

**RESIDENTS' & ENVIRONMENTAL SERVICES POLICY OVERVIEW COMMITTEE:**  
**REVIEW OF PLANNING ENFORCEMENT CONSTRUCTION AND USE OF DETACHED OUT-BUILDINGS (HOMES IN BACK GARDENS)**

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| <b>Cabinet Member</b>     | Councillor Keith Burrows   |
| <b>Cabinet Portfolio</b>  | Planning and Transportation  |
| <b>Officer Contact</b>    | Gill Brice, Democratic Services  |
| <b>Papers with report</b> | RESPOC Review Planning Enforcement – Construction and Use of Detached Out-Buildings (homes in back gardens) - Final Report |

**HEADLINE INFORMATION**

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| <b>Purpose of report</b>                        | To receive the Residents' and Environmental Services Policy Overview Committee providing recommendations which addresses the processes currently used for the enforcement of the unauthorised construction and use of detached out buildings.   |
| <b>Contribution to our plans and strategies</b> | This report primarily relates to the contentious problems surrounding the unauthorised residential use of outbuildings located within gardens of existing dwellings. In addition to evaluating action currently being taken through the Planning Enforcement function, the report attempts to identify ways for the Council to both adopt a holistic approach whilst actively enlisting the assistance of external Agencies. Such proposals may affect the delivery of a number of corporate strategies, including the Sustainable Community Strategy and Housing Strategy. |
| <b>Financial Cost</b>                           | There are no additional financial commitments arising from this report that are not already contained within the Departments overall budget.  |
| <b>Relevant Policy Overview Committee</b>       | Residents' and Environmental Services   |
| <b>Ward(s) affected</b>                         | All   |

**RECOMMENDATION**

**That Cabinet:**

- Welcome the attached report from the Residents' and Environmental Services Policy Overview Committee, noting the comments it found in favour of the proposed steps to improve the processes currently used for the enforcement of the unauthorised construction and use of detached out buildings.**

2. Recognises that planning enforcement is a high priority for residents, as clearly demonstrated at the recent Cabinet Question Time events. In recognition of this profile requests that Cabinet Member approval is given to the “Cross Council Protocol” before it is published.
3. Accepts the recommendations of the Policy Overview Committee report as set out in below and in the review, noting the officer comments on their implementation.

#### **Policy Overview Committee Recommendations**

4. 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.
5. 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.
6. 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<sup>1</sup> to identify enforcement concerns to planning officers and investigate a corporate joint IT system.
7. 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.
8. The improvements currently being undertaken under the Ocella Enforcement database system are continued to enable enforcement officers to work more effectively.
9. 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 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.

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<sup>1</sup> A Planning and Building Control database used by Local Government Departments

- 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.**

## **INFORMATION**

### **Reasons for recommendation**

The recommendations are aimed at changing the processes currently being used with a view to reducing where possible the timescales for the taking of enforcement action of the unauthorised construction and use of detached out buildings. Improving the ability to take effective enforcement action will result in enhanced inter-departmental working.

The recent Cabinet Question Time events held across the borough demonstrated that Planning enforcement was a priority for residents of Hillingdon, because of this the Cabinet may feel the "Cross -Council Protocol" is an important document which warrants Cabinet Member approval.

### **Alternative options considered / risk management**

The Cabinet could decide to reject or amend the Policy Overview Committee's recommendations.

### **Supporting Information**

1. The Committee chose to undertake a review on the construction and use of detached buildings in back gardens as this is a growing problem that is set to worsen in the current economic climate. It is also an issue that residents across the borough are continually raising with Councillors. The committee felt that it would be timely to undertake a review that took stock of the current situation, the key issues and that looked at future policies and action that might be undertaken by the Council.
2. The aim of the review was to consider whether there were any improvements that could be made to the processes currently used for the enforcement of the construction and use of detached outbuildings.
10. The review took place between November 2009 and February 2010.
11. The committee heard from the Head of Planning and Enforcement, Enforcement Manager and the Deputy Enforcement Manager.
12. The Committee's recommendations with officer comments on their implementation are listed below: -
  - 1. That the Planning Enforcement Team continue its inter departmental forum involving Private Sector Housing, Council Tax, Housing Benefits and Building Control departments and meet 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.**

Officer Response:

*Officers have commenced the process of agreeing a 'cross-Council' protocol:*

*Routine meeting of Managers: to promote the free exchange of information and/or intelligence, in an effort that a corporate approach is taken to enforce compliance with relevant statutory controls.*

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

Officer Response:

*The previous adhoc (case by case) approach has recently been replaced by an agreed procedure, which sets out a protocol for action together with contact details of the various Council Teams/external Agencies.*

