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Planning and Development Division
Environment and Regeneration Department
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PLANNING COMMITTEE

Date: 4th September 2014

Report	PLANNING ENFORCEMENT AND APPEAL PERFORMANCE: First quarter 2014/2015
Wards	All Borough

Case Officer	Matthew Tear
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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 performance figures for the first quarter for the year 2014/2015 (1st April 2014 to 30th June 2014).

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.

3.2 Investigations Instigated

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

First Quarter 2014/2015 Investigations Commenced

	Immediate	High	Standard	Low	Total
Barnsbury	1	1	7	2	11
Bunhill	0	4	7	0	11
Caledonian	0	7	15	15	37
Canonbury	1	2	8	0	11
Clerkenwell	0	2	4	0	6
Finsbury Park	0	1	4	0	5
Highbury East	1	3	4	0	8
Highbury West	0	2	9	0	11
Hillrise	0	1	7	0	8
Holloway	0	5	7	0	12
Junction	0	0	8	0	8
Mildmay	0	0	6	0	6
St Georges	0	1	6	0	7
St Marys	0	5	14	1	20
St Peters	0	0	15	0	15
Tollington	0	1	6	0	7
TOTAL	3	35	127	18	183

Table 1: Planning Enforcement investigations commenced, sorted by Ward and priority category

Commentary:

At the end of June 2014 the Enforcement Team had **580** live enforcement cases under investigation, which is one of the highest outstanding monthly amounts for the last 10 years. Options are being considered to bring this figure down to a more manageable level, which will include a further report to look at reassessing the investigation priorities for Planning Enforcement, and the possibility of temporary growth.

3.3 Site visit performance

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

First Quarter 2014/2015 % of Site Visits undertaken within target

	Total Site Visits	Total Site Visits Meeting Target	Total %	Immediate %	High %	Standard %	Low %
Barnsbury	11	9	81.8%	100.0%	0.0%	85.7%	100.0%
Bunhill	11	11	100.0%	N/A	100.0%	100.0%	N/A
Caledonian	37	35	94.6%	N/A	71.4%	100.0%	100.0%
Canonbury	11	11	100.0%	100.0%	100.0%	100.0%	N/A
Clerkenwell	6	4	66.7%	N/A	100.0%	50.0%	N/A
Finsbury Park	5	5	100.0%	N/A	100.0%	100.0%	N/A
Highbury East	8	8	100.0%	100.0%	100.0%	100.0%	N/A
Highbury West	11	10	90.9%	N/A	50.0%	100.0%	N/A
Hillrise	8	8	100.0%	N/A	100.0%	100.0%	N/A
Holloway	12	11	91.7%	N/A	100.0%	85.7%	N/A
Junction	8	7	87.5%	N/A	N/A	87.5%	N/A
Mildmay	6	6	100.0%	N/A	N/A	100.0%	N/A
St Georges	7	7	100.0%	N/A	100.0%	100.0%	N/A
St Marys	20	20	100.0%	N/A	100.0%	100.0%	100.0%
St Peters	15	15	100.0%	N/A	N/A	100.0%	N/A
Tollington	7	6	85.7%	N/A	100.0%	83.3%	N/A
TOTAL	183	173	94.5%	100.0%	88.6%	95.3%	100.0%

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

Commentary:

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 94.5% of new cases within the allotted target.

3.4 Investigations Concluded

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

First Quarter 2014/2015 Investigations concluded

	Immediate	High	Standard	Low	Total
Barnsbury	1	1	8	0	10
Bunhill	0	1	6	0	7
Caledonian	0	3	11	0	14
Canonbury	0	3	12	0	15
Clerkenwell	0	2	6	0	8
Finsbury Park	0	0	8	0	8
Highbury East	1	3	4	1	9
Highbury West	0	1	12	0	13
Hillrise	0	0	5	0	5
Holloway	1	3	2	0	6
Junction	0	0	8	0	8
Mildmay	0	0	8	0	8
St Georges	0	2	10	0	12
St Marys	0	9	22	0	31
St Peters	1	1	8	1	11
Tollington	0	0	6	0	6
TOTAL	4	29	136	2	171

Table 3: Planning Enforcement cases closed, sorted by Ward and Priority category

Commentary:

This has been a steady quarter for case closures, although the number of new cases received was higher than the amount closed. This will be addressed next quarter with a concerted effort to increase the amount of case closures.

3.5 Notices Issued between 1 April 2014 and 30 June 2014

Enforcement Notices: 6

Listed Building Enforcement Notices: 3

Planning Contravention Notices: 1

Breach of Conditions Notices: 0

Stop Notices: 0

Section 215 (Untidy Land): 0

Commentary:

The number of all Notices served for this quarter is lower than the same quarter for last year. This is attributable to higher numbers of cases being resolved by voluntary compliance and through negotiation, as well as an increase in the type of planning breaches that are not resolved with an Enforcement Notice (estate agent boards for example). It is expected, however, that as the direction of the team moves towards enforcement action that recovers the cost from the

perpetrator, the issuing of Enforcement Notices will rise again as part of an increase in the use of the Proceeds of Crime Act.

