

	<p>Planning Committee</p> <p>2nd August 2011</p> <p>Report from the Director of Regeneration & Major Projects</p>
For Action	Wards affected: All
<p>Report Title: Planning and Building Control Enforcement 2010-11</p>	

1.0 Summary

- 1.1 This report provides an update on planning enforcement activity over the last financial year and highlights key trends and issues in relation to previous years. It also covers the related area of Building Control, discusses the scope for joint working and proposes to amend the Enforcement Policy statements for both areas to reflect this more joined up approach.

2.0 Recommendations

- 2.1 That Planning Committee note the scope of enforcement activity undertaken within Planning and Development and the contribution that it makes to dealing with significant problems affecting residents and visitors to Brent.
- 2.2 That the current Planning and Building Control Enforcement Policies be amended to reflect the changes set out in this report and the merger of the two units.
- 2.3 That support is given to the wider use of the Proceeds of Crime Act 2002 in tackling persistent or deliberate offenders.

3.0 Background

- 3.1 There is significant non compliance with both Planning controls and the Building Regulations in Brent. This is in part due to ignorance of the statutory requirements but also of calculated risk taking on the part of owners or developers, either to avoid costs incurred in submitting relevant applications or to undertake work which might not gain approval under Planning or Building Control legislation. In some instances, this may be driven by the high gains that can be achieved through renting residential

accommodation in the borough. If unauthorised or non-compliant work goes unchecked it can lead to poor living conditions, and harm to residential amenity. Non-compliance in relation to Building Regulations requirements, in both residential and commercial premises, could also lead to unsafe or dangerous buildings affecting residents and visitors to the borough.

Planning Enforcement Annual Report 2009

3.2 The Planning Committee considered and agreed a report in 28th July 2009 which provided a detailed review and analysis of various aspects of planning enforcement activity and included comparisons over previous years and with other authorities. The key elements of this report were;

- That Brent continued to be one of the most active planning enforcement agencies in England which was sustained by a proportionately low level of staff resources
- However, that there was a large and growing backlog of Enforcement Notices (EN's) that had not been complied with after 2 years.
- That demand for the service exceeded the capacity.
- That it was difficult to recast priorities to reflect demand and resources.

In response to the general problem of managing demand, the Planning Committee also supported a more flexible approach to replacement windows in inter war conservation areas as well as a very targeted approach to unauthorised satellite dishes. This approach is likely to be reflected in the reduced number of EN's served within Conservation Areas as shown in 3.3 below.

It should be noted that Building Control matters were not reported at this time.

Planning Enforcement 2010/11

3.3 Annex 1 provides an update of the main indicators of enforcement activity that were discussed in the 2009 Annual Review. It demonstrates that a high level of activity has been maintained in the areas of investigating complaints, serving Enforcement Notices, undertaking prosecutions and direct actions. It also shows a continued high level of success when Enforcement Notices are appealed. In particular, it also demonstrates that Brent has maintained its position as one of the very highest performers in national terms. The significance of this performance is also emphasised by a comparison group of London Boroughs in terms of available staff resources and overall activity. The following sections discuss some of the factors and trends behind this information.

Borough Patterns of Complaints and Activity

3.4 Comparison with previous years indicates a similar general pattern of activity across the Borough and in the range of types of action taken. In summary;

- More complaints about unauthorised work were received, more Enforcement Notices (EN's) were issued, more Direct Actions undertaken and more complaints closed than in the 2009/2010.
- Complaints received and EN's served continue to be generally spread across the Borough with no particular concentrations by Ward or area. Stonebridge Ward has the lowest number of complaints which probably reflect a lower proportion of private sector housing and the scale of the Park Royal employment area.
- Conservation Areas tend to be concentrations of demand due to the contribution of active residents groups and higher design requirements. They account for about 15% of all EN's served in 2010/11 which is a reduction from some 25% in previous years. This change is also reflected in the reduction in EN's relating to unauthorised windows to 3 (from an average of 7 in the previous 5 years and none against satellite dishes (previous average of 5)
- Complaints are predominantly from individual residents or associations (88% of all breaches relate to domestic properties). These tend to be about nearby issues which are considered to have a significant effect on individual amenities.
- Unauthorised conversions of houses into flats or HMO's and the use of out-buildings for living purposes remain a significant issue (increasing to 18% of all breaches). However, the largest proportion of breaches still relate to various types of household extension (increased to 40%).
- Brent seems to have a relatively high rate of unauthorised activity, despite being one of the most active planning enforcement authorities in the country.

Structure and Resourcing

- 3.5 The vast majority of planning enforcement work is undertaken by a dedicated team although there has been an increase in initial investigations undertaken within the area planning teams before referral. Additional short term funding for part of 2009/10 was identified for planning enforcement following the previous review of enforcement activity and resources. This was then reflected in the 2010/11 budget and provides a current staffing structure of 5 planning enforcement officers, including a Team Manager, and a technical support post which also covers the service of EN's. This structure, and an improved use of IT, has enabled a higher number of EN's to be served despite an increase in the number of complaints received. It has also supported the focus on achieving compliance with earlier EN's discussed below.
- 3.6 The primary work of the enforcement planning staff involves investigating complaints and is therefore demand led. However, greater emphasis has been placed in recent years on updating complainants on the progress with investigations as these can often take time to conclude and can be a source of concern for residents. There has also been a continuing effort to work closely with residents groups. The adopted Planning

Enforcement Policy provides a guide to responding to the demand led nature of the work and has been reviewed since its introduction in 2002. However, in reality, the nature of the complaints means that it is not always easy to clearly prioritise all demands.