- 3. That the Planning Enforcement Team continue to seek changes to the working protocol between Enforcement and Planning Officers dealing with retrospective planning applications, in particular, to make changes to the Ocella Database<sup>2</sup> to identify enforcement concerns to planning officers and investigate a corporate joint IT system.**

Officer Response:

*The assistance of Development Control Managers and E-Government officers is currently being sought in order to address this issue.*

- 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.**

Officer Response:

*Having due regard to considerations of expediency, action as set out above will be taken.*

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

Officer Response:

*Following on from a number of improvements introduced to date, with assistance from E-Government officers, further initiatives are actively being pursued.*

- 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**

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<sup>2</sup> A Planning and Building Control database used by Local Government Departments

relevant regulations and criminalisation. In addition to seek support for such lobbying from London Councils, the Local Government Association and other groups.

#### Recommended Changes

- a. An amendment requiring owners to apply for planning permission for outbuildings with a floor area greater than 25 sq. metres. (measured externally).
- b. 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.

#### Officer Response:

- a. *Although a change to the General Permitted Development Order as suggested may be beneficial in terms of restricting the eventual use of outbuildings/detached structures, officers consider it unlikely that an attempt to introduce such an amendment would be favourably received. The reasons for reaching this conclusion being; following a lengthy period of consultation, as recent as October 2008 the referred to Order was subject to a number of changes (Amendment Order No.2) and the Order was accompanied by open expressions of reluctance on the part of Central Government to impose further controls upon householders. Nonetheless officers will formally write on behalf of the Council to the Department of Communities and Local Government to raise this issue.*
- b. *The introduction of this reduced floor area would bring control to structures that are likely to be converted to living accommodation. Residents would benefit from early advice from Building Control Bodies who can advise whether Planning Permission is required and if the building would meet the requirements of the Building Regulations 2000. It needs to be noted that this is likely to be met with resistance from residents as they would be required to submit formal Building Regulations Applications with relevant fees for work that was previously not controlled.*

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.**

#### Officer Response:

*As a consequence of impending changes to planning legislation (both General Permitted Development and Use Classes Orders), the ability of a Local Planning Authority (LPA) to justify the imposition of an Article 4 Direction is likely to be far harder.*

*Under the referred to legislation, the use of a dwellinghouse as "a House of Multiple Occupancy" (HMO) – in line with the Housing Act: occupation of a property by 3 or more persons not being members of the same family - will constitute a material change of use requiring prior planning approval. Local Planning Authorities will then be in a position to*

*impose controls over the number/manner in which both dwellinghouses and/or outbuildings may be used.*

*The serving of an Article 4 direction is a lengthy process, which if agreed by the relevant Area Planning Committee would require the drafting of the Order be undertaken by the Councils legal team (who have not at this stage assessed the likelihood of the Secretary of State agreeing an Article 4 direction). An Article 4 direction could also raise the issue of compensation payments. It is considered that prior to presenting any report to Committee officers would need to assess how viable an Article 4 direction would be in practice. This would require dialogue with the Councils legal team, analysis of any financial considerations (re: Compensation) and discussion with the Department of Communities and Local Government.*

## **Financial Implications**

There are no additional financial commitments arising from this report that are not already contained within the Departments overall budget. Any implications of the serving of an Article 4 Direction would be considered in the Committee report addressing such a matter.

## **EFFECT ON RESIDENTS, SERVICE USERS & COMMUNITIES**

### **What will be the effect of the recommendations?**

The committee's recommendations will improve the Council's ability to take effective enforcement action by reducing the timescales for the taking of enforcement action in relation to the unauthorised construction and use of detached out buildings. In doing so, this will improve the public's perception of the Authorities enforcement function and partnership working.

### **Consultation Carried Out or Required**

The committee took evidence from officers as described on pages 12 – 16 of the review report.

## **CORPORATE IMPLICATIONS**

### **Corporate Finance**

Corporate Finance has reviewed this report and is satisfied that there are no additional financial implications arising from the recommendations. An imposition of an Article 4 Direction could result in compensation payments. Any implications of the serving of an Article 4 Direction would be considered in the report addressing that particular matter.

### **Legal**

The proposals and options are at an early stage. We recommend that proposals to seek a change in the law, or to promote legislative orders should now be considered together with the Legal Services Environment and Planning Team. Legal Services Environment and Planning Team closely support the work of the Planning Enforcement Team. We are unaware of any case in the last twelve months where an Inspector has upheld an enforcement appeal against a Council enforcement notice served in relation to unauthorised use of outbuildings."

## **BACKGROUND PAPERS**

NIL