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Planning and Development Division
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PLANNING COMMITTEE

Date 08 July 2014

Report	PLANNING ENFORCEMENT AND APPEAL PERFORMANCE: Fourth quarter and year-end 2013/2014
Wards	All Borough
Case Officer	Matthew Tear

1. Synopsis

- 1.1 On 17 April 2007 the Executive approved a new Development Control Enforcement Policy.
- 1.2 The policy commits the Planning Enforcement Service to quarterly reports to Area Planning Sub-Committees on enforcement team performance and appeal statistics.
- 1.3 This report contains enforcement and appeal performance figures for the fourth quarter for the year 2013/2014 (1st January 2014 to 31st March 2014), and the year-end totals. This report also sets out appeal performance for both planning enforcement and all planning applications.

2. Recommendations

- 2.1 To note the content of the report.

3. Background

- 3.1 The priority categories are:
- Immediate priority – site visit within 24 hours;
 - High priority – site visit within 5 working days;
 - Standard priority – site visit within 10 working days;
 - Low priority – site visit within 15 working days.

Investigations instigated

- 3.2 The table below reflects the total of new planning enforcement investigations instigated, grouped by Ward and priority category.

Fourth Quarter 2013/2014

	Immediate	High	Standard	Low	Total
Barnsbury	0	3	8	0	11
Bunhill	0	2	13	0	15
Caledonian	0	3	8	0	11
Canonbury	0	1	9	0	10
Clerkenwell	0	2	9	0	11
Finsbury Park	0	1	8	0	9
Highbury East	0	4	7	0	11
Highbury West	0	4	19	0	23
Hillrise	0	1	7	0	8
Holloway	0	0	18	0	18
Junction	0	2	11	0	13
Mildmay	0	3	7	0	10
St Georges	0	1	15	0	16
St Marys	0	6	21	0	27
St Peters	0	1	16	0	17
Tollington	0	0	8	0	8
TOTAL	0	34	184	0	218

Table 1: Investigations commenced, sorted by Ward and priority category

Commentary:

- 3.3 At the end of March 2014 the Enforcement Team had **565** live enforcement cases under investigation, which is one of the largest amounts outstanding for the last 10 years. This is partly attributable to a very high number of new cases being received in the first two quarters of this year, multiple cases being brought to our attention at once (estate agent boards, satellite dishes), and new cases being registered as a result of Licensing consultations (see 4.2).

Site visit performance

3.4 The table below states the Enforcement Team's performance statistics relating to site visits undertaken within the target periods for the relevant priority categories.

Fourth Quarter 2013/2014 % of site visits undertaken within target

	Immediate	High	Standard	Low	Total
Barnsbury	N/A	100%	75.0%	N/A	81.8%
Bunhill	N/A	100%	92.3%	N/A	93.3%
Caledonian	N/A	100%	87.5%	N/A	90.9%
Canonbury	N/A	100%	88.9%	N/A	90.0%
Clerkenwell	N/A	50%	66.7%	N/A	63.6%
Finsbury Park	N/A	100%	87.5%	N/A	88.9%
Highbury East	N/A	100%	71.5%	N/A	81.8%
Highbury West	N/A	100%	100%	N/A	100.0%
Hillrise	N/A	100%	100%	N/A	100.0%
Holloway	N/A	N/A	100%	N/A	100.0%
Junction	N/A	100%	100%	N/A	100.0%
Mildmay	N/A	100%	85.7%	N/A	90.0%
St Georges	N/A	100%	100%	N/A	100.0%
St Marys	N/A	100%	100%	N/A	100.0%
St Peters	N/A	100%	87.5%	N/A	88.2%
Tollington	N/A	N/A	100%	N/A	100.0%
TOTAL	N/A	97.1%	92.0%	N/A	93.0%

Table 2: Percentage of site visits undertaken within target response times

Commentary:

3.5 In view of the increasing cases received and increasing caseloads, officers have done very well to maintain the excellent levels of service required to visit 93% of new cases within the allotted target.

