

**THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA
REGULATION AND ENFORCEMENT REVIEW COMMITTEE**

25 FEBRUARY 2015

**REPORT BY THE EXECUTIVE DIRECTOR OF
PLANNING AND BOROUGH
DEVELOPMENT**

ENFORCEMENT PERFORMANCE MONITORING OCTOBER – DECEMBER 2014

The purpose of this report is to update Members on the delivery of planning enforcement services during the last quarter by the Planning and Borough Development Business Group.

FOR INFORMATION

1.0 INTRODUCTION TO PLANNING ENFORCEMENT

- 1.1 A breach of planning control is defined as the carrying out of development without the required planning permission or failing to comply with any condition or limitation subject to which planning permission has been granted. Any contravention of the limitations on, or conditions belonging to, a planning permission constitutes a breach of planning control against which enforcement action may be taken.
- 1.2 Local planning authorities have responsibility for taking whatever enforcement action may be necessary, in the public interest, in their administrative areas. Effective enforcement is important as a means of maintaining public confidence in the planning system and it is the view of the government that local planning authorities should act proportionately in responding to suspected breaches of planning control. Local planning authorities have discretion to take enforcement action, when it is regarded as expedient to do so having regard to the development plan and any other material considerations.
- 1.3 The Royal Borough's planning enforcement team now comprises nine officers including a team leader, four senior enforcement officers and four enforcement officers. The current team leader, Mr. