

Meeting:	Planning Committee
Date:	9 September, 2009
Subject:	Planning Enforcement
Responsible Officer:	Stephen Kelly, Divisional Director of Planning
Portfolio Holder:	Councillor Marilyn Ashton, Portfolio Holder for Planning, Development and Enterprise
Exempt:	No
Enclosures:	Appendix A: Enforcement Scheme of Delegation

Section 1 – Summary and Recommendations

This report provides an overview of the activities of the planning enforcement team, outlines some of the current work streams aimed at enhancing the service's effectiveness and seeks the Committee's approval of the proposed Enforcement Scheme of Delegation to allow officers to secure compliance with and prosecution of planning and related breaches.

Recommendation: Approve the Enforcement Scheme of Delegation attached at Appendix A.

Reason: The changes to the scheme of delegation alongside the other actions outlined in this report will serve to improve the effectiveness and efficiency of planning enforcement in Harrow.

Section 2 – Report

Background

The effective enforcement of planning regulations goes hand in hand with the proper management of development. As a matter of principle, the Town and Country Planning Act 1990 (“the Act”) seeks to regulate the development and use of land in the public interest. The Act contains detailed provisions that require, inter alia, the grant of planning permissions and related consents before development takes place. The Act allows for proper consultation with interested parties and statutory consultees to ensure that all those with an interest in, or who may be affected by, development, have an opportunity to contribute to the decision making process. It remains for the Local Planning Authority to balance all material planning considerations in determining whether to permit development.

The carrying out of development without first securing planning permission is not in itself a criminal offence. Such development is “unlawful”. Unlawful development may be rendered lawful through either the grant of a retrospective planning permission or by virtue of its “immunity” from action – usually by virtue of elapsed time.

Part VII of the Act confers powers on local planning authorities to take enforcement action in respect of breaches of planning control. Enforcement powers may be invoked where development has been carried out without the requisite grant of planning permission, or a condition imposed on a planning permission has been breached. The Act also provides for special controls such as planning obligations, tree preservation orders and listed buildings. Examples of local planning authorities’ powers include:

- Planning Contravention Notices
- Enforcement notices
- Breach of Condition Notices
- Stop Notices
- Temporary Stop Notices
- Injunctions
- Enforcement of duties as to replacement of trees
- S215 Untidy Site Notices
- Advertisement Discontinuance notices

In London, the Local Planning Authority may also utilise powers granted by virtue of the London Local Authorities Act 1995 to serve a notice requiring removal of an advertisement hoarding and take direct action by entering on the land, removing the hoarding and recover the expenses incurred in doing so.

At present, the Divisional Director of Planning has delegated powers for certain enforcement and advertisement procedures. These powers are set out in Parts 11 and 23 of the Schedule of Delegation dated 2 May 2007. This report seeks authority for an amendment of these powers in the form of the Enforcement Scheme of Delegation attached hereto as Appendix A. If

approved, the Enforcement Scheme of Delegation will be free standing and will be called the Enforcement Scheme of Delegation will be subject to the following provisos:

All decisions must be taken in accordance with the Principles of Delegation which state that “Officers should exercise delegated powers unless, in their opinion, the matter should be decided by Members”. Examples of matter which should be determined by Members include, matters not covered by an approved policy or guidance; those with unusual features; matters which may have political or other significance; or public interest matters.

Where the Chair of the Planning Committee or a Nominated Member requests in writing or by e-mail that the planning breach be reported to Committee, such decision shall not be decided under delegated powers.

In taking any decision, the Divisional Director of Planning must have regard to whether the decision to be taken is within approved expenditure limits, and whether the decision complies with council procedures, financial regulations and contract procedure rules.

These provisos are especially important for matters that will require additional financial resources or have a potential adverse reputational impact on the Council, such as Injunctions, Stop Notices and Temporary Stop Notices.

Current situation

The vast majority of development is carried out in accordance with the “lawful” process set out in the Town and Country Planning Acts; namely permission/consent is sought and then if required, confirmed by the LPA prior to works commencing. To ensure that the integrity of the planning process is maintained, it is important for planning authorities to make provisions for those circumstances where development does not follow this process. Most authorities therefore have dedicated planning enforcement teams to investigate alleged breaches of planning control and ensure that the adverse consequences of the breach are remedied in the most effective way.

