

# **REPORT FOR: PLANNING COMMITTEE**

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**Date of Meeting:** 18 April 2012

**Subject:** Update on planning appeals and enforcement notices

**Responsible Officer:** Stephen Kelly - Divisional Director of Planning

**Exempt:** No

**Enclosures:** Appendix A – List of Appeals  
Appendix B – Enforcement Notices Register

## **Section 1 – Summary**

This report provides the Committee with an overview of Planning appeal decisions, and enforcement statistics for the second and third quarters of 2011/12.

**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 the quarters 2 and 3 of 2011/12.

### 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 formal 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 – centered 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 behavior.

### 2.3 Appeal Decisions by Type

Below is a table that summarises the results of appeal decisions by type in the previous two quarters. Whilst the success rate of appeals against refusal or non-determination of planning applications remains slightly above the national average of between 32 and 40%, of note is the considerably higher success rate that the Council continues to have in planning enforcement appeals (just 17% allowed, including one partially allowed). There are no examples of enforcement notices being dismissed on any basis of legal or procedural deficiency.

**Table 1: Appeal Decisions by Type – 1 July 2011- 31 December 2011**

<b>Summary of appeal decisions (July to December 2011)</b>	
1 <sup>ST</sup> JUL 2011 – 30 <sup>th</sup> Sept Dec 2011	1 <sup>st</sup> OCT – 31 <sup>st</sup> DEC 2011
<b>Householder appeals</b> 20 Decided 10 Allowed <b>% Allowed = 50%</b>	<b>Householder appeals</b> 32 Decided 13 Allowed <b>% Allowed = 40.6%</b>
<b>Enforcement</b> 5 Decided 0 Allowed  <b>%Allowed = 0%</b>	<b>Enforcement</b> 9 Decided 2 Allowed 1 Part Allowed <b>%Allowed = 33.3%</b>
<b>Others (Written representations, informal hearings, public Inquiries)</b> 18 Decided 7 Allowed <b>%Allowed = 38.8%</b>	<b>Others (Written representations, informal hearings, public Inquiries)</b> 26 Decided 8 Allowed <b>%Allowed = 30.7</b>

Performance in planning appeals remains below national averages, and has done so for some time. Officers have put in place a series of measures to seek to respond to the outcomes of appeals but specific trends in decision making are hard to capture, given that site by site decisions have a range of specific circumstances.

The bulk of appeals being allowed relate to the Householder category of development (50% in Quarter 2 and 40.6% in Quarter 3). A review of those decisions shows the Inspectorate giving significant weight to site circumstances where proposals exceed the guidance within the Supplementary Planning Document: Residential Development. In these cases the appeals allowed appear to have turned on the Council's failure to identify the specific harm arising from the development using statistical or other quantifiable assessments. A greater focus upon the balancing of both considerations in the assessment of both impacts and policy compliance is accordingly being promoted within the team. Since this approach has been adopted the success rate for the Council on householder appeals has improved, as is evidenced from the reduction from 50% to 40% allowed from the end of Quarter 2 to the end of Quarter 3 . However, this will continue to be monitored.

A second factor in the number of appeals allowed in these two Quarters, particularly in householder appeals, is the approach adopted by the Planning Service in April 2011 not to negotiate on live applications, rather to encourage negotiation prior to the submission of a formal application through the pre-application advice service. Whilst this initially resulted in an increase in the number of more 'marginal' refusals, and subsequently more appeals allowed

'on balance', the take up of pre-application has increased, and a review of the outcomes shows that in cases where pre-application advice was followed, the majority of subsequent planning applications have been successful. In cases where pre-application advice has not been followed, and planning permission has been refused, in all but one case the subsequent appeal has been dismissed. Officers have discussed this approach with planning agents, with the feedback provided being that the pre-application process provides a greater degree of certainty. Officers will continue to monitor the outcomes of this process.

Investment in the recruitment (and development) of permanent staff, including the recruitment of trainee planning officers, and in the development of the process and approach to planning applications (as discussed above), and to more explicit examination and review on a team basis of the outcomes of planning appeals are all geared towards improving the assessment and appraisal of planning proposals.

Officers have also sought to open up channels of communication with regular applicants and professionals submitting applications to the Council, to try and understand and improve the quality of new development proposals. Officers are now meeting with agents to discuss these matters, in addition to keeping them informed on changes to the planning systems, and a four monthly basis.

## 2.6 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 quarters 2 and 3 of 2011/12. A copy of the enforcement register is appended to this report for information. 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 264 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 20 enforcement notices were served. 14 of these have been appealed. Of the enforcement appeal determined in this period, only 2 were allowed, with an additional appeal being part allowed and part dismissed. This

high level of success on enforcement appeals has continued from previous Quarters and demonstrates a robustness in the enforcement process. As detailed in the appeals section above, there are no examples of enforcement notices being dismissed on any basis of legal or procedural deficiency.

During this period a revised policy on enforcement was drafted, which has since been the subject of full consultation. The policy, as updated to reflect the outcome of consultation is being reported to Cabinet on 4<sup>th</sup> April 2011 prior to formal adoption. The proposed policies, when adopted, would assist the enforcement service to more effectively prioritise and respond to breaches of planning control.

**Table 2: Enforcement Summary July – December 2011**

Months	Total Cases Closed	Total New Cases Created	Total ENF Notices served	Appeals Lodged	Appeals Allowed	Appeals Dismissed	Prosecution
Jul-Dec	264	394	20	14	3 (including 1 part allowed	14	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: Jennifer Hydari



on behalf of the  
Chief Financial Officer

Date: 3 April 2012

Name: Abiodun Kolawole



on behalf of the  
Monitoring Officer

Date: 4 April 2012

## **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 determine July –December 2011