3.6 Investigations concluded

Fourth Quarter 2013/2014

	Immediate	High	Standard	Low	Total
Barnsbury	0	7	9	0	16
Bunhill	0	0	13	0	13
Caledonian	0	2	26	0	28
Canonbury	0	0	4	0	4
Clerkenwell	0	5	12	0	17
Finsbury Park	0	2	15	0	17
Highbury East	0	1	13	0	14
Highbury West	0	2	9	0	11
Hillrise	0	0	10	0	10
Holloway	0	0	12	0	12
Junction	0	2	12	4	18
Mildmay	0	1	7	0	8
St Georges	0	0	10	1	11
St Marys	2	5	24	0	31
St Peters	0	6	15	0	21
Tollington	0	0	12	0	12
TOTAL	2	33	203	5	243

Table 3: Cases closed in fourth quarter.

Commentary:

3.7 This has been a very busy quarter for case closures with in excess of 100 cases closed in February and 86 in March.

Year End Figures 01 April 2013 to 31 March 2014:

Investigations instigated

3.8 The table below reflects the total of new planning enforcement investigations instigated, grouped by Ward and priority category.

Year End Figures 01 April 2013 to 31 March 2014

	Immediate	High	Standard	Low	Total
Barnsbury	1	7	27	0	35
Bunhill	0	16	61	0	77
Caledonian	0	8	49	2	59
Canonbury	1	1	30	0	32
Clerkenwell	0	10	45	0	55
Finsbury Park	0	7	49	0	56
Highbury East	1	10	35	0	46
Highbury West	1	4	58	0	63
Hillrise	0	2	23	17	42
Holloway	0	1	40	0	41
Junction	0	4	46	16	66
Mildmay	0	6	23	0	29
St Georges	0	3	47	1	51
St Marys	2	13	108	0	123
St Peters	3	11	53	0	67
Tollington	2	0	39	0	41
TOTAL	11	103	733	36	883

Table 4: Investigations commenced, sorted by Ward and priority category

3.9 Investigations concluded

Year End Figures 01 April 2013 to 31 March 2014

	Immediate	High	Standard	Low	Total
Barnsbury	1	12	20	0	33
Bunhill	0	22	50	0	72
Caledonian	0	8	58	1	67
Canonbury	1	0	24	0	25
Clerkenwell	0	12	42	0	54
Finsbury Park	0	5	43	0	48
Highbury East	1	9	36	0	46
Highbury West	1	5	35	0	41
Hillrise	0	0	22	17	39
Holloway	0	1	32	1	34
Junction	0	6	36	14	56
Mildmay	2	7	47	1	57
St Georges	0	2	33	3	38
St Marys	2	12	85	1	100
St Peters	2	19	43	0	64
Tollington	0	1	31	0	32
TOTAL	10	121	637	38	806

Table 5: Cases closed.

Site visit percentages

3.10 Throughout this year the team has managed to visit 96% of all new cases within the prescribed priority timeframes. This is an excellent performance considering the increased caseloads and increased demands on officer time.

4. Planning Enforcement Performance

Notices Issued between 1 April 2013 and 31 March 2014

- 4.1 There were 883 new enforcement cases registered between the period 1 April 2013 and 31 March 2014, which is a small increase of 30 cases upon the previous year and represents the most enforcement cases received in any one year for at least 10 years.
- 4.2 The breakdown of Notices served over the year is as follows:
- Enforcement Notices (including Listed Building Enforcement Notice) 20
 - Planning Contravention Notices: 20
 - Breach of Conditions Notices: 1
 - Stop Notices: 0

Licensing Responses

- 4.3 Since February 2013 the planning enforcement team have been making representations to every new (and renewal) Licensing application that is made to the Council. A review of the planning history of the application property is made to ensure the proposed licensed hours are consistent with the permitted planning use of the property, and also with regards to its authorised hours of operating. If discrepancies are found it usually results in the new license being deferred or refused until such time that the planning position is clarified.
- 4.4 Over the course of the year planning enforcement provided representations to 261 Licensing applications.

Planning Enforcement Projects 2013/2014

- 4.5 A number of projects were undertaken by Planning Enforcement over the year, including specific work on unauthorised conversions in Caledonian Road, the Proceeds of Crime Act in a planning enforcement context and the lawfulness of Pay Day Loan companies operating in the borough.

