

**London Boroughs of Brent and Harrow
Trading Standards Joint Advisory Board
23 November 2017
Report from the Service Manager**

FOR INFORMATION

**PROPOSAL FOR DISCUSSION: OFFERING A SERVICE TO
THE LONDON BOROUGH OF HARROW TO INCREASE USE
OF CONFISCATION PROCEEDINGS UNDER THE
PROCEEDS OF CRIME ACT 2002 IN PLANNING CASES.**

1.0 Purpose of the Report

- 1.1 This report sets out a proposal from the London Borough of Brent (LLB) to provide a service investigating planning infringements committed by those who have benefited financially from their breaches, carrying out financial investigations under the Proceeds of Crime Act 2002 (POCA) and providing advocacy services in subsequent legal proceedings on behalf of the London Borough of Harrow (LBH).
- 1.2 The proposal offers LBH an inclusive service for investigating such infringements increasing LBH's use of POCA to assist securing future compliance with planning law, to establish systems ensuring future longevity this work and for both Boroughs to benefit from the Home Office financial incentivisation scheme to fund future investigations.

2.0 Recommendation(s)

- 2.1 That the Joint Advisory Board agrees this proposal and supports its implementation or makes other comments or recommendations.

3.0 Detail

PROCEEDS OF CRIME ACT 2002

- 3.1 POCA is a piece of legislation used in relation to confiscating money that has been acquired as a result of crime. The Act provides Accredited Financial Investigators (AFI) with a robust set of powers for investigating, restraining and confiscating assets.
- 3.2 The LBB and LBH have provided their Trading Standards Service on a joint consortium basis for over 50 years with LBB acting as the host authority. In 2012, Brent and Harrow Trading Standards Service established a dedicated Financial Investigation Team consisting of two qualified Accredited Financial Investigators to take advantage of the opportunities offered by POCA in terms of ensuring

criminals do not financially benefit from their wrongdoing. More recently, LBB's Financial Investigation Team have extended their remit to undertake investigations for other local authorities and they are currently doing work for several different London Boroughs.

- 3.3 The Government introduced an incentivisation scheme to encourage local authorities to use POCA. The scheme is administered by the Home Office and sees local authorities retaining a percentage of all successful confiscation orders that they obtain, when they are paid.
- 3.4 When a confiscation order is paid, the money is divided in accordance with the Home Office incentivisation scheme, which means that 50% will be apportioned to the Government. The remaining 50% is divided between the prosecuting authority (18.75%), the investigating authority (18.75%) and the HM Court Service (12.5%). Therefore, where we conduct our own investigations and are also the prosecuting authority, our share under the incentivisation scheme is 37.5%. The Home Office is currently also taking a top slice from the 37.5% ranging from 0% to 3% each quarter to fund their crime initiatives.

TOWN & COUNTRY PLANNING ACT 1990

- 3.5 With a few exceptions, breaching planning legislation is generally not a criminal offence unless an effective enforcement notice has been issued. If the notice is not complied with, the local authority has a number of statutory remedies it can rely on, including prosecution and direct action.
- 3.6 Whilst prosecution can be a deterrent, this does not necessarily result in the breach being remedied and the fines are often low. Before the use of POCA, those who were making a financial income as a result of their planning breach may ignore enforcement notices, doing so with the knowledge that the rewards of their criminal activity far outweighed any risks from enforcement.
- 3.7 Using the local authority's power to take 'direct action' can sometimes be successful in remedy a breach but this sometimes leaves the local authority with an expensive bill covering the costs until such time as the property is sold and is subject to funds being available. This also still leaves a rogue landlord for example, who has illegally converted a house into multiple bedsits, with the potential rental income they made from their planning breach.
- 3.8 The advantage of using Financial Investigators to obtain a confiscation order under POCA means that not only is the offender punished by way of a prosecution, but also they forfeit the rental income attributable to the planning breaches. This can be a very useful method of targeting offenders, creating a real deterrent against breaches of planning law, while at the same time, the authority receives a share of the confiscated money once it has been paid by virtue of the Home Office incentivisation scheme.

OPPORTUNITY

- 3.9 The LBH states in its Planning Enforcement Policy¹ dated April 2012, that the 'Council will seek to utilise the Proceeds of Crime Act where evidence suggests that the breach of planning control has given rise to significant financial gain'. However, to the best of our knowledge, POCA has only been used on one occasion since the policy was introduced, in a recent case that is currently yet to conclude and on another occasion Brent prosecuted a landlord who had also illegally converted other properties in Harrow. In this case, Brent included the rental income collected from all the properties and secured an order.
- 3.10 It is recognised from investigating planning breaches both within the LBB and on behalf of other London Boroughs, that there are a great number of planning infringements being committed resulting in a financial gain. Accordingly, there is scope to share the expertise of LBB's Planning Enforcement and Financial Investigation Officers who routinely carry out financial investigations of planning breaches, with the LBH to make much better use of POCA.
- 3.11 Discussions have taken place with Harrow's Divisional Director of Commissioning and Commercial Services and the Manager the Planning Enforcement Team about different options available to implement this. Whilst there has been overall support and agreement for this, the proposals have not progressed. We understand the main reason for the lack of progress is the level of resource available to LBH's Planning Enforcement team which means there is limited scope to proactively investigate planning breaches.
- 3.12 More recently, the subject was informally discussed at our last Trading Standards Joint Advisory Board meeting on 11 May 2017 as part of a report updating the Board about our financial investigation work. This report provides a formal footing to document the proposal.

PERFORMANCE

- 3.13 The Brent & Harrow Trading Standards Financial Investigation Team is well respected within local authority networks. In 2016 our Financial Investigation team were shortlisted for the LGA Awards in the innovation category for a continuing successful track record in which they applied POCA to planning cases. Although they did not win the award, the event showed a high recognition for the team's excellence in this area of law. Previously, one of our officers won 'Best Individual' award in the 'Keith Hughes Award Scheme' run nationally by the National Crime Agency, which recognises outstanding performance in the field of financial investigation.
- 3.14 In recent years, Brent Council has secured a number of successes directly in relation to planning infringements which have resulted in POCA confiscation, some examples of which are highlighted in Appendix 1. One of the largest confiscation orders led to an incentivisation payment of £204,134.25 to Brent Council. Since the creation of our Financial Investigation team, they have secured over 70 confiscation orders which has resulted in over £2.3m being paid via the Home

¹ https://www.harrow.gov.uk/download/downloads/id/1553/planning_enforcement_policy

Office incentivisation scheme making Brent Council one of the highest performing local authorities in the whole of the UK in terms of asset recovery.

- 3.15 The financial investigations we have conducted for other London Borough's planning services includes Ealing who have received an income of £86K from our work, Lambeth have received £66K, Islington £49K whilst our own planning service have received £936K.
- 3.16 As a result of our previous cases, the LBB has an experienced team of Planning and Financial Investigation Officers and legal advocates who have detailed knowledge investigating and prosecuting these types of planning breaches. As this area of work has evolved, the authority has faced various challenges in Court, some of which have resulted in appeal cases creating current legal precedence.
- 3.17 Our advocacy team are fully conversant with the full interpretation of the law, likely legal challenges and defences, how best to present these cases and how the confiscation regime can be successfully applied to them.

PROPOSAL

- 3.18 The exact specifics of our proposals would need sensitive discussion with the relevant personnel at the LBH, but our suggestion is for arrangements to be made which delegates appropriate authority from the LBH to the LBB to undertake this work on their behalf.
- 3.19 The LBB would then provide a Planning Officer to support LBH's existing team, specifically briefed with looking at the enforcement of planning conventions which would lead to POCA cases.
- 3.20 Subject to that Officer's initial findings, a plan of action would be developed to progress and manage appropriate cases. Appropriate cases will be any planning breach which has resulted in a financial income to the homeowner or others. Examples of this will be a landlord who has illegally converted a property into bedsits which they are now renting out or a house divided in two to make flats which are being let to tenants. It could be the homeowner benefiting from financial gain or often an agent or other commercial entity.
- 3.21 Cases will need assessing on an individual basis but in summary, the Officer would gather evidence of any planning breach and arrange to serve an enforcement notice requiring the breach to be remedied if this has not been done already. At the same time, the Officer will assess compliance with existing enforcement notices and in the case of noncompliance leading to financial gain, gather the required evidence to progress the case to legal proceedings.
- 3.22 LBB's Financial Investigators will conduct their usual enquiries, make Court applications and investigate cases using their POCA powers with the view to bringing confiscation proceedings following any successful convictions.
- 3.23 Finally, LBB would supply an appropriate legal representative to advise on any necessary areas of the investigation and to represent the LBH in Court during any legal proceedings taken. In the more complicated cases, legal Counsel would need

to be appointed to represent the authority.

- 3.24 We cannot be specific at this stage as to what can potentially be achieved by this proposal, as we do not have detailed analysis of the volume or type of work Harrow's planning team have underway. A secondment would allow for full exploration of past and present cases and an assessment of each one so that they can be progressed in order of priority.
- 3.25 The table found in Appendix 2 shows a simplified process that we would expect to follow if this proposal is agreed. It will be imperative for the success of this proposal, that close corporation between the LBB and LBH's planning staff is adopted at the outset to assist in identifying the potential of this proposal and maintaining this in the future providing longevity to the idea and promoting a closer working relationship between the two Council planning teams.
- 3.26 This would be a long term project as the required planning enforcement process has to be followed before any POCA investigations can formally commence. Furthermore, the cases that do lead to enforcement will have to progress through the legal system which in itself can take many months or longer to conclude. It is therefore expected that this work will take place over at least a 12 month period with the expectation that subject to legal proceedings and the decision given by the Court regarding the payment terms of any confiscation order granted, cases may not finally conclude before 2019.

4.0 Financial Implications

- 4.1 This proposal creates staffing costs for a Planning Enforcement Officer, Financial Investigator and a Legal representative. The exact cost of this will vary subject to the potential number of cases identified, how advance or otherwise they are in terms of their current enforcement, the priority of these cases, their complexity both in planning and financial investigation terms and to the extent that they are challenged during any subsequent legal proceedings.
- 4.2 The LBB would seek to charge the LBH an hourly or daily rate for the Planning Officer and Legal representative to cover the costs. Steps would be taken to regularly review the work undertaken by the LBB and to ensure that it does not exceed an appropriately agreed amount and that invoices are raised and paid promptly.
- 4.3 In relation to the Financial Investigator, these Officers are currently provided by the Trading Standards Service. Accordingly, LBH already contribute towards their costs so there would be no recharges for their time.
- 4.4 External charges incurred by the Financial Investigators such as research fees or land registry searches would be charged back to Harrow at full cost along with Counsel fees where legal representation was appointed to attend Crown Court hearings.
- 4.5 The LBB as host authority for the shared Trading Standards consortium, agrees to return a share of any underspend from the yearly Trading Standards budget back to the LBH. At present, the LBB holds underspend from the last two financial years

2015-2017. It is respectively proposed and subject to agreement with Harrow's Divisional Director of Commissioning and Commercial Services who has responsibility for this budget, that circa £40k of this underspend is used to assist Harrow fund this proposal over a 12 month period.

- 4.6 An agreement would be entered between the LBB and LBH which provides for each borough to share a split of any commission received from the Home Office incentivisation scheme if and when successful confiscation orders are paid. This income would be spent in accordance with Home Office guidance but essentially, subject to the value of the income received, we would suggest any money is reinvested back into future planning enforcement and/or financial investigation work creating longer term savings for each borough.

5.0 Legal Implications

- 5.1 The Local Government Act 1972 as amended, the Localism Act 2011 and the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012 allow one council to delegate of its functions to another council.
- 5.2 Appropriate agreements and delegations would have to be agreed between LBB and LBH to ensure that the correct authority is given for this work to be carried out.

6.0 Equality Implications

- 6.1 The proposals in this report have been screened to assess their relevance to equality and were found to have no equality implications.

7.0 Consultation with Ward Members and Stakeholders

- 7.1 Ward Members do not need to be consulted about this report as it affects all of the wards and the use of POCA is already part of Harrow's Planning Policy.

8.0 Human Resources/Property Implications

- 8.1 There are staffing implications for the LBB as this proposal would take a time resource of a Planning Enforcement Officer, Financial Investigator and a Legal Advocate. This resource would be offset by the recharging of the Planning Officer and Legal representatives time on a daily or hourly rate to the LBH with the option to backfill their duties with temporary agency workers if required.
- 8.2 The financial investigation will be carried out by Financial Investigators who subject to the number of cases being investigated by the LBH and their complexity, will be able to fit this work in amongst their existing case load. However, if there are a high volume of cases to investigate or if they are particularly complex, then they may have to review and prioritise work being accepted on behalf of other local authorities to create capacity.

Any person wishing to obtain more information should contact Simon Legg, Senior Service Manager, Standards and Enforcement, Brent Civic Centre, Engineers Way, Wembley Middlesex HA9 0FJ or simon.legg@brent.gov.uk

SIMON LEGG
SENIOR SERVICE MANAGER

APPENDIX 1

EXAMPLES OF SUCCESSFUL ORDERS UNDER POCA LEGISLATION

- 1.0 One of the orders was a case against a landlord who had converted a single dwelling property into 9 self-contained dwellings. Brent Council had served an enforcement notice, however the landlord ignored this, so a prosecution was mounted. Following the prosecution Brent Council started Confiscation proceedings in order to recover the rental income that had been made as a result of renting the nine dwellings. As a result of these proceedings an order was made under POCA for £494,314.30 and the defendant was given six months to pay up or serve three years in prison. The defendant has since paid in full and Brent Council received 37.5% of this order, £185,367.86.
- 1.1 Working with a neighbouring London Borough's Planning Service, a landlord was ordered to pay a confiscation order for £382,467. This matter related to a landlord who had converted his property into six self-contained flats without planning permission. He had not complied with an enforcement notice issued by the Council, so legal proceedings were instituted.
- 1.2 In October 2015 a confiscation order for £170,000 for failure to comply with an enforcement notice which related to a property in Brent. The property had been converted into three self-contained flats without planning permission. On the same day a second confiscation order was made at Harrow Crown Court for £17,600 against the same defendant after he failed to comply with another enforcement notice which related to another property on the North Circular Road that had been converted into eight self-contained flats without planning permission. Both orders have since been paid in full and Brent Council received 37.5% of this order, £70,350.
- 1.3 In one Brent planning case a confiscation order was made against a property developer for £1,438,180.59 following the conversion of a property into 12 dwellings without planning permission. Brent Council served an Enforcement Notice in relation to this property in Willesden Lane, NW2, however it was ignored so legal proceedings commenced. This confiscation order was the subject of an appeal and was later reduced to £544,358.00. This order has since been paid in full and Brent Council received 37.5% of this order, £204,134.25.
- 1.4 In a more recent case, a Brent property owner was ordered to pay £158,780.00 following failure to comply with an Enforcement Notice issued by Brent Council against a property in NW2. The enforcement notice was served because the property had been converted into ten self-contained flats without planning permission. The flats were described by the independent surveyor as 'poorly presented' and in need of a 'comprehensive overhaul'. This is another confiscation order that has been paid in full and Brent Council received £59,542.50.

APPENDIX 2

The table below shows simplified steps to be taken if this proposal is agreed.

	Process	Activities and estimated period of time to undertake work
1	<p>A Planning Officer from Brent Council will review all of the outstanding Enforcement Notices and identify suitable cases for Proceeds of Crime confiscation.</p> <p>At the same time, planning infringements which have not yet been served any Enforcement Notice will be highlighted and steps will be taken working with LBH Planning Officers, to commence this process.</p>	<p>Subject to the number of cases, research of old enforcement notices is expected to take 3 months.</p> <p>Investigations to see which of the old enforcement notices are viable for prosecution is expected to take 3 months.</p>
2	<p>A revisit would be made to properties with outstanding enforcement notices and reminder would be sent to attempt to gain compliance through consent. A period of six months will be given to allow for compliance.</p>	<p>Evidence gathering including letter writing to generate evidence, waiting for the expiry of the six month compliance period notices is expect to take 3-9 months.</p>
3	<p>Where non compliance continues a full investigation will be carried out by Brent Planning with a view to prosecution which would be carried out by the LBB's legal team.</p>	<p>Assembling evidence, drafting and service of summons notices is expected to take 1- 3 months per case.</p> <p>Attendance at court and follow up work will be on a case by case basis but could take 3-6 months per case.</p>
4	<p>Brent Council's Financial Investigators will conduct an investigation under POCA, to quantify the financial benefit of the criminal activity and the likelihood of recovering assets through confiscation.</p>	<p>Subject to orders given by the Court, each case potentially be spread over a period of 6-9 months.</p>