

REPORT FOR: PLANNING COMMITTEE.

Date of Meeting: 20 February 2013

Subject: INFORMATION REPORT – Update on Planning Appeals and Enforcement Notices

Responsible Officer: Stephen Kelly - Divisional Director of Planning

Exempt: No

Enclosures: Appendix A – Enforcement Grid

Section 1 – Summary

This report provides the Committee with an overview of Planning appeal decisions, and enforcement statistics for the third 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 3 of 2012/2013.

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 – centred 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 behaviour.

2.3 Appeal Decisions by Type

Table 1: Appeal Decisions by Type – 1 October 2012 – 31st December 2012

Summary of Appeal Decisions (Oct – Dec 2012)
Householder Appeals 35 Decided 13 Allowed % Allowed = 37%
Enforcement 4 Decided 2 Allowed % Allowed = 50%
Others (Written representations, informal hearings, public inquiries) 17 Decided 9 Allowed % Allowed = 53%

The above table summarises the results of appeal decisions by type in the previous quarter (Q3). The success rate (for appellants) has risen since the last quarter with 42 % of all appeals being allowed. However, this quarter included double the appeals of Q2 and an improvement in householder appeal performance. With the percentage of householder appeals allowed dropping from 45% to 37%. This improvement in performance for householder appeals 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 cause prior to refusing permission. This work is on going and it is considered encouraging to note the continuous improvement this quarter.

Performance in the 'other' category has dropped to 43% from 25%. There are a variety of appeal types within this category but 50% of the appeals allowed in December were resubmissions of applications for dwellings on garden land approved prior to the adoption of the NPPF and the Core Strategy. In order to address this and provide clarification and a definition of garden land to help decisions makers. The Council has prepared a draft Harrow Garden land Development Supplementary Planning Document. The SPD is currently the subject of a consultation and is available on the Councils website for comments. The adoption of the SPD should mean a significant improvement in Appeal performance for this type of application.

The Enforcement Appeal performance has reduced since the last quarter. However, there was only 3 enforcement appeals in Q2 with 1 allowed and 4 enforcement appeals in Q3 with 1 allowed and 1 part allowed as such it is not considered that the changes in performance are significant. It is also important to recognise that 2 out of the 4 appeals were located at 16 Exeter Road and one of the appeals for a front porch was dismissed with costs awarded to the Local Planning Authority.

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

2.4 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 3 of 2012/13. A copy of the enforcement register is appended to this report for information. This quarter has seen the reduction in staff from 4 to 2 in the planning enforcement team, following the deletion of the Enforcement team leader post as part of the Medium Term Financial Strategy, and the departure of another officer to take up a more senior position in another authority. Notwithstanding this, 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 171 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 6 enforcement notices were served. This is a reduction from previous quarter and reflects the reduction in members of staff. 8 appeals against enforcement notices have been received. Of the enforcement appeals determined in this period, 2 out of 4 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 Harrow and Brent Trading Standards to successfully prosecute a second 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.

Table 2: Enforcement Summary Oct - Dec 2012

Months	Total Cases Closed	Total New Cases Created	Total ENF Notices served	Appeals Lodged	Appeals Allowed	Appeals Dismissed	Prosecution
Oct - Dec	171	123	6	8	2 (including 1 part allowed)	2	2 (4 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: 7 February 2013		
Name: Abiodun Kolawole	<input checked="" type="checkbox"/>	on behalf of the Monitoring Officer
Date: 4 February 2013		

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