Ensuring Compliance with Enforcement Notices

- 3.7 A continuing effort has been made to ensure compliance with older EN's. This followed the previous review that demonstrated that a high level of activity in serving EN's led to an on-going commitment to prosecution and direct action in order to resolve problems. This indicated that only about 50% of EN's were complied with despite Brent undertaking more direct actions and prosecutions than most authorities. However, progressive monitoring and action on older EN's has now produced a compliance rate of nearer 80% for cases older than 2 years. This outcome has required a rise in the number of prosecutions and a significant commitment of time by senior staff.
- 3.6 The resource commitment required to support the range of activity described above needs to be recognised in terms of the scopes involved in using planning legislation to investigate and pursue complaints, defend appeals, provide expert witness presentations at Inquiries and prosecutions and in managing direct actions.

Proceeds of Crime Act 2002

- 3.6 This has been a focus more recently and builds on the experience gained elsewhere in Brent. The ability to pursue individuals or companies with a history of unauthorised activity can help to target the causes of significant problems. It also provides a potentially strong deterrent through the ability to claim a proportion of the income generated by that activity. However, by its nature, this involves lengthy timescales and requires experienced staff input. A number of cases are now being prepared under the Act and it is hoped that the first results will be achieved prior to the end of 2011/12

Planning and Building Control Joint Working

- 3.7 Planning and Building Control operate under separate legislation and the decisions made under these provisions need to be taken independently. However, the combination of the two services within Planning and Development at the end of 2010 has given an added impetus to cross working and liaison.
- 3.8 While there have clearly been continuing benefits relating to joint advice and support for major developments (including fee income), the major emphasis on enforcement issues has been to help to facilitate a coordinated approach when problems arise, the ability to target joint or combined site visits, and a promotion of public awareness of the need to comply with both processes. Both services, for example, are available at the widely used and highly valued weekly Evening Advice Surgery.

Building Control Enforcement

- 3.9 The primary function of the Building Control service is to protect people's health and safety in and about the built environment. However, the function of the Building Regulations has also been extended to incorporate welfare, convenience and

sustainability issues such as energy efficiency and water saving measures. The Building Regulation system has similarities with Planning but also significant differences. Unlike any other local authority service, Building Control operates in competition with private Approved Inspectors who are able to undertake the Building Regulation function on a project by project basis. For several years, locally determined charges have been set to match the Building Regulation service costs and Building Control can also work across borough boundaries and operate as partners with developers in other authority areas.

- 3.10 Building Regulations are generally written in “functional” terms thereby allowing architects and developers greater flexibility to demonstrate compliance for any particular design solution. This is important with regard to major developments incorporating innovative designs, materials or construction methods and places great reliance on Building Control to fully consider options put forward to confirm compliance.
- 3.11 Ensuring compliance can be very resource intensive to monitor and resolve but, in most cases, contraventions of the Building Regulations may be resolved using a softer approach than using the formal legal processes available by providing helpful advice, assistance and guidance to contractors and residents to correct defects and achieve satisfactory completion. In addition, the competitive nature of the business means that a builder or developers decision whether to use the local authority service could be influenced by perceptions of the enforcement implications between public and private agencies. It should be noted that only local authorities may take formal enforcement in respect of contravention of Building Regulations.
- 3.12 Whilst formal (legal) enforcement through the Magistrates Court has not been undertaken for some years, Building Control surveyors resolve a large number of technical contraventions on a daily basis through inspection and monitoring on site. Surveyors are proactive in identifying and investigating unauthorised works during their travels around the borough. Due to the recession, Building Control has seen a significant increase in the number of illegal building projects over the last few years. We have actively sought to “convert” these unauthorised works into Regularisation applications in an attempt to bring these works under control and ensure compliance with Building Regulations. In 2010/11, 344 Regularisation applications were received, 167 of which have been progressed to satisfactory completion and the remainder are ongoing cases. These unauthorised works would invariably have presented unsatisfactory conditions including health and safety issues and other difficulties for residents had they not been Regularised. Regularisation applications also achieved approximately £155k income for the Council.
- 3.13 Where formal enforcement is required, there are strict time limits for the local authority to take action set out in statute. Currently, any action must be brought within two years of completion of the specific work with the proviso that if the local authority has sufficient evidence to take formal enforcement then they must do so within six months of having that evidence (still within the overall two year time frame).
- 3.14 Building Control is very successful in attracting many major commercial developers to use its services and operates a number of established partnership working arrangements retaining approximately 80-85% of the market share (by value).