Harrow’s planning enforcement team comprises 4 officers, supported by an administrator. The enforcement team carries out some 1100 investigations each year. The number of notified complaints received has increased in recent years. This year the team has received 197 complaints between April and start of July. Through investigation, the team has been able to close some 210 enforcement cases this year (this number includes old and more recent cases). There are around 3000 logged cases at various stages of investigation/action registered on the council’s system. Whilst this figure reflects previous incomplete recording and is under review, the need to focus the resources of the team to maximum effect remains paramount.

To enable day-to-day delivery of the service, the Council has delegated certain powers to nominated officers to enter land, investigate breaches and instruct the Council’s solicitor in the service of statutory notices. This reflects

practice across the Country, and underpins the requirements for a responsive and effective investigative service.

The activities of Harrow's enforcement team have been reported on a monthly basis to the planning committee by way of an "enforcement grid." This provides some information on the activities of the team, but not all. Feedback from members suggests that the value of the enforcement grid as a means of effectively monitoring enforcement activity is limited by the format and by the level of information provided within these reports.

Effective enforcement

Members have made clear their commitment to effective enforcement. In recent years, as the enforcement workload has grown the enforcement team has struggled to keep up with rising demand for investigations, action and compliance. Notwithstanding the recent down turn in development activity, changes in "permitted development" and the rise of unauthorised (and potentially lucrative) conversions have placed increasing pressure on the service. Moreover, it is clear from the published enforcement grid that there is a backlog of work associated with securing compliance with enforcement and related notices, through action and/or prosecution.

The large number of enforcement notices that await prosecution for non compliance and the increasing number of investigations requiring formal action points to an increasing cynicism amongst offenders around the effectiveness of the enforcement service in Harrow. In recent years successive reviews of planning enforcement by government have highlighted significant discrepancies in practice between local authorities. Additional provisions, such as the introduction of powers to stop work immediately in specific circumstances have been introduced. Case law and further clarification through Inspector's decisions on the scope of compensation payments in the event of issuing stop notices, have also served to re-affirm government's commitment that LPAs make full use of the legislative provisions in the public interest.

In response officers are undertaking a review of the enforcement activities and processes and have identified a number of work streams that, based upon best practice, would serve to improve the effectiveness and public confidence in the planning enforcement regime. These include:

- More effective system for recording and monitoring investigations
- A clear policy on the prioritisation and approach to planning enforcement
- Improved communication with complainants and offenders through the use of IT
- Improved monitoring information to members
- Improved information on planning matters to reduce "accidental" breaches
- Clearer planning permissions and conditions
- Greater collaboration between legal and planning officers
- Streamlined processes for securing compliance with statutory notices
- Effective prosecution of breaches of control

- Cross departmental working on evidence gathering and support for unauthorised development to allow quick remedy.

The majority of the work streams being pursued will be delivered using the resources of the existing Division and are being overseen by the Divisional Director for Planning, and the Director of Legal and Governance Services. Resources for 2009/10 have also been identified to improve the Council's ability to undertake works to secure compliance with enforcement notices.

Enforcement Policy

To allow consistent and effective management of the rising demand for investigations and the need for effective action to secure compliance, officers will be reviewing the current enforcement policy. A revised policy will set out more fully how the service will prioritise and respond to specific types of breach and will contain information for complainants and offenders on the enforcement process. The policy will be widely published and placed centrally within the decision making process. The policy will allow resources to be more clearly focused on Council priorities and will assist officers and members in communicating the Council's commitment to planning enforcement and in managing the expectations of the community. It is expected that the revised document will be brought to the Planning Committee for consideration, in January 2010.

Scheme of delegation

To address the need for a quicker and more effective response to breaches of planning control, and in line with practice elsewhere in the country, officers are seeking to amend the current scheme of officer delegation from the Council. The ability of officers to use all statutory provisions of the Planning Acts, to issue notices, prosecute, undertake action in default of a notice, carry out works under the London Local Authorities Act 1995 and to secure injunctions against harmful activity is considered to be an important part of demonstrating Harrow's commitment to effective enforcement. The proposed revision to the scheme of delegation therefore seeks to provide delegated power to the Corporate Director – Place Shaping and Divisional Director of Planning to authorise the Director of Legal and Governance Services to do the following:

1. Prosecution for non compliance with all notices served pursuant to Parts VII and VIII of the Town and Country Planning Act 1990 (as amended), e.g. Enforcement Notices, Breach of Condition Notices and Untidy Site Notices
2. The service of temporary stop notices and stop notices.
3. To take all necessary steps to facilitate the carrying out of works required by an enforcement notice where the notice has not been complied with
4. To take all necessary steps to facilitate the carrying out of works required by an Untidy Site notice under S215 of the Act where the notice has not been complied with

