

PLANNING ENFORCMENT - CONSTRUCTION AND USE OF DETACHED OUTBUILDINGS (HOMES IN BACK GARDENS)

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 753 enforcement cases, of these 54 related to complaints regarding outbuildings within the Borough between 1 January 2009 to 30 November 2009.

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, 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 at 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 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 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 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 B 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 were 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 bring more outbuildings under the control of the Council.

3) The Local Planning Authority could consider the imposition of Article 4 Directions on certain areas in the Borough, in particular those wards where the problem of outbuildings is most prevalent.

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.