals with a variety of issues from alleged breaches of planning control, alterations to listed buildings, changes of use, non compliance with planning conditions, buildings/structures, demolition in conservation areas, advertising structures, cutting/felling or pruning of protected trees and hedgerows, failure to comply with the requirements of planning legal notices such as Section 106 notices, enforcement notices, breach of conditions notices and stop notices and taking further prosecution or injunctive action where appropriate.

When investigating possible breaches of planning control where outbuildings are concerned, the main issues which enforcement officers face is proving that the outbuilding is being used as a separate residential unit.

Often officers find it difficult to gain access into an outbuilding or getting the appropriate information in terms of names of occupiers, rental or tenancy agreements. Unfortunately it is a fact of life that many of the owners are not living at the property and are therefore difficult to track down.

Other issues are the complexity of the legislation and especially legislative constraints and case law which require the Council to prove that the outbuilding is being used as a separate residential dwelling and not incidental to the main dwelling house.

Enforcement Officers do have statutory rights of entry under Section 196 (A) of the Town and Country Planning Act 1990 (as amended). Where officers are denied entry by owners/occupiers, formal inspection letters are written advising owners of an appointment to view the property. A minimum of 24 hours notice is required under Section 196(A) and if they are denied entry prosecution action can be taken or apply to the Court for a warrant to enter premises.

During this period changes may be made to the outbuilding, in an effort to mask and conceal the fact that it is being used as a separate residential unit. The investigatory process can become a time consuming process. Officers can also serve Planning Contravention Notices to gain further information on the use of the outbuilding, including any copies of tenancies, rental agreements etc. Again a minimum of 28 days is given to the owners to reply back to the Council's questions and it is a criminal offence not to complete/return the questionnaire incorporated in the notice. Often owners will try and prolong this process for their own gain.

CRIMINALISATION OF THE PLANNING PROCESS

In respect of criminalisation of breaches of planning control, the Government reviewed the enforcement procedures in the Carnwath Report entitled "Enforcing Planning Controls" (February 1989) when it was decided not to make unauthorised development a criminal offence.

Any change to the legislation would have both a major impact upon households and lead to an increase in resources necessary to police the new laws. Inevitably criminalisation of planning breaches may not be politically acceptable as it would be contrary to the governments desire to reduce regulatory controls and it would require a review of working practices/ procedures.

Complexity of the existing planning law/ guidance undermines the ability of government to enact legislation recognising unauthorised development as a criminal offence. In addition it could be argued that to do so would take away the transgressors right to challenge planning policies or give them the opportunity to negotiate a solution.

PROFESSIONAL ADVICE

Officers are bound by the Enforcement Concordat introduced by Central Government whereby the Enforcement Service is governed by the protocols of Consistency, Proportionality, Openness and Helpfulness. Communication to all members of the public is given in an open, transparent and courteous manner by officers. It is not appropriate/ acceptable for officers to act as planning agents for any transgressors. All information given to the transgressor is based upon the planning merits and facts of the case. Officers are actively discouraged not to favour one side against the other.

WHAT NEEDS TO BE DONE

Improvements to the Service

1) As already mentioned in the report to the Committee on the 18 November 2009, the planning enforcement team is looking to set up an inter departmental forum involving Private Sector Housing, Council tax, Housing Benefits and Building Control to meet up on a regular basis to exchange views, intelligence and work more closely in dealing with unauthorised outbuildings Corporately.

The Enforcement Team has already built up direct links with various outside bodies such as the District Valuer, The Border Agency, Fire Brigade and local Police to share intelligence where appropriate.

Significant progress has been made to enable both the exchange of information and work with other Council departments and outside agencies.

2) Currently changes are also being made to the working protocol between Planning Enforcement and Planning Officers dealing with retrospective planning applications, changes to the Ocella Database will flag up enforcement concerns to planning officers.

3) Where appropriate, if retrospective planning applications for retention of outbuildings or separate residential dwellings are submitted to the Planning Committee with recommendations to refuse planning permission, officers will also be required to write enforcement reports under Part 2 of the agenda on the same Planning Committee with recommendations for the taking enforcement action. This will speed up the time for the Council to take enforcement action where it is considered expedient and the outbuilding is considered to be unacceptable in planning terms.

4) Improvements are currently being undertaken under the Ocella Enforcement database system to enable enforcement officers to work smarter and effectively: adding more functions on to the database and creating new protocols between the enforcement team and The Borough Solicitor to expedite matters in the time taken to serve enforcement notice(s).

POSSIBLE CHANGES TO LAW

Presently part of the problem in controlling the use of outbuildings as separate residential units is the fact that under the provisions Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (Class E) house owners can build outbuildings under Permitted Development without the need to apply for express planning permission to the Council.

1) An amendment could be sought from central government requiring owners to apply for planning permission for outbuildings with a floor area greater than 25 m sq (measured externally). This would effectively bring a larger number of outbuildings under planning control but allow smaller structures to be built without recourse to the Local Planning Authority.

Although this would increase the workload in terms of number of planning applications received, it would bring into the control of the planning authorities outbuildings which were previously outside local governments direct control. Wording of an amendment would have to be carefully drafted to ensure that owners could not get round the GPDO by building a number of smaller structures.

2) Other possible changes to the law could be under the Building Regulations Act 2000 whereby changes to the schedule of exempt buildings schedule could be made under Regulation 9, of Schedule 2, Class VI (Small detached buildings). Currently the floor area of a outbuilding not exceeding 30 sq m is exempt from building control under the building acts, this figure could be reduced to 20 sq m bringing more outbuildings under the control of the Council.

3) The Local Planning Authority could consider the imposition of Article 4 Directions in certain areas in the Borough, in particular those wards where the problem of outbuildings is most prevalent. (An Article 4 Direction allows a Local Authority, in exceptional circumstances, to withdraw a permitted development right within a limited area.)

The Article 4 direction would take away the permitted development rights to build these structures in the rear garden and would require the householder to apply for planning permission. A study showing the effect of these structures and the consequences in the area would need to be carried out to back up the Council's case. The study along with a formal application could then be given to the Department of Communities and Local Government for confirmation of Article 4 status in these particular wards.

This would then require householders to apply for planning permission for outbuildings and give the Council greater control over the size and use of these buildings in these particular wards.

It should be noted that under the current planning legislation the issue of an Article 4 Direction can lead to the risk of compensation through the withdrawal of planning permission by way of an Article 4 Direction removing the householders Permitted Development rights.

The new provisions of the Planning Act 2008 will introduce protection from payment of compensation providing the Local Planning Authority give notice of the withdrawal of Permitted Development rights to all affected for a period of 12 months before the legislation comes into effect.

Recommendations

At the December meeting, Officers provided an overview of current planning enforcement and the use of detached out-buildings as homes in back gardens. A number of points were raised in discussion, which are detailed below and the Committee has made the following recommendations in respect of them:

Witness Session

Changes to the Permitted Development Order made in October 2008

Officers reported that the change made in relation to outbuildings was in regard to the height and distance from the dwellinghouse and needing to be incidental to the dwellinghouse. Prior to 2008 larger outbuildings were allowed under permitted development rights. We heard that where occupiers applied for Certificates of Lawfulness for outbuildings where it was felt that a building was not being used incidental to the main dwellinghouse the certificate had been refused.

It was agreed that although this change had tackled the size of outbuildings allowed in rear gardens the committee should not be distracted by this change. The use being made of outbuildings in rear gardens was the issue and what needed be done to improve the timescales for enforcement of the unauthorised erection and use of outbuildings within existing residential properties.

Our review recognised that officers worked closely with other departments but it was important that this continued and a recommendation was suggested to this effect. A procedure has already been agreed and introduced in terms of the initial stages of an investigation this is attached at Annex D for information.

Recommendation 1 - That the Planning Enforcement Team continue its interdepartmental forum involving Private Sector Housing, Council Tax, Housing Benefits and Building Control departments and meets on a regular basis to exchange views, intelligence and to work more closely in dealing with unauthorised outbuildings corporately. That officers continue to update the working protocol.

The Enforcement Team and working relationships with outside agencies.

Officers reported that they had built up links with various outside agencies including the Police Service, Fire Brigade and Boarder Agency and shared intelligence as appropriate.

The committee suggested that where it was known that an outbuilding was being used as a separate dwelling that the District Valuer should be notified immediately.

Officers advised that they would liaise with Council Tax to see whether the principle of notifying the District Valuer in relation to the use of outbuildings as separate dwellings was something that could be brought into practice.

Officers explained that a recent development in terms of Partnership working is a request made on behalf of the UKBA (UK Border Agency). The UKBA 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. Arising out of this evidence the following recommendation was suggested.

Recommendation 2 - That the Planning Enforcement Team continues to work with various outside bodies, such as the District Valuer, the UK Border Agency, Fire Service and Local Police to share intelligence where appropriate.

The current database system used by the Enforcement Team and Contract Planning Officers

Our review was informed that the Enforcement Team liaised with various departments within the Council on a regular basis. It was felt there was a need to look at the databases held by departments to see whether the information held could be made accessible corporately, which would save time when investigating cases across the Council.

Ocella was the database system being used in the Enforcement Team and that changes were being made to enable exchange of information in regard to retrospective planning applications in relation to the erection and use of outbuildings within existing residential properties to be shared with officers in the Enforcement Team. This would enable a Part 2 enforcement report to be considered at the same meeting a report on the retrospective planning application, if it was being recommended for refusal. This would improve the timescales for enforcement action being taken. A recommendation to this effect was suggested.

Our review advised that the current contracts of planning officers job specification could be changed to include the requirement to write planning and enforcement reports. Officers from the Enforcement Team would still have an input into the reports to provide the reasons for expediency. This could be addressed in the new contracts when being renewed.

Recommendation 3. That the Planning Enforcement Team continues to seek changes to the working protocol between Planning Enforcement and Planning Officers dealing with retrospective planning applications, in particular to make changes to the Ocella Database to identify enforcement concerns to planning officers and investigate a corporate joint IT system

Recommendation 4 - The improvements currently being undertaken under the Ocella Enforcement database system are continued to enable enforcement officers to work more effectively.

Recommendation 5 - Where appropriate, if retrospective planning applications for retention of outbuildings or separate residential dwellings are submitted to the Planning Committee with recommendations to refuse planning permission, officers should be required to write enforcement reports under Part 2 of the agenda on the same Planning Committee with recommendations for the taking of enforcement action.

The changes sought to the permitted development rights.

Officers reported that the change was to seek the reduction of the size of an outbuilding from 30 sq m to 25 sq m and would enable larger outbuildings to be bought under the control of the Local Planning Authority.

The committee felt that this was something that other authorities might support and that Hillingdon should take the lead and write to other planning authorities to ask for their views. If there was wide support for seeking these changes, then a campaign for a change in the law might be undertaken.

In regard to the criminalisation of breaches of planning control this was reviewed in 1989 when it was decided not to make unauthorised breaches a criminal offence. The committee felt that before this was taken further, discussions needed to be undertaken with other departments before any review was sought on criminalisation of breaches in planning control.

Recommendation 6 - That officers identify other Local Authorities in England and Wales with similar problems (construction of buildings in back gardens) with a view to seeking their support in establishing a joint campaign to lobby for changes to the law and relevant regulations and criminalisation. In addition to seek support for such lobbying from London Councils, the Local Government Association and other groups.

Recommended Changes

- i. An amendment requiring owners to apply for planning permission for outbuildings with a floor area greater than 25 sq. metres. (measured externally).***
- ii. Changes to the schedule of exempt buildings schedule under Regulation 9, of Schedule 2, Class VI (small detached buildings) of the Building Regulations Act 2000 to reduce it to 20 sq. metres.***

The implications of Article 4 Directions.

Our review was informed that an Article 4 Direction took away permitted development rights so that any proposed development would require a planning application to be submitted. An Article 4 direction can be sought for certain areas where the problem of outbuildings are most prevalent and would give the Planning Authority greater control over these kinds of development.

A study showing the effect of these structures and the consequences in the area would need to be carried out to back up the Council's case if an Article 4 Direction was sought. The study along with a formal application would then be made to the Department of Communities and Local Government for confirmation of the Article 4 status in these areas.

Members were informed that the current planning legislation regarding Article 4 Directions can lead to the risk of compensation by removing the householders Permitted Development rights. New provisions of the Planning Act 2008 would introduce protection from payment of compensation providing the Local Planning Authority had given notice of the withdrawal of Permitted Development rights to all affected for a period of 12 months before it came into effect.

Recommendation 7 - That consideration be given to the imposition of Article 4 Directions on certain areas in the Borough, in particular those wards where the problem of outbuildings is most prevalent, and to submit a formal application to the Department of Communities and Local Government for confirmation of Article 4 status in these particular wards

Closing Word

Following a review of the Enforcement function in 2005, the management of the Team was enhanced and the number of case officers was increased to address the growing number of enforcement cases. Of the 786 enforcement cases last year, about 7% related to complaints about outbuildings in the Borough. In view of the downturn in the economic climate, the lack of readily available cheap mortgage finance and the potential financial gains to be made from detached outbuildings the prevalence of planning enforcement cases related to the construction and use of detached outbuildings is set to increase.

Our review has shown that ability for officers to readily access (share) intelligence will constitute a major step forward, likely to result in enhanced inter-departmental working and the more efficient use of resources (officer time/effort). This facility will have numerous benefits across the Council including *lessening the time taken to progress investigations and reducing the time taken to instigate action as appropriate, thereby reducing costs to the Council.*

In addition to the innovate use of ICT systems, we suggest that further working practices could include *agreed protocols for inter-Directorate working, regular case review meetings and a forum for Managers to explore further initiatives/partnership working.*

Most 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 with appropriate expertise and qualifications. In addition, we are of the view that the relevant laws need to be changed and urge the commencement of a campaign to encourage Government to introduce such changes.

Finally, the Committee would like to thank the witnesses who contributed to the review, and also the officers who advised on the main issues from the Council's perspective. Particular thanks go to Jim Lynn and the Enforcement Team for their comprehensive briefings on this topic. We commend the report and recommendations to Cabinet

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.

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.

1. 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,

2. 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.

3. 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.

4. 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.

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6. 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.

Alleged unauthorised residential use of Outbuildings.

Contact details for the Services/Teams to be informed upon receipt of complaints/involvement in subsequent investigation:

1. Private Sector Housing:

wporter@hillingdon.gov.uk and/or chikson@hillingdon.gov.uk (Technical Admin Team)

Telephone: ext 7437 or 4189

Alternatively: PSHTeamHousing@hillingdon.gov.uk

2. Investigation Team:

benefitsfraud@hillingdon.gov.uk

For urgent checks/case discussions contact Garry Coote, Fraud Investigations Manager, email gcoote@hillingdon.gov.uk

Telephone: ext 0369.

3. Hillingdon Homes:

Dependant upon the location of the premises in question:-

HHCommunityHousingHayes or

HHCommunityHousingRuislip or

HHCommunityHousingUxbridgeAndYiewsley@HillingdonHomes.ltd.uk

(Awaiting telephone contact details)

4. Planning Enforcement:

MRaven@hillingdon.gov.uk (Maureen Raven, Technical Support officer - direct line: (01895) 558126) or

Alternatively: Planning@Hillingdon.gov.uk

Residents' & Environmental Services Policy Overview Committee Review
Planning Enforcement – Construction and Use of Detached Out-Buildings
February 2010

5. Borders Agency

John Gascoigne (Immigration officer for Hillingdon)

john.gascoigne@homeoffice.gsi.gov.uk

Telephone: - 07768 777204.

Andy Kemp (immigration officer for Harrow)

andy.kemp@homeoffice.gsi.gov.uk

Telephone: - 07799 583215

NB. John and Andy work closely, share/exchange intelligence providing cover in one another's absence- all E-mails to be addressed to both officers.