5. The service of a discontinuance notice under regulation 8 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007
6. The taking of direct action by the Council entering land, removing advertisement hoardings and recover the expenses incurred in doing so pursuant to the London Local Authorities Act 1995.
7. Securing injunctions against breaches of planning control under section 187B of the Act

In parallel with the changes to the scheme of delegation, the appended schedule introduces a reporting requirement to the committee that ensures that the Planning Committee are made aware of any circumstances where the powers above have been exercised by officers, quarterly. It is important to note that prosecution of breaches, and the carrying out of action in default, is discretionary. The merits of such actions will vary on a case-by-case basis along with the liabilities of the Council. It will be for the officers to consider both the Council's and the public interest served by such action on a case-by-case basis. The decision will be informed by a report in substantially the same format as a committee report, and will contain all the information on the breach and will consider the expediency of taking action, where this is statutorily required.

In due course, this approach will be reflected in the revised enforcement policy, which will be subject to public consultation. In the meantime, given the need to resolve a number of longstanding breaches, delegated powers will be exercised by the Divisional Director of Planning and overseen by the Director of Legal and Governance and Finance as all reports for delegated authority will be legally and financially cleared.

Other Options Considered

Consideration of alternative to wider delegated powers was undertaken. This included the calling of special planning committee meetings or the use of urgent member decision making process. The options were rejected because of the organisational difficulties associated with the calling of committee meetings at short notice.

The use of urgent member decision making was also rejected in consultation with the Portfolio Holder because of the significant burden placed upon individual nominated members and the risk of inappropriate lobbying of elected members associated with such a process.

The wider review of enforcement services encompasses consideration of a range of options to improve efficiency and effectiveness, and is ongoing.

Conclusion

The effective enforcement of planning control is a priority for the new Place Shaping Directorate and the new Planning Division. This reflects the desire of the community and members to ensure that the planning system operates

with integrity. Given the legacy of outstanding investigations and the need to deliver a responsive, efficient and cost effective service, officers are engaging a wide-ranging review of current activities. This has identified a number of areas for improvement and change that will seek to reduce accidental breaches of control, allow more effective engagement with all parties where a breach takes place and ensure that resolution of breaches is secured with consistency and resilience.

Alongside proposed action to secure compliance with outstanding notices, officers will be continuing to engage with members to ensure that the development of the above principles improves the integrity and effectiveness of Harrow's planning service so that it can continue to contribute to the Community Strategy objectives and reflect corporate priorities.

Financial Implications

The operational and process changes outlined in the report will be carried out from existing revenue budgets within Place Shaping and Legal Services. In respect of the carrying out of works in default, up to £25,000 has been set-aside within 2009/10 for the implementation of such works if required from the Place Shaping Capital programme.

Specific financial risks associated with each enforcement case will be considered on a case-by-case basis, along with potential measures to mitigate such impacts.

The changes to the scheme of delegation itself may shorten Planning Committee meetings and members' briefings and save on officer time.

Risk Management Implications

The proposed programme of changes to planning enforcement will improve management of risks through the transparent and effective operation of the statutory planning regime in the Borough. Specific risks associated with the delegation of decision making to officers will need to be assessed on a case-by-case basis, having regard to the specific circumstances prevailing. Each report authorising use of the provisions above will be accompanied by a risk assessment that identifies all specific risks attributable to the action and the mitigation measures proposed.

Legal Implications

Most of the enforcement powers conferred on local planning authorities may have legal repercussions when they are exercised; Enforcement Notices may be appealed, Injunctions may be defended and compensation may be sought if stop notices are issued. Certain actions such as the issuing of stop notices have a higher risk of costs implications for the Council, but this risk is theoretically comparable whether the decision to issue such a stop notice is made by the Planning Committee or by the Divisional Director of Planning under delegated powers. To mitigate this risk any decision to issue such notices should be informed by a report containing correct and well reasoned

information and cleared by the Director of Finance and the Director of Legal and Governance Services.

Section 3 - Statutory Officer Clearance

Name: Sheela Thakrar	<input checked="" type="checkbox"/>	on behalf of the* Chief Financial Officer
Date: 28 August 2009		
Name: Abiodun Kolawole	<input checked="" type="checkbox"/>	on behalf of the* Monitoring Officer
Date: 26 August 2009		

Section 4 - Contact Details and Background Papers

Contact: Stephen Kelly, Divisional Director – Planning, Ext 6149

Background Papers

Approved Scheme of Delegation to Director of Planning dated May 2007

APPENDIX

A – Proposed Enforcement Scheme of Delegation.

