

REPORT FOR: PLANNING COMMITTEE.

Date of Meeting: 10 July 2013

Subject: **INFORMATION REPORT** – Appeals and Enforcement Update Report

Responsible Officer: Stephen Kelly - Divisional Director of Planning

Exempt: No

Enclosures: Enforcement Register Quarters 1-4, 2012/2013

Section 1 – Summary

This report provides the Committee with an overview of Planning appeal decisions for Quarter 4 of 2012/13, and an end of year overview enforcement statistics for 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 4 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 January 2013 – 30th April 2013

Summary of Appeal Decisions (Jan – April 2013)
Householder Appeals 27 Decided 12 Allowed % Allowed = 44%
Enforcement 4 Decided 1 Allowed % Allowed = 25%
Others (Written representations, informal hearings, public inquiries) 20 Decided 6 Allowed % Allowed = 30%

The above table summarises the results of appeal decisions by type in the previous quarter (Q4). There has been an improvement on the Local Authorities performance with the percentage of applications being dismissed on appeal increasing to 62% from 58%.

The success rate (for appellants) for householder appeals has risen since the last quarter with 44 % of all householder appeals being allowed. The performance in householder applications is considered to reflect the Government's relaxation in policy with regard to householder development. The now implemented amendments to the permitted development allowances and Officers continuing to place significant emphasis on specific site circumstances is considered to result in improved performance next quarter.

Performance in the 'other' category has improved dramatically from 53% of appeals being allowed to 30%. This improvement in performance is excellent given that there was an increase in applications on that determined in Q3. This performance reflects the 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. It is also considered to reflect the adoption of the Harrow Garden Land Development Supplementary Planning Document, which clarifies and defines garden land for decision makers.

The Local Planning Authority has successfully defended three costs applications submitted by appellants in planning appeals over the past quarter. It has, however, unsuccessfully defended one appeal at 14 Cecil Road for a planning condition regarding car parking permit restrictions. This was due to the fact that the condition was not fully substantiated through appeal documents. Significant discussion has been had with the Local Highways Authority, who is carrying out further work with regard to parking capacity within controlled parking zones. In order to avoid any future costs applications this condition is only recommended to be added to any permission if specific site circumstances warrant the condition reasonable.

The Enforcement Appeal performance has also significantly improved on Q3 with the percentage of appeals being allowed on appeal dropping by half. The Local Planning Authority has been successfully awarded costs in 77 Stuart Avenue but unsuccessfully defended applications for costs in two further appeals; 73 Hindes Road and 293 and 295a Station Road. Costs were awarded in the case of 73 Hindes Road on the basis of a fundamental disagreement between the Appellant and the Council on the description of the breach of planning control, which was at the heart of the appeal. The Planning Inspector determined that the breach was as described by the appellant and subsequently awarded costs against the Local Planning Authority. It is not considered that this costs application was awarded on the basis of any legal or procedural deficiency.

Costs were also awarded in the appeal at 293 and 295a Station Road as the Inspector considered that the Council did not correctly describe the breach of planning control in relation to the planning unit. In order to avoid any future costs applications Officers will check at length that the description of the breach is accurate, and will increase the use of Planning Contravention Notices (PCNs) to ascertain clearer information on the nature of the breach of planning control where there may be limited information available to the Council. From 2013/14 onwards

the number of PCNs served will be reported by Quarter as part of the Enforcement statistics.

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.

2.5 Planning Enforcement

Below is a summary of enforcement statistics by quarter for 2012/13. A copy of the enforcement register for all 4 quarters is appended to this report for information. This year 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. The Development Management team structure has also been changed to bring the enforcement officers into the area teams to work more closely with the area team managers and with the case officers within each team.

Planning enforcement continues to receive a significant number of complaints regarding alleged breaches of planning control, and notwithstanding the reduction by 50% in the number of dedicated enforcement officers, the number of complaints investigated and closed has remained consistent throughout the year. Prosecutions and direct Actions have also continued, with 2 prosecutions pending in addition to the three successful prosecutions during the year, and direct action being completed on 4 breaches of planning control. The performance on enforcement appeals is discussed in the appeals section above.

There has, however, been a notable reduction in the number of formal notices served. As a response to this officers have reviewed the process for agreeing and authorising formal enforcement action, and as a consequence of this review a revised report format has been agreed with legal officers, which should serve to make this process more efficient. It should also be noted, that, whilst the number of notices served last quarter was 4, there are 5 further notices authorized and currently being drafted.

The Enforcement team has, in this year, also worked with Harrow and Brent Trading Standards to successfully prosecute two landlords 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 Statistics by Quarter 2012/13

1 st Quarter	Total Cases Closed	Total New Cases Created	Total ENF Notices served	Appeals Lodged	Appeals Allowed	Appeals Dismissed	Prosecution
Apr 12- Jun 12	102	186	14	7	4(1 part allowed)	2	1

2 nd Quarter	Total Cases Closed	Total New Cases Created	Total ENF Notices served	Appeals Lodged	Appeals Allowed	Appeals Dismissed	Prosecution
Jul 12- Sep 12	116	223	12	3	1	2	1

3 rd Quarter	Total Cases Closed	Total New Cases Created	Total ENF Notices served	Appeals Lodged	Appeals Allowed	Appeals Dismissed	Prosecution
Oct 12- Dec 12	102	122	6	4	2(1 part allowed)	2	1

4 th Quarter	Total Cases Closed	Total New Cases Created	Total ENF Notices served	Appeals Lodged	Appeals Allowed	Appeals Dismissed	Prosecution
Jan 13- Mar 13	134	99	4	6 (+9 that are awaiting Decision)	3	3	Direct Action on 4 Properties

Table 3: Enforcement Summary 2012/1013

Months	Total Cases Closed	Total New Cases Created	Total ENF Notices served	Appeals Lodged	Appeals Allowed	Appeals Dismissed	Prosecution/ Direct Action
April 2012- March 2013	552	630	41	29 (9 pending decisions)	10(including 1 part allowed)	10	3 prosecutions (2 pending) 4 direct actions

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 2013, 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 defence 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 Halai	<input checked="" type="checkbox"/>	on behalf of the Chief Financial Officer
Date: 25 June 2013		
Name: Abiodun Kolawole	<input checked="" type="checkbox"/>	on behalf of the Monitoring Officer
Date: 26 June 2013		

Section 6 - Contact Details and Background Papers

Contact: Beverley Kuchar, Head of Development Management and Building Control, 0208 736 6167

Background Papers:

Enforcement Register Q1-Q4 2012/13
Schedule of appeals April to June 2012