Caledonian Road

- 4.6 The Caledonian Road project has involved both research of Council records, Council Tax, Street Naming and Numbering and Building Control, to identify the possible unauthorised sub-division of residential properties in Caledonian Road. The project has involved investigating some 170 residential units owned by one landlord on Caledonian Road. 118 individual residential units have been visited and detailed drawings made of what was found on site. Unfortunately it has transpired that the majority of the units found are lawful by virtue of being in continual use for in excess of 4 years. To this end in excess of 30 Certificates of Lawfulness have been approved, with a request made for a further 98 applications for Certificates in an attempt to confirm the outstanding units are lawfully in use as self-contained residential units.
- 4.7 Detailed layout plans have been produced following the visits to ensure if any further subdivision takes place the Council has clear evidence to support any formal action. In addition to the site visits Enforcement Notices have been issued with regard to a number of breaches including: unauthorised residential conversions, roller shutters, structures on the forecourt and unauthorised signage.
- 4.8 The temporary officer specifically appointed to deal with this project finished in February 2014 as the project was drawing to an end. The existing / on-going cases have now been absorbed into the day-to-day duties of the Planning Enforcement Team.

Estate Agent Boards

- 4.9 It was envisaged to conduct a rolling program of proactive estate agent board removal throughout the year. However, an initial survey of previously-reported 'hot spots' identified that a proactive campaign was not necessary, particularly in view of other competing enforcement priorities. Estate agent boards were therefore dealt with as they were reported to the team, resulting in the removal of in excess of 20 estate agent boards throughout the year.

Pay Day Loans

- 4.10 Islington, like many other parts of the country, has seen a marked increase in the number of companies providing pawn broking, services to cash cheques and offer short term loan agreements (Pay Day Loans). The purpose of this project was to investigate the planning implications in the increase in the number of these companies across the borough and ensure the companies involved were trading with the correct planning permission.
- 4.11 A survey was carried out of 18 properties in the borough that had been highlighted as possibly in breach of the planning legislation, and in particular the Use Classes Order. Of the 18 properties surveyed there were 15 that were lawful; either still trading within Class A1 shops (as per their planning permission) or had traded for more than 10 years continuously (and therefore exempt from any enforcement action). Of the remaining 3 properties where planning concerns were identified; one is in the process of closing down after council intervention; one was subject to an unsuccessful appeal and has reverted back to its lawful use and one was granted a Certificate of Lawfulness.
- 4.12 Information from this project was shared with colleagues in Spatial Planning and Transport to assist in working on policy changes.

Short Term Lets

- 4.13 A growing number of complaints are being received pertaining to residential flats that have undergone a change of use to be used for short term letting. Such a change of use would require planning permission by virtue of Section 25 of the Greater London Council (General Powers) Act 1973 (as amended) – which defines short term lets as sleeping accommodation which is occupied by the same person for less than 90 consecutive nights.
- 4.14 An initial 12 flats within one residential development in the south of the borough were identified for further investigation and it was found that all but one were being used for unlawful short term letting. Enforcement action resulted in the swift cessation of the unauthorised uses.
- 4.15 A further residential development located in the south of the borough is also the subject of an enforcement investigation, but this time in relation to an alleged 48 flats that are being used unlawfully for short term letting. An update will be provided in the first quarter report for 2014/2015. It is worth noting, however, that the appropriateness of Section 25 of the Greater London Council (General Powers) Act 1973 (as amended) is currently the subject of a government consultation and may be abolished in 2014/2015.

Proceeds of Crime (POCA)

- 4.16 Traditionally, a breach of planning control has been remedied by an Enforcement or Stop Notice, an Injunction, and/or a fine not exceeding £20,000. Whilst these sanctions are not insubstantial there is now the potential that those who violate planning laws could be subjected to a confiscation order, in line with the Proceeds of Crime Act 2002 (PoCA 2002). The use of this legislation by other boroughs across London has proven to be a very effective tool in dealing with serious breaches of planning control.

4.17 As such, the Enforcement Team initiated its first prosecution case to utilise POCA this year in relation to the unauthorised creation of 6 residential flats. The owner of the property failed to comply with the council's Enforcement Notice, and entered a guilty plea on 18th March 2014 in the Highbury Magistrates Court. The council attached a POCA application to the proceedings and the case was then referred to Blackfriars Crown Court on 28th April 2014 for sentencing and confiscation order. The owner failed to outline his financial position prior to the appearance so has been ordered to do so by the Court. The proceedings are to reconvene after 8th September for sentence and confiscation order, although early indications are that the owner will raise a loan to pay the confiscation order (circa £77,000) before this time. The council will then receive one third of the confiscation order.

