

**REPORT FOR: OVERVIEW AND
SCRUTINY COMMITTEE
AND SCRUTINY SUB-
COMMITTEES**

Date of Meeting:	05 April 2011
Subject:	Planning Enforcement
Responsible Officer:	Andrew Trehern – Corporate Director of Place Shaping
Scrutiny Lead Member area:	Keith Ferry – Portfolio Holder for Planning, Development and Enterprise
Exempt:	No
Enclosures:	None

Section 1 – Summary and Recommendations

This report provides an overview of the performance of the planning enforcement service. The report includes information on the scale of enforcement activity and the policy position driving such activity in Harrow.

For Information

Section 2 – Report

1.0 Introduction

- 1.1 Harrow's planning enforcement team comprises 4 officers, supported by an administrator. Since April 2010, the enforcement team has received over 776 complaints via the telephone, e-mail, Councilor correspondence and officer investigations (and unsuccessful retrospective planning applications). This represents an increase, year on year over the last 3 years (see table 1 below).
- 1.2 Officers seek to undertake a site visit to all alleged breaches where ever possible, based upon an informal prioritization process. Because of the number of complaints and the ongoing process of managing "live" cases, these visits are often undertaken as linked visits, on the way to or from other investigations. Access to sites, to investigate breaches may require a number of visits (and in some cases the use of Court awarded warrants). The team has investigated and closed some 487 cases this year (to March 2011).
- 1.3 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. In September 2009, the Council extended the scope of such delegation to the Divisional Director.

2.0 Background to Planning Enforcement

- 2.1 The carrying out of development without first securing planning permission is not in itself a criminal offence. Such development is "unlawful". The Council is required to be able to demonstrate that development is not lawful in order to pursue formal enforcement action. This requires evidence. Unlawful development may be rendered lawful through either the grant of a planning permission or by virtue of its "immunity" from action – usually by virtue of elapsed time.
- 2.2 Part VII of the Town and Country Planning Act 1990 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.
- 2.3 Examples of local planning authorities' enforcement 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

2.4 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.

3.0 Enforcement Policy

- 3.1 Planning Policy Guidance Note 18 dating from 1991 sets out the government's policy on the use of planning enforcement powers by local planning authorities. Practice guidance and the development of specific provisions (such as temporary stop notices) since the 1990 Act (and the PPG) have been covered in subsequent circulars. Specific guidance is also provided on the enforcement of planning control for listed buildings.
- 3.2 PPG 18 is clear that a Local Planning Authority should not pursue enforcement action where the purpose is to remedy trivial breaches. Accordingly, an enforcement notice should not normally be issued solely to "regularise" development which is acceptable on its planning merits, but for which permission has not been sought. This would normally considered, on appeal, to amount to unreasonable behavior.
- 3.3 A LPA may consider that development has been carried out without the requisite planning permission, but the development could be made acceptable by the imposition of planning conditions (for example, to control the hours, or mode, of operation; or to carry out a landscaping scheme). If so, the authority may invite the owner or occupier of the land to submit an application, and pay the appropriate application fee, voluntarily. LPA's should adopt reasonable time limits for compliance where dealing with enforcement cases. In the case of unauthorized development by a householder who may have relied on or incorrectly interpreted "permitted development" rights the PPG indicates that it is inappropriate to initiate a prosecution, unless the householder has failed to take satisfactory steps to regularise the breach, despite being allowed adequate time to do so.
- 3.4 The PPG also encourages LPA's to adopt a sympathetic approach to enforcement involving small businesses and the self employed consistent with the government's interest in fostering enterprise.
- 3.5 Nevertheless, where, in the LPA's view, unauthorised development has been carried out and the LPA consider that: -
- (1) the breach of control took place in full knowledge that planning permission was needed (whether or not advice to this effect was given by the LPA to the person responsible);

- (2) the person responsible for the breach will not submit a planning application for it (despite being advised to do so); and
- (3) the breach is causing serious harm to public amenity in the neighbourhood of the site, the LPA should normally take vigorous enforcement action (including, if appropriate, the service of a stop notice) to remedy the breach urgently, or prevent further serious harm to public amenity.

3.6 Overall PPG 18 states that

- *“In considering any enforcement action, the decisive issue for the LPA should be whether the breach of control would unacceptably affect public amenity or the existing use of land and buildings meriting protection in the public interest;*
- *enforcement action should always be commensurate with the breach of planning control to which it relates (for example, it is usually inappropriate to take formal enforcement action against a trivial or technical breach of control which causes no harm to amenity in the locality of the site); and*
- *where the LPA's initial attempt to persuade the owner or occupier of the site voluntarily to remedy the harmful effects of unauthorised development fails, negotiations should not be allowed to hamper or delay whatever formal enforcement action may be required to make the development acceptable on planning grounds, or to compel it to stop (LPAs should bear in mind the statutory time limits for taking enforcement action).”*

4.0 Enforcement in Harrow;

4.1 The Committee's concern is that:

- (i) That developers get planning permission for a development but exceed that plan; and
- (ii) Properties are developed without permission.

4.2 The table below indicates the number of cases and consequential action taken by the planning enforcement team over the last 3 years. The table highlights the consequences of the recent and deliberate focus on planning enforcement, notably a marked increase in the use of enforcement notices over the last 2 years and a consequential reduction in the number of cases “cleared up” through a conclusion that formal action is not expedient. This reflects a hardening of the approach to enforcement in line with Community and Member feedback.