However, during the downturn there has been a steady growth in business taken by Approved Inspectors, who are now targeting small residential projects. Where the Building Control function is undertaken by an Approved Inspector, the local authority has no control over the works or enforcement powers unless the Approved Inspector cannot certify compliance. Where this is the case the project would revert back to the local authority for enforcement, as appropriate. Approved Inspectors do not possess formal enforcement powers.

- 3.15 These measures have influenced on-going internal reviews of the enforcement role in Building Control. The major emphasis is seen as continuing to be focussed on monitoring and the control of work on site, providing helpful advice and guidance to prevent non-compliance in the first place. The continued emphasis on discovery and investigation of unauthorised works and use of Regularisation applications is achieving very satisfactory results. It is hoped to reinforce this role by more active promotion and publicity and working more closely with Planning enforcement and other agencies. Although seen as a last resort, it is also intended to pursue formal enforcement through court action where such a targeted approach is seen as the only remaining option available.

Revised Planning and Development Enforcement Policy

- 3.16 Both services have adopted Enforcement Policy's which comply with the Enforcement Concordat for other regulatory services with the former Environmental Services. It is important that these links are maintained across other Council services and it felt that both policy's are still essentially sound. It is proposed to maintain them as separate policy documents but to amend them to cross refer, to emphasise the links between Planning and Building Control and to update aspects such as the Proceeds of Crime Act.

4.0 Financial Implications

- 4.1 Costs are sought on all prosecutions and are awarded in the majority of cases. However, on average, these only cover some 50-60% of costs involved. Any increase in the number of formal actions taken by Building Control will require adequate resourcing.

5.0 Legal Implications

- 5.1 Brent's Legal Services present planning enforcement prosecutions. A higher proportion of enforcement notices are appealed (50%) than planning appeals (6%). Most of these involve Public Inquiries where representation is provided under a contract arrangement. Both arrangements are seen to work well.

6.0 Diversity Implications

- 6.1 Very low returns are received from both complainants and those on whom enforcement notices are served. However, analysis suggests that the service's actions are broadly reflective of the resident and property owning population.

7.0 Staffing/Accommodation Implications

7.1 None directly from this report. Planning and Building Control staff, while generally office based, spend a large proportion of time on site visits.

8.0 Environmental Implications

8.1 Planning Enforcement action is only justified when there is significant harm and this is tested through the appeal and court process. Most problems adversely effect more than one individual. Building Control also covers issues than can affect neighbouring properties but the focus is on health, safety, welfare convenience and sustainability matters relating to the application premises.

9.0 Background Papers

Planning Enforcement Policy 2008 ([http://www.brent.gov.uk/tps.nsf/Files/LBBA-348/\\$FILE/Final%20Draft%20Revised%20Enforcement%20Policy%2022%2011%2008.docx](http://www.brent.gov.uk/tps.nsf/Files/LBBA-348/$FILE/Final%20Draft%20Revised%20Enforcement%20Policy%2022%2011%2008.docx))

Planning Enforcement: Annual Report 2008/9, Planning Committee 28/7/2009

(<http://democracy.brent.gov.uk/Data/Planning%20Committee/20090728/Agenda/Planning%20Enforcement%20Annual%20Report%20July%2009.pdf>)

Contact Officers

Any person wishing to inspect the above papers should contact;

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Planning and Development Enforcement Report 2010/2011

Annex one

No. of Enforcement Notices issues:

Year	2010/11	2009/10	2008/9	2007/8	2006/7	2005/6	2004/5	2003/4	2002/3	2001/2
No of notices issued	170	143	117	171	132	157	130	114	100	78

No of Complaints received:

Year	2010/11	2009/10	2008/9	2007/8	2006/7	2005/6	2004/5	2003/4
No of complaints received	928	835	903	895	879	878	729	475

No of cases resolved (closed):

Year	2010/11	2009/10	2008/9	2007/8	2006/7	2005/6	2004/5	2003/4
No of cases closed	955	698	922	718	507	495	332	123

Direct Action/Prosecution:

Year	2010/11	2009/10	2008/9	2007/8	2006/7	2005/6	2004/5	2003/4
No of Direct Actions taken	30	25	30	23	35	28	15	14
Enforcement Notice Convictions obtained	17	21	13	7	3	5	1	5
Advert Convictions obtained	25	56	7	0	0	5	29	7

Compliance as of 31st March 2011:

Year	2010/11	2009/10	2008/09	2007/08	2006/07	2005/06	2004/05	2003/04
Notices in effect & expired	58	121	103	153	106	128	111	95
Complied with	17	43	70	105	78	108	91	76
Not complied with	36	57	22	28	22	14	13	14
Partly complied with	4	17	9	17	6	6	5	2
Not determined	1	4	2	3	0	0	2	3
% complied with	32%	35%	68%	68%	73%	84%	87%	80%

Appeals:

Year	2010/11	2009/10	2008/9	2007/8	2006/7	2005/6	2004/5	2003/4
No of Enf appeals dealt with	67	55	78	78	50	53	34	38
No of appeals dismissed	41	43	66	59	36	36	23	27
% Dismissed	76	78	85	76	72	68	68	71