Future Enforcement Projects 2014/2015

4.18 As we move into 2014/2015 there are a number of new projects that have already commenced. These include:

- Improved cost recovery from transgressors in all aspects of planning enforcement
- Further developments to increase the use of the Proceeds of Crime Act.
- Improved IT support for Planning Enforcement to include a better reporting / case management capacity and the introduction of technology for mobile working and greater efficiency.
- Working with the Spatial Policy and Transport team to address the issue of 'Buy to Leave' empty properties across the borough.

4.19 Further updates in respect of these projects will be provided throughout 2014/2015.

5. Appeals

Appeal performance:

5.1 The tables below (1-3) reflect the percentage of planning appeal decisions allowed against the Authority's decision to refuse planning permission. The numbers in brackets reflect the actual number of appeals allowed, against the total number of appeals. The figures do not include appeals relating to listed buildings, enforcement notices, advertisements or applications for Certificates of Lawfulness.

Fourth Quarter 2013/2014

Total	22.6% (7/31)

Table 6: Appeals against refusal of planning permission allowed

Year total 2013/2014

Total	35.2% (43/122)

Table 7: Appeals against refusal of planning permission allowed

All Applications and Enforcement Appeals performance

5.2 The tables below (8-9) reflect the percentage of all appeals allowed against the Authority's decision to refuse permission or issue an Enforcement Notice. The numbers in brackets reflect the actual number of appeals allowed, against the total number of appeals. The figures include appeals against refusals of consent relating listed buildings, advertisements and Certificates of Lawfulness and enforcement appeals.

Fourth Quarter 2013/2014

	All Applications	Enforcement
Total	25.6% (11/43)	83.3% (5/6)

Table 8: All appeals allowed against refusal of permission or issue of Enforcement Notice

The Enforcement statistic for this quarter looks particularly negative. This is due to the Enforcement Notice served at 487 Liverpool Road (unauthorised satellite dish in a Conservation Area) which was appealed by 4 separate tenants. When this appeal was allowed it was counted as 4 separate allowed appeals, and this has skewed the figures.

Year total 2013/2014

	All Applications	Enforcement
Total	35.3% (53/150)	28.6% (6/21)

Table 9: All appeals allowed against refusal of permission or issue of enforcement notice

Appeal Commentary 2013/2014.

- 5.3 In 2012-13, the percentage of appeals allowed (for planning application appeals) was 34.6%, compared to 35.2% in 2013/2014, which represents a slight increase. Similarly, there was a slight increase in the number of appeals allowed for all applications (going from 33.8% in 2012-13 to 35.3% in 2013-14) and enforcement appeals (going from 27.7% in 2012-13 to 28.6% in 2013-14).
- 5.4 Whilst these are slight increases they are similar to neighbouring boroughs, and it is widely felt that this coincides with the appointment of a number of new Inspectors at the Planning Inspectorate this year, who appear to be adopting a more liberal interpretation of planning policy. It is also apparent that there can sometimes be inconsistencies between the reasoning of Inspectors, with the following paragraph found in a recent decision.
- "I have considered three other appeal Decisions for mansard roofs in Cloudesley Road, which appear to pull in different directions and emphasise that the balance is a difficult one."*
- 5.5 In general the appeals that have been allowed fall into three main categories; roof additions (including dormers and mansards), quality of accommodation and works to Listed Buildings. All of these themes have been examined at Planning Forum (see paragraph 5.6 below) and actions implemented, where appropriate, to minimise future losses.

Allowed Appeals Schedule

- 5.6 Since November 2012, all of the appeal decisions **allowed** by the Planning Inspectorate have been discussed internally at Planning Forum. This is a fortnightly meeting attended by the Head of Development Management, Deputy Heads of Service and Team Leaders, where officers bring applications for discussion and guidance.
- 5.7 Each allowed appeal has been discussed in depth to gain a better understanding of why the Planning Inspector made the decision they did, and to ascertain whether there is anything that can be learnt from the decision for future applications. Each discussion has been captured on the 'Allowed Appeals' document, which is attached as Appendix 1 of this report.

6 Implications

6.1 **Financial implications:**
None

6.2 **Legal Implications:**
None

6.3 **Environmental Implications**
None

6.4 **Equality Impact Assessment:**
No equalities impact assessment carried out, as the purpose of the report is to report performance on planning enforcement and planning appeals to Members.

Background papers: (available online or on request)

- Report of the Executive Member for the Environment dated 17 April 2007 to Executive Board.

Final report clearance:

Signed by: 

Service Director – Planning and Development Date

Received by:

Head of Democratic Services Date

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