Appendix A

Enforcement Scheme of Delegation

Harrow Council Planning Committee

DELEGATION TO THE

DIVISIONAL DIRECTOR OF PLANNING

9 September 2009

Enforcement Services

The Divisional Director of Planning (or Corporate Director- Place Shaping where specifically mentioned) is authorised specifically to act in exercise of the functions of the Planning Committee in respect of the planning enforcement matters covered in this scheme of delegation subject to the restrictions and conditions indicated:

Provisos

This delegated authority will be subject to the following provisos:

- A) All decisions must be taken in accordance with the Principles of Delegation which state that "Officers should exercise delegated powers unless, in their opinion, the matter should be decided by Members". Examples of matters which should be determined by Members include matters not covered by an approved policy or guidance; those with unusual features; matters which may have political or other significance; or public interest matters.
- B) Where the Chair of the Planning Committee or a Nominated Member request **in writing or by email** that the application be reported to the Committee, such application shall not be decided under delegated powers;
- C) In taking any decision, the Divisional Director of Planning must have regard to whether the decision to be taken is within approved expenditure limits, and whether the decision complies with council procedures, financial regulations and contract procedure rules.
- D) Any decision on taking enforcement action in terms of this Enforcement Scheme of Delegation shall be recorded on the quarterly enforcement grid and reported to Planning Committee
- E) These provisos are particularly important for matters that will require additional financial resources or have a potential adverse impact on the Council's reputation, such as Injunctions, Stop Notices and Temporary Stop Notices.

1) **Enforcement (General)**

Planning Contravention Notices

- a) To issue and serve Planning Contravention Notices pursuant to Section 171C of the Town and Country Planning Act 1990 in respect of alleged breaches of planning control,
- b) To instruct the Director of Legal and Governance Services to take legal proceedings for offences under Section 171D of the Town and Country Planning Act 1990 in respect of failure to comply with the requirements of a Planning Contravention Notice.
- c) To consider any offer or representations which the recipients of a Planning Contravention Notice may wish to make regarding any alleged breach of control.

Section 330 Notices and s16 notices

- d) To authorise the issue and service, by the Director of Legal and Governance Services, of notices under Section 330 of the Town and Country Planning Act 1990 and notices under Section 16 of the Local Government (Miscellaneous Provisions) Act 1976.
- e) To instruct the Director of Legal and Governance Services to take legal proceedings for offences under Section 330(4) and (5) of the Town and Country Planning Act 1990 and section 16 (2) of the Local Government (Miscellaneous Provisions) Act 1976 in respect of failure to comply with the requirements of a section 330 notice and section 16 notice, respectively.

Breach of Condition Notices

- f) To authorise the issue and service, by the Director of Legal and Governance Services, of Breach of Condition Notices under Section 187A of the Town and Country Planning Act 1990 in respect of alleged breaches of planning condition (s).
- g) To authorise the withdrawal, by the Director of Legal and Governance Services, of Breach of Condition Notices under section 187A (6) of the Town and Country Planning Act 1990.
- h) To instruct the Director of Legal and Governance Services to commence legal proceedings for offences under Section 187A (8) and (9) of the Town and Country Planning Act 1990 in respect of failure to comply with the requirements of a Breach of Condition Notice.

Enforcement Notices

- i) To authorise the issue and service, by the Director of Legal and Governance Services, of Enforcement Notices under section 172 of the Town and Country Planning Act 1990 in respect of alleged breaches of planning control.
- j) To authorise the variation or withdrawal, by the Director of Legal and Governance Services, of Enforcement Notice (s) under section 173A of the Town and Country Planning Act 1990.
- k) To take direct action (following consultation with the Director of Legal and Governance Services) under section 178 of the Town and Country Planning Act 1990 by entering the land, subject of an extant Enforcement Notice, and taking the steps required to remedy the breach of planning control as set out in the notice.

- l) To instruct the Director of Legal and Governance Services under section 178 (1)(b) of the Town and Country Planning Act 1990 to recover the expenses reasonably incurred by the Council in taking direct action to secure compliance with an Enforcement Notice.
- m) To instruct the Director of Legal and Governance Services to take legal proceedings for offences under Section 179 of the Town and Country Planning Act 1990 in respect of a failure to comply with the requirements of an Enforcement Notice.