Table 1: recorded complaints and action

Year	Complaints recorded	Notices Served	Appeals submitted	Cases Closed
2008/9	749	19	7	1101
2009/10	760	52	15	534
2010/11*	776	49	32	487

- 4.3 This greater use of enforcement notices is inevitably accompanied by an increase in enforcement appeals. Whilst the service has successfully and effectively defended such appeals and has secured costs (for unreasonable behaviour) in 6 appeals over the last years, the consequential impact of the focus on action has meant that officers time has had to focus on a fewer number of live cases. This has served to reduce the clear up rate of the service.

Table 2: Enforcement Appeals

Year	Appeals submitted	Allowed	Dismissed
2008/9	7	2	5
2009/10	15	3	12
2010/11	32	0	20

- 4.4 The performance of the Council in the preparation and service of high quality and effective notices is reflected in the performance on appeal. Against a national trend of some appeals allowed for enforcement matters, Harrow's improving performance is well above the national average. In the case of 6 appeals over the last 18 months, the Council has also successfully pursued claims for costs against the appellant on the grounds of unreasonable behaviour.
- 4.5 A revised enforcement policy, seeking to identify clear priorities and new service standards to inform all involved in the enforcement process is under preparation. This policy will also include a prosecution policy for breaches of listed building and conservation area consents, paving the way for more effective enforcement of such criminal breaches through the courts.
- 4.6 PPG18 stresses that the pursuit of formal enforcement processes should follow only after voluntary attempts to secure resolution of a breach have failed. This makes economic sense also, given that where a genuine attempt is made to remedy a breach, it is unnecessary to engage additional officer time (on appeals etc) and legal advice and formal notices to compel a willing party to resolve a dispute.
- 4.7 Together with the increase use of enforcement notices, the Council has also sought to more fully exploit the range of measures provided for planning enforcement, in an attempt to demonstrate a greater determination to resolve harmful breaches. Consequently, this has seen, for the first time, the use of untidy site notices (S215) and action under the London Local Authorities Act (to remove unauthorised adverts) alongside the use of planning contravention notices, enforcement notices and stop notices.
- 4.8 Compliance with extant enforcement notices has also been secured through the Councils successful prosecution (of a change of use and unauthorised developments) in the Court. There are 11 further prosecutions initiated and underway for failure to comply with the terms of an enforcement notice and 7 further cases being prepared for prosecution by the enforcement officers. Direct action involving the demolition of an unauthorised garage, clearance of an unauthorised

builder's yard and removal of a 48-sheet advertisement hoarding also took place in 2010. The planning enforcement team has also begun engagement with the financial investigations team within Brent and Harrow Trading Standards to pursue more robust financial penalties alongside proposed convictions for breaches of enforcement notices using the more robust penalties within the Proceeds of Crime Act.

- 4.9 Finally, the Coalition is currently examining scope for changes to UK planning legislation. These include changes to the fee regulations (to enable fee recovery of all costs) and the scope to broaden the planning enforcement powers (and policy) through changes to the enforcement provisions and a new national planning policy statement. The Planning Service will seek to exploit such changes where possible to examine whether more effective recovery of costs and a more efficient process might usefully increase the capacity to pursue early action against breaches.

5.0 Benchmarking Planning Enforcement

- 5.1 The costs and effectiveness of planning enforcement services amongst local authorities are within the scope of a project, supported by the Planning Advisory Service, for "managing Excellent Planning Services. Harrow is participating in this project which will seek to identify baseline information that is capable of being shared between local authorities. This project is at an early stage and whilst the Council has undertaken a first phase review of its own costs and outcomes, this data has not yet been reconciled with potential partners amongst the other pilot authorities. As the project matures, it is expected that reliable (and comparative) data on costs and performance will be forthcoming.
- 5.2 Discussion with neighbouring authorities in London is ongoing to establish a reliable indicator of performance (in terms of officer productivity) and cost.

6.0 Equalities Impact

- 6.1 Each enforcement decision must have regard to the implications for action under both equalities legislation and the Human Rights Act. This report does not make policy and provides no specific assessment of a particular case requiring such an assessment.

7.0 Financial Implications

- 7.1 The cost of operating the enforcement service is contained within the Planning Division of place shaping's budget. No reductions or changes to funding are proposed by this report. Depending upon the approach, the prosecution or pursuit of direct action has specific budget implications that are considered in detail at the time of such a decision. The cost of the financial investigations undertaken is met from the Planning Divisions budget.

8.0 Performance Issues

None.

9.0 Environmental Impact

- 9.1 Does the proposal comply with all relevant environmental legislation?
Yes
- 9.2 All enforcement decisions are made having regard to the statutory framework, and policy covering such action, including where relevant, the provisions of the development plan.

10.0 Risk Management Implications

- 10.1 Risk included on Directorate risk register? No

Separate risk register in place? No – case specific RA undertaken as required.

11.0 Corporate Priorities

- 11.1 Planning enforcement activity aims to reinforce and help to deliver the following emerging corporate priorities:
- **Keeping neighbourhoods clean, green and safe:** by securing the removal of harmful unauthorised developments.
 - **United and involved communities - a Council that listens and leads:** In acting upon complaints made by the community, individuals and related associations.

Section 3 - Contact Details and Background Papers

Contact: Stephen Kelly Divisional Director – Planning , 020 8736 6082

Background Papers:

Town and Country Planning Act 1990
Planning Policy Guidance Note 18 – 1991