3.6

Licensing Responses

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.

In this quarter planning enforcement received 57 new consultations and responded to 63 existing consultations.

3.7

Planning Enforcement Projects

Planning Enforcement are currently dealing with a number of projects, the updates of which are as follows:

Short Term Lets - investigation into residential properties that have been unlawfully changed to offer short term letting for periods of less than 90 days.

We are currently dealing with 10 cases involving unauthorised changes of use to short term letting without the requisite planning permission and new cases are being reported regularly. One of the cases involves the conversion of 48 residential flats into short term lets. Enforcement action is currently being undertaken at this property and a further update will be provided next quarter.

There are, however, proposals outstanding to relax the law on short term lets in London with the DCLG proposing to implement changes in April 2015.

Proceeds of Crime - looking to apply the Proceeds of Crime Act in a planning context to remedy serious breaches of planning control.

The first prosecution case to enact this legislation had its initial hearing in December 2013 and involves the revenue generated through the unlawful creation of 6 residential units, over a prolonged period of time. The owner of the property has already pleaded guilty and will be sentenced and fined when the case next goes to court in September 2014. The owner has also paid the £77,000 proceeds of his crime to the courts, of which the Council will receive one third of in due course.

The Enforcement Team have identified a number of other cases where applying POCA to prosecution proceedings may be applicable, and further updates will be provided next quarter.

Estate Agent Boards – continuing program of identifying and removing large clusters of estate agent boards. Many new, unlawful estate agent boards are reported on a weekly basis and swift action is taken to seek their removal. If the boards are not removed then Council-appointed contractors remove the boards, with the costs of doing so (with administration costs) passed on to the offending party.

3.8 Appeal performance: (Previously BVPI 204)

The following table reflects 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.

First Quarter 2014/2015

Total	59.1% (13/22)

Table 1: Appeals against refusal of planning permission allowed

3.9 All Applications and Enforcement Appeals performance

The table below reflects 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.

First Quarter 2014/2015

	All Applications	Enforcement
Total	56.3% (18/32)	0% (0/6)

Table 2: All appeals allowed against refusal of permission or issue of enforcement notice

3.10 Appeal commentary:

In 2013-14, the percentage of appeals allowed was 35.2% (for planning application appeals) and 35.3% for all applications. The appeal figures for this quarter for planning appeals (59.1%) and all applications (56.3%) are significantly higher than last year's average.

Other London Authorities are experiencing similar increases in appeals that are allowed and it is widely felt that this coincides with the appointment of a number of new Inspectors at the Planning Inspectorate; and the fact that Inspectors appear to be adopting a more liberal interpretation of planning policy as well as attaching higher weight to material planning considerations to justify a departure from policy. This is particularly evident with regards to roof additions, developments at the rear of properties, Listed Building works and the quality of residential units. A significant proportion of the allowed appeals for this quarter have involved works to the roof (loft conversions, dormer windows, roof terraces etc.).

It also appears the context used to determine applications has changed. Where previously we won appeals due to the harm to the applicant property itself, Inspectors now appear to be attaching much stronger weight to the surrounding context of the street and general vicinity.

Since November 2012, the majority 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.

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. Whilst there has not been any patterns emerging as to why appeals have been lost, it does appear that different Inspectors apply different policy interpretations, and more commonly, subjective design judgements. Such factors are now forming part of our planning assessment.

The 'Allowed Appeals' schedule captures the details of all appeals that have been discussed at Planning Forum. This schedule was previously attached to the year-end '*Planning Enforcement and Appeal Performance*' report, but Members have recently requested that this is reported quarterly. In view of this, the Allowed Appeals schedule for first quarter 2014-15 is attached as **Appendix 1**.

3.11 Appeal Costs Information

Local planning authorities, appellants and interested parties who have taken part in the appeal process, including statutory consultees, may apply for costs, or have costs awarded against them. A party applying for costs may have costs awarded against them, if they themselves have behaved unreasonably.

An Inspector or the Secretary of State may, on their own initiative, make an award of costs, in full or in part, in regard to appeals and other proceedings under the Planning Acts if they consider that a party has behaved unreasonably resulting in unnecessary expense and another party has not made an application for costs against that party.

Members have recently requested that the appeal cost applications statistics also form part of this report, and these are therefore reported below.

Appellants' Costs Applications Decided First Quarter 2014/2015

Total Number of Costs Applications by Appellants Decided	Costs Applications Refused	Costs Awarded	Partial Costs Awarded
3	100% (3/3)	0% (0/3)	0% (0/3)

Table : All costs applications made by appellants decided in First Quarter 2014/2015

Council's Costs Applications Decided First Quarter 2014/2015

Total Number of Costs Applications by Council Decided	Costs Applications Refused	Costs Awarded	Partial Costs Awarded
2	50% (1/2)	0% (0/2)	50%(1/2)

Table : All costs applications made by the council decided in First Quarter 2014/2015

4. Implications

4.1 Financial implications:

None

4.2 Legal Implications:

None

4.3 Environmental Implications

None

4.4 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.

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