Section 215 Notices

- n) To authorise the issue and service, by the Director of Legal Services, of Notices under Section 215 of the Town and Country Planning Act 1990 for remedying the condition of land, and to take any subsequent direct action to carry out the works in default.
- o) To instruct the Director of Legal and Governance Services under section 219 (1)(b) of the Town and Country Planning Act 1990 to recover the expenses reasonably incurred by the Council in taking direct action to secure compliance with a section 215 Notice.
- p) To instruct the Director of Legal and Governance Services to take legal proceedings for offences under Section 216 of the Town and Country Planning Act 1990 in respect of a failure to comply with the requirements of a section 215 Notice.

Injunctions

- q) The Corporate Director – Place Shaping shall authorise the Director of Legal and Governance to take Injunctive action under Section 187B of the Town and Country Planning Act 1990, Section 222 of the Local Government Act 1972, Sections 9 and 44A of the Planning (Listed Buildings and Conservation Areas) Act 1990, and Section 214A of the Town and Country Planning Act 1990 in exercise of the Council's functions as a Local Planning Authority.

Temporary Stop Notices and Stop Notices

- r) To authorise and instruct the Director of Legal and Governance Services to:
 - i) Issue and serve temporary stop notices and stop notices under sections 171E and 183 of the Town and Country Planning Act 1990;
 - ii) Commence legal proceedings for offences under sections 171G and 187 of the Town and Country Planning Act 1990 in respect of temporary stop notices and stop notices.

Right of Entry

- s) To exercise the Council's functions as Local Planning Authority in relation to the provision of written authority for officers carrying out the inspection of properties in connection with enforcement matters under Part VII of the Town and Country Planning Act 1990

2) Tree Preservation

- a) The Divisional Director of Planning may exercise the Council's functions in relation to applications for consent to the cutting down, topping, lopping, or destruction of trees subject to Tree Preservation Orders and the provisions of Sections 211-214 of the Town and Country Planning Act 1990 (trees in conservation areas not protected by a Tree Preservation Order), except where the Divisional Director of Planning considers that a refusal of consent may involve the payment of significant compensation.

- b) The Divisional Director of Planning may authorise proceedings in relation to unauthorised works on unprotected trees in conservation areas and trees subject to a Tree Preservation Order.

3) Advertisements, Listed Buildings, Conservation Areas and Areas of Special Control

The Divisional Director of Planning may exercise the Council's functions in relation to conservation areas, listed buildings and areas of special control that have been designated and defined by the Council or Cabinet under the Town and Country Planning Act 1990 and / or the Planning (Listed Buildings and Conservation Areas) Act 1990 and the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 respectively.

Such functions are to include the following:

Advertisement Consent applications & Advertisement Controls:

- (a) To exercise the Council's functions in relation to applications for consent and enforcement under the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 and the London Local Authorities Act 1995.
- (b) To authorise or instruct the Director of Legal and Governance Services to:
 - i) issue and serve all notices and commence all associated procedures contained within Part III of the London Local Authorities Act 1995
 - ii) issue, serve, vary or withdraw discontinuance notices in accordance with Regulation 8 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007;
 - iii) commence legal proceedings for offences under section 224 of the Town and Country Planning Act 1990;
 - iv) recover expenses reasonably incurred in securing compliance with any notice served under Part III of the London Local Authorities Act 1995
- (c) To take direct action (following consultation with the Director of Legal and Governance Services) to secure compliance with any notice served under Part III of the London Local Authorities Act 1995.

Listed Buildings

- d) To authorise the Director of Legal and Governance Services to issue and serve, Building Preservation Notices and Emergency Building Preservation Notices under sections 3 and 4 of the Planning (Listed Buildings and Conservation Areas) Act 1990 .
- e) To authorise the Director of Legal and Governance to issue and serve Urgent Works Notices in respect of Listed Buildings in accordance with section 54 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and to recover expenses reasonably incurred carrying out urgent works under section 55 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
- f) To authorise the Director of Legal and Governance to issue and serve Listed Building Enforcement Notices under section 38 of the Planning (Listed Buildings and Conservation Areas) Act 1990;
- g) To instruct the Director of Legal and Governance Service to commence legal proceedings for offences under sections 9 and 43 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Please Note:

References to the Town and Country Planning Act 1990 and associated references should be read as including the relevant sections of the Planning and Compulsory Purchase Act 2004 and the Planning Act 2008.

**Stephen Kelly
Divisional Director of Planning**