

REPORT FOR: PLANNING COMMITTEE.

Date of Meeting: 5 September 2012

Subject: **INFORMATION REPORT –**
Overview of Planning appeal decisions
and enforcement statistics for the first
quarter of 2012/13

Responsible Officer: Stephen Kelly - Divisional Director of
Planning

Exempt: No

Enclosures: Appendix A Schedule of appeal
decisions
Appendix B Enforcement Grid

Section 1 – Summary

This report provides the Committee with an overview of Planning appeal decisions and enforcement statistics for the first quarter of 2012/13.

FOR INFORMATION

Section 2 – Report

2.1 Appeals Background

This report provides the Committee with an overview on the appeal decisions received by the Council in Quarter 1 of 2012/13.

2.2 Overview

The decisions of the Council as Local Planning Authority are subject to a right of appeal. Appeals are made to the Planning Inspectorate, an agency of Government, established independently by the Secretary of State to review and in most cases, determine, planning appeals submitted. Planning Appeals may be determined by “written representations” – where the appeal is “heard” by an exchange of written correspondence; an “informal Hearing” – where the parties meet to explore the reasons for refusal with a Planning Inspector or by way of a public inquiry, where formalised examination of the evidence takes place under the Direction of an inspector.

The majority of planning appeals are heard by way of written representations. Public inquiries, because of their cost and the delay associated with them, are the least common form of appeal in the borough.

In addition to the consideration of the planning merits of a specific application – centered upon the reasons for refusal, in some cases, planning inspectors will determine claims against the Council for applicants (or the Councils) costs arising as a result of unreasonable behavior.

2.3 Appeal Decisions by Type

Table 1: Appeal Decisions by Type – 1 April 2012- 30 June 2012

Summary of appeal decisions (April – June 2012)
Householder appeals 18 Decided 3 Allowed % Allowed = 17%
Enforcement 7Decided 5 Allowed %Allowed = 71%
Others (Written representations, informal hearings, public Inquiries) 15 Decided 5 Allowed %Allowed = 33.8%

The above table summarises the results of appeal decisions by type in the previous quarter (Q1). Whilst the success rate (for appellants) of appeals remains slightly above the national average (42% of all appeals were allowed, or partially allowed in this quarter), of note is the improvement in the number of householder appeals being allowed, with the percentage dropping from over 40% and 50% in previous quarters to 17 %, (3 out of 18 appeals). Indeed, the Inspectorate has the option to partially allow appeal, and in the case of one of the three appeals allowed, the Inspectors conclusions reflected those of the Council (who are not able to grant elements of the scheme and refuse others in the same way the Planning Inspectorate can).

This improved performance has come as a result of work with the Development Management team to consider not just adopted guidance, but also to take into account site circumstances, being clear to identify harm caused prior to refusing permission. This was identified in earlier reports as an area for development within the team, and it is therefore encouraging to note the improved performance of the last quarter.

The table also reflects improved performance in the category of 'Other' appeal, with the performance being close to the national average of 30%.

However, the number of appeals allowed in relation to enforcement cases has warranted some investigation, as this is a significant change from previous quarters where performance on enforcement appeals had been outstanding. In reviewing the 5 appeals allowed it is important to note that this includes one that was partially allowed, with the enforcement notice still being maintained on elements of the development.

In addition, appeals relating to 17 and 19 Elmsleigh Avenue were both allowed. These were in respect of significant extensions to both properties that the Council considered to be overdevelopment, and disproportionate to the original houses. These appeal decisions have been reviewed to consider whether a different approach could or should have been adopted. However, whilst the Inspector has acted correctly and taken into account all relevant policies and material consideration, and the decision is therefore sound, Officers remain of the view that the scale of extensions to this property do not comply with guidance, and result in disproportionate additions, to the detriment of the character and appearance of the locality. Put simply, given the policy background and site circumstances, officers would take the same decision. Notwithstanding this, the Inspector is entitled to come to a different conclusion, and there are no grounds for challenge.

