



**Resources and Public Realm  
Scrutiny Committee**  
6 September 2023

**Report from the Corporate Director  
of Communities and Regeneration**

**Councillor Farah, Cabinet Member  
for Safer Communities and Public  
Protection**

**Planning Enforcement**

<b>Wards Affected:</b>	All
<b>Key or Non-Key Decision:</b>	Not applicable
<b>Open or Part/Fully Exempt:</b> <small>(If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)</small>	Open
<b>List of Appendices:</b>	Three: Appendix 1: Planning Enforcement Policy Appendix 2: England LPA Notices Appendix 3: Direct Actions
<b>Background Papers:</b>	None
<b>Contact Officer(s):</b> <small>(Name, Title, Contact Details)</small>	Tim Rolt, Planning Enforcement Manager; Tel: 0208 937 5242 tim.rolt@brent.gov.uk

**1.0 Executive Summary**

1.1. As requested by the Chair of the Resources and Public Realm Scrutiny Committee, this report outlines the planning enforcement process as carried out in Brent, and how this area of work is resourced.

**2.0 Recommendation(s)**

2.1 That the Committee note the scope of enforcement activity undertaken within Planning and Development and the contribution that it makes to securing sound planning and development, and dealing with significant problems affecting Brent's residents.

**3.0 Detail**

**3.1 Contribution to Borough Plan Priorities & Strategic Context**

- Local Plan – implementing the Council’s adopted planning policies.
- Inclusive Growth Strategy – inclusive growth and reducing inequalities.
- Borough Plan 2023-2027 - Prosperity and Stability in Brent

## **3.2 Background**

### **3.2.1 Information was requested on:**

- Context and background for planning enforcement nationally, in London and in Brent.
- Approach and processes for planning enforcement
- Policy
- Performance
- Resourcing e.g. staffing
- Strengths/weaknesses
- Key Planning Enforcement issues and challenges, including the action underway to address these.
- Benchmarking information and lessons learnt from other local authorities in relation to performance, key planning enforcement issues and achievements.

### **Context and Approach**

3.2.2 Planning enforcement powers are derived from the Town and Country Planning Act 1990. Despite dealing with significant environmental and legal issues and having a detailed statutory background, planning enforcement remains a discretionary activity. However, the council do have a statutory duty to consider enforcement action if a breach of planning control is identified; the main tests being that the action should be proportionate and ‘expedient’. Government reviews over the last few years have concluded that there was no need to significantly change the overall enforcement process but have called for councils to make more effective use of the powers available.

3.2.3 The National Planning Policy Framework sets out that local authorities should publish a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. Further detail is set out in the government’s planning practice guidance.

3.2.4 The planning enforcement service is concerned with resolving serious breaches of planning control. There must be harm to public amenity, safety or the environment for enforcement action to be justified, and the unauthorised development is contrary to adopted planning policies to the extent that it is unlikely that planning permission would be granted for it.

3.2.5 The Council cannot take enforcement action simply to remedy a breach of planning control if that breach is considered acceptable in planning terms. As

such the Council only takes enforcement action when it is in the public interest to do so.

- 3.2.6 It is not an offence (or illegal/unlawful) to carry out development without first obtaining planning permission, except for unauthorised works to listed buildings, and illegal advertisements without permission. A criminal offence only arises when an Enforcement Notice has been served and has not been complied with.
- 3.2.7 Brent has been at the forefront of planning enforcement activity for over a decade, with a clear emphasis on taking action to achieve outcomes when necessary. This approach requires a high level of positive action and the use of the most appropriate means to achieve a resolution of a breach. These include: -
- Negotiations to resolve the breach which may involve one of the following to stimulate discussions.
  - Planning Contravention Notices - as part of the investigation and assessment phase
  - Enforcement Notices - which then need to be defended if appealed.
  - Breach of Condition Notices – where appropriate but have a limited effect.
  - Stop Notices – where urgent and very serious harm occurs; but there is a risk of having to pay compensation.
  - Court Injunctions – only appropriate in the most extreme cases and are costly.
  - ‘Default’ Powers – where the Council can take ‘Direct Action’ including demolishing buildings or removing items when they are in breach of a notice. Brent usually gets a proportion of its costs back but cost recovery can be a lengthy process.
  - Section 215 Notices where very serious site amenity problems occur.
  - Prosecution for breach of a notice – where in the public interest
  - Proceeds of Crime can follow on following a successful prosecution in some circumstances.
- 3.2.8 None of the above excludes the scope for discussion and persuasion and every investigation requires this to be considered. However, there are practical limitations on its effectiveness where, for example, the breach has already occurred or there are difficulties in tracing ownership. This can cause frustration for complainants who have difficulty understanding why someone they see as responsible for causing harm isn’t being forced to resolve it immediately.
- 3.2.9 However, while the need to consider options can include the opportunity to apply for retrospective planning permission for the breach or an amended version of it, it is not an excuse for inactivity. These processes can be lengthy with it often taking 12 months from an initial complaint being made to having a confirmed enforcement notice - which then has a further period for compliance. The public can naturally feel that this is a long time to resolve an issue of immediate concern to them.

3.2.10 Given the number of planning enforcement cases that the team deal with it is not possible to give a bespoke 121 service to complainants. The team undertakes to keep the complainant informed at various stages of the investigation process. This is usually an acknowledgment after receipt of a complaint, a decision to take enforcement action following an investigation, and upon receipt of an appeal against an enforcement notice. In between these processes, the complainant is welcome to contact the enforcement case officer to find out what the latest position is. However due to limited resources we are not able to engage in lengthy exchanges of emails.

### **Policy**

3.2.11 Brent's 'firm but fair' outcome-orientated approach was endorsed with the agreement of a Planning Enforcement Policy in 2007. This was updated in 2021. A copy of the Planning Enforcement Policy can be found in Appendix 1.

3.2.12 The current Enforcement Policy seeks to prioritise and allocate resources to pursuing actions that have already been commenced while having the ability to deal with new cases that cause significant harm. While judgements on relative harm are an essential part of the planning enforcement process, they may have little practical meaning to individual complainants. The key issue in prioritising action is to ensure that resources are targeted on achieving a high level of compliance in the more serious cases.

### **Resourcing**

3.2.13 The Planning Enforcement team currently consists of 6.5 FTE. The planning enforcement base budget funds 4 FTE permanent posts. A further 2.5 FTE permanent posts are funded through income obtained by the Proceeds of Crime Act. From the council's efforts at benchmarking, this level of staffing is just below the London average of 7.5 FTE for the planning enforcement function.

3.2.14 As a result of cost saving measures in 2016 and 2018 2 FTE posts were removed from the establishment. However, funding was provided for 2 FTE posts for a temporary period of two years from the corporate pot to cover enforcement action on Wembley Event Day Parking Project and Town Centre improvement works as part of Brent's Nomination of Borough of Culture in 2019. A number of unauthorised car parks were closed down and significant improvements were made to Kilburn, Neasden, Harlesden and Wembley Town Centres using section 215 'Tidy Land' notices. Both these planning enforcement projects were completed, and the posts have been deleted.

### **Performance**

3.2.15 Number of cases received and registered:-

2015	2016	2017	2018	2019	2020	2021	2022
786	810	972	835	866	864	786	510

3.2.16 The number of cases received over the last 8 years is broadly the same even during the pandemic. However, in 2022 officers had to take steps to act

differently as a combination of the loss of the two posts and a backlog of site visits had been built up as a result of the pandemic meant that it was not possible to investigate every case that was reported to the planning enforcement team.

3.2.17 Therefore, a decision was made in January 2022 to more thoroughly examine newly reported cases and carry out an initial desk-based investigation to see if it warranted being registered as a case for investigation. Previously every case registered would receive a site visit. In January 2022 however, it was decided that not every report would be registered and only those registered would receive a site visit. This explains the drop in cases registered in 2022.

3.2.18 As part of the initial desk-based investigation, officers would review if the reported breach amounted to a breach of planning control or was other issue which did not relate to planning (eg party wall issues, boundary disputes, trespass, noisy building works). If the report does not relate to planning, or if it did but was very minor, then the case would not be registered as an enforcement case.

3.2.19 This approach has helped to produce a caseload which is at more sustainable levels and has had limited impact on the amount of enforcement action that is taken. However, despite this each enforcement officer has an average case load of 250 under investigation where no enforcement notice has yet been served. The number of enforcement notices that are in effect but where compliance has not been confirmed is currently 420. In total the council has 1,865 cases which are under investigation or are subject to an enforcement notice which has not been complied with. This high level still represents a significant backlog which will take time to work through.

3.2.20 Number of enforcement notices issued:-

2015	2016	2017	2018	2019	2020	2021	2022
168	174	199	153	158	119	121	134

3.2.21 The fall in the number of notices issued in 2020 and 2021 is due to the time lag caused by the difficulties investigating cases at the start of the pandemic. The team are now catching up and the projection for the number of enforcement notices issued in 2023 is 140. Whilst the loss of two members of staff has had an impact on the number of enforcement notices that can be issued, it has not yet had a significant impact.

3.2.22 A total of 685 enforcement notices have been served by Brent in the last 5 years, putting Brent consistently in the top 3 of all local planning authorities within the UK, and was the most active last year. Only a few other London Boroughs (Westminster, Barnet, Newham) have consistently served 100 or more Notices in recent years. (See Appendix 2 for last year's statistics). However no other authority combines this with the level of subsequent prosecution and direct action that is undertaken by the council. Brent can therefore fairly claim to be the leading local authority for planning enforcement

in the entire country. This is reflected in our reputation which does elicit requests for advice and help from other local planning authorities.

3.2.23 Number of convictions obtained following prosecution:-

2015	2016	2017	2018	2019	2020	2021	2022
7	8	10	16	9	7	8	5

3.2.24 Number of POCA confiscation orders obtained following prosecution:-

2015	2016	2017	2018	2019	2020	2021	2022
3	2	4	6	3	5	3	3

3.2.25 Number of Direct Actions undertaken:-

2015	2016	2017	2018	2019	2020	2021	2022
28	19	20	20	14	9	7	12

3.2.26 There has been a decrease in the number of direct actions over the last few years. Limited action was taken during the pandemic, and since then, the types of cases that officers have been dealing with have tended toward those that are not suitable for direct action. The figure in 2015 was skewed as it reflects action to close several Shisha cafes down following a cross agency/departmental project to tackling ASB.

3.2.27 Examples of some direct actions undertaken can be found in Appendix 3.

### **Strengths and Weaknesses**

3.2.28 The strengths of the enforcement team are the output that they produce with limited funding. This provides a very efficient team who are keen to resolve matters. However, with the reduction in staff there is limited scope to carry out proactive enforcement projects. Work is therefore mainly reacting to complaints made by the public (and sometimes via Members).

3.2.29 The weakness of the team is that it is difficult to respond to peaks and there are delays in investigating cases due to the backlog. There is no scope to carry out visits for PR purposes or to deal with construction issue complaints. (eg noisy building works, mud on the road, construction taking place at anti-social hours) due to structural problems of enforceability and the time it takes to enforce - the development will usually be complete before enforcement action is concluded. Therefore the breach will have resolved itself at the expense of time taken by staff to mount enforcement proceedings. That time is best spent on enforcement issues which do not resolve themselves over time.

## **4.0 Stakeholder and ward member consultation and engagement**

4.1 Enforcement updates are regularly given to the Lead Member at briefings.

## **5.0 Financial Considerations**

- 5.1 The Planning Enforcement team's budget for 2023/24 is £160,674. Staffing costs are in the region of £460,000. The main source of income is from direct action and appeal fees and the council is expected to receive £170,000 during 2023/24 in this respect. In addition to this it is expected that the Council will receive £150,000 from Proceeds of Crime.
- 5.2 By law, funding received via the Proceeds of Crime Act is ringfenced for the detection of planning enforcement crime. It cannot be used as a substitute for the base planning enforcement budget. It is used to improve Brent's Planning Enforcement team by employing additional officers above the base budget.
- 5.3 All prosecutions are carried out in accordance with the code for crown prosecutors. A decision to prosecute takes into account several factors including the seriousness of the offence; duration of the offence; widespread problem; and impact of breaches such as this on the community generally.
- 5.4 A decision to prosecute is never made on the basis of a financial basis or the potential of an award under the Proceeds of Crime Act.

## **6.0 Legal Considerations**

- 6.1 Government advice is that it is for each authority to decide how it organises its enforcement of planning control. The National Planning Policy Framework suggests that to provide a decision-making framework for enforcement action, the authority should have an enforcement policy, also known as the Enforcement Plan. Brent's plan is up to date having been reviewed in April 2021
- 6.2 Where there is evidence of a significant breach of planning control the enforcement team should either solicit an application for planning permission to legitimise the situation or consider enforcement action. In considering whether to take formal enforcement action the council must observe the policies in Brent's Local Plan and its enforcement policy. A failure to do so could either result in costs being awarded against the council or an adverse finding through the complaints process and Local Government Ombudsman.

## **7.0 Equality, Diversity & Inclusion (EDI) Considerations**

- 7.1 The Council has carried out research into the equality implications of its enforcement function. However, it is difficult to obtain accurate statistics due to the failure of contraveners, interested parties and complainants to provide the necessary data.
- 7.2 All policy documentation is assessed for equality implications and all planning enforcement decisions are based on that policy documentation.

## **8.0 Climate Change and Environmental Considerations**

8.1 Planning enforcement can assist with the council's green agenda and the declared climate emergency. For instance, the unauthorised paving over of front gardens resulting in a loss of landscaping, which can worsen local flooding after heavy rainfall. Other breaches typically tackled by the team include changes of use that have been undertaken without appropriate mitigation of the additional vehicle movements generated. Where harmful breaches of planning control are identified which do not meet the council's policy, enforcement action is usually pursued.

## **9.0 Human Resources/Property Considerations (if appropriate)**

9.1 N/A

## **10.0 Communication Considerations**

10.1 On occasion, there are opportunities to publicise successful enforcement actions.

**Report sign off:**

**Zahur Kahn**

Corporate Director of Communities and Regeneration