

REPORT FOR: PLANNING COMMITTEE.

Date of Meeting: 20 November 2013

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

Responsible Officer: Stephen Kelly - Divisional Director of Planning

Exempt: No

Enclosures: Enforcement Register Quarters 1-2, 2013/2014

Section 1 – Summary

This report provides the Committee with an overview of Planning appeal decisions and an overview of enforcement statistics for Quarters 1 and 2 of 2013/14.

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 Quarters 1 and 2 of 2013/2014.

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 Quarter 1

Table 1: Appeal Decisions by Type – 1 April 2013 – 30th June 2013

Summary of Appeal Decisions (Jan – April 2013)
Householder Appeals 10 Decided 5 Allowed % Allowed = 50%
Enforcement 5 Decided 2 Allowed % Allowed = 40%
Others (Written representations, informal hearings, public inquiries) 10 Decided 3 Allowed % Allowed = 30%

The above table summarises the results of appeal decisions by type in the previous quarter (Q1). The Local Planning Authorities performance has not improved on the last quarter with 40% of appeals allowed (38% were allowed within the previous quarter).

This is considered to be attributed to the rise in householder applications allowed as a result of the revised General Permitted Development Order which has relaxed the tolerances in which householder works can take place without requiring planning permission. Inspectors have considered the appeals in relation to the revised General Permitted Development Order, although the Local Planning Authority made their decision prior to the adoption of this legislation. The Development Management team are now ensuring that the revised legislation is a key consideration in determining applications and as such performance should improve within the next quarter.

Performance in the 'other' category remains consistent and reflects the work within 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.

There has been an increase in the number of enforcement notices quashed this quarter. The circumstances surrounding this are as follows; The enforcement notices at 293 and 293a Station Road was quashed and costs awarded against the Local Planning Authority due to the fact that the Council did not correctly describe the breach of planning control. In order to avoid any future costs applications Officers will check at length that the description of the breach is accurate.

The other enforcement notice quashed was at 33 Radnor Road where the Inspector agreed with the Local Planning Authorities conclusion that the out building was too high. However, the enforcement notice was quashed on the basis of the addition of a planning condition requesting the reduction in the height of the building to 2.5 metres.

The development management team will continue to ensure that taking formal enforcement action is expedient whilst checking at length that notices accurately identify the breach of planning control.

2.3 Appeal Decisions by Type Q2

Table 1: Appeal Decisions by Type – 1st July 2013 – 30th September 2013

Summary of Appeal Decisions (1st July 2013 – 30th September 2013)
Householder Appeals 8 Decided 1 Allowed % Allowed = 12.5%

Enforcement 4 Decided 1 Allowed % Allowed = 25%
Others (Written representations, informal hearings, public inquiries) 10 Decided 2 Allowed % Allowed = 20%
Majors 0 Decided 0 Allowed % Allowed = 0%

The above table summarises the results of appeal decisions by type in the previous quarter (Q2). The Local Planning Authorities performance has significantly improved with 18% of applications allowed on appeal during this quarter compared to 40% allowed in the last quarter Q1.

There has been significant improvement in performance with regard to householder appeals this quarter with only 1 appeal out of 8 allowed. This is considered to reflect the Development Management teams approach to consider not just adopted guidance, but also to take into account site circumstances, being clear to identify harm cause prior to refusing permission. Further to this it is also demonstrates the fact the Development Management team is implementing the Government's recent policy and legislation changes consistently and accurately.

Performance in the 'other' category has also improved with a 10% decrease in applications allowed on appeal and reflects the work within the development management team to ensure site circumstances are a significant consideration in the context of the adopted development plan.

One enforcement notice was quashed over the past three months at 9 Crowshott Avenue, this notice was quashed as a requirement indicated involving amendments to the roof could not physically be carried out. The development management team will continue to ensure that taking formal enforcement action is expedient whilst checking at length that requirements are accurate and can be implemented.

Costs have been awarded against the Council for unreasonable behaviour in two cases. Costs were awarded in the case of a proposed extension at Summerdyne in which a window was inaccurately identified as a bedroom window when it served an en-suite and subsequently the Planning Inspector considered one of the refusal reasons unreasonable (the appeal was dismissed). Partial costs have also been awarded against the Council in the case of the LPA's refusal to discharge a number of planning conditions for a new dwelling at 'Land adjacent to Laureston', in that the Inspector considered that common ground could have been found on certain issues prior to the Appeal. Costs have also been awarded for the Council in this case as the Inspector considered that the level of information submitted at the appeal stage by the appellant was excessive and unreasonable, although, this additional information was assessed through the appeal process. This appeal was also dismissed.

Officers are now ensuring that all windows are accurately identified and if necessary neighbouring properties are inspected prior to an application being refused on this basis. The Local Planning Authority continues to proactively engage with applicants through the comprehensive pre-application service it offers to avoid any unnecessary appeals.

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 for Quarters 1 and 2 for 2013/14. A copy of the enforcement register for quarters 1 and 2 is appended to this report for information. Last year saw 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, with the effective implementation date on 1 April 2013.

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.

In the first quarter of the year there was 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 implemented and a review of Q2 notices served has shown the positive impact of revisions to the process, with 6 notices served and reports drafted for 12 further notices.

Table 2: Enforcement Statistics by Quarter 2012/13

Summary of Enforcement Statistics for 2013/2014 (Jul 13 to Sep 13)

Months/Year	Total New Cases Created	Total ENF Notices served	Appeals Lodged	Outstanding Appeals Allowed	Outstanding Appeals Dismissed	Prosecution
Apr 13 – Jun 13	165	1	0	3	3	1 pending
July 13- Sep 13	143	6 (12 pending with legal)	2	0	5	3 Currently 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 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: Jessie Mann

on behalf of the
Chief Financial Officer

Date: 6 November 2013

Name: Siân Webb

on behalf of the
Monitoring Officer

Date: 7 November 2013

Section 6 - Contact Details and Background Papers

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

Background Papers:
Enforcement Register Q1-Q2 2013/14