There are no examples of enforcement notices being dismissed on any basis of legal or procedural deficiency.

2.6 Conclusion (Appeals)

Planning Appeals introduce considerable additional costs to the planning application process for both applicants and the Council. They also prolong the uncertainty surrounding new development for surrounding residents and

businesses. The outcome of planning appeals can be uncertain for both applicants and the Council. Wherever possible, the Planning Division is seeking to avoid unnecessary appeals by providing better, earlier and more consistent guidance and by ensuring that planning applications submitted respond to clear policy guidance setting out the expectations of the Council for quality, sustainability and amenity. When an application is refused, work within the team is increasingly focused upon ensuring that sound and clear reasons for refusal are provided, to enable an applicant to understand what needs to be changed (if possible) to make a proposal acceptable, and to allow the most robust defence of such reasons in the event of an appeal.

2.7 Planning Enforcement

Below is a summary of enforcement statistics for quarter 1 of 2012/13. A copy of the enforcement register is appended to this report for information. The planning enforcement team continues to receive a significant number of complaints regarding alleged breaches of planning control, and has responded by investigating these breaches and closing 160 cases where investigation revealed there was no breach in planning control, or where the breach was minor, and not expedient in the public interest to pursue formal action. A total of 16 enforcement notices were served. 8 of these have been appealed. Of the enforcement appeals determined in this period, 5 out of 7 were allowed. This is discussed in the appeals section above. This is a lower level of performance than the high level of success on enforcement appeals from previous Quarters. The robustness of the enforcement process, including thorough consideration of identified harm, the expediency of taking action, will continue to be monitored. As detailed in the appeals section above, there are no examples of enforcement notices being dismissed on any basis of legal or procedural deficiency.

The Enforcement team has, in this quarter, also worked with Brent Enforcement and Harrow and Brent Trading Standards to successfully prosecute a landlord under the Proceeds of Crime Act (POCA). Further cases have been identified for similar action, and it is important to note that , following publicity on the successful POCA prosecution, other landlords in a similar position have confirmed that they will be (and indeed have) complied with the requirements of their enforcement notices. This work follows on from the Direct Action undertaken earlier this year.

The Planning Enforcement and Prosecution Policy has now been adopted formally and is available on the Council website.

Table 2: Enforcement Summary April – June 2012

Months	Total Cases Closed	Total New Cases Created	Total ENF Notices served	Appeals Lodged	Appeals Allowed	Appeals Dismissed	Prosecution
April-June	160	251	16	7	5(including 1 part allowed)	2	1 (7 pending)

Section 3 – Further Information

This report, insofar as it reports on enforcement action, will be updated on a quarterly basis, in accordance with Proviso F of the Planning and Building Control Scheme of Delegation, March 2012, which requires that any decision on taking enforcement action be reported to the planning committee.

Section 4 – Financial Implications

This report, for information, has no direct financial implications.

Section 5 – Corporate Priorities

The delivery of effective defense against appeals and planning enforcement has a direct role to play in the achievement of Council Corporate priorities, including 'Keeping neighbourhoods clean, green and safe' and 'Supporting our Town Centre, our local shopping centres and businesses'.

The objectives of the Council's involvement in appeals and planning enforcement, set out in this report will contribute directly to improving the physical environment of the Borough and reinforcing the integrity of the statutory planning process, for the benefit of the Borough and its residents and businesses.

Name: Kanta Hirani	<input checked="" type="checkbox"/>	on behalf of the Chief Financial Officer
Date: 24 August 2012		
Name: Matthew Adams	<input checked="" type="checkbox"/>	on behalf of the Monitoring Officer
Date: 24 August 2012		

Section 6 - Contact Details and Background Papers

Contact: Beverley Kuchar, Head of Development Management and Building Control, x6167

Background Papers:

Enforcement Register
Schedule of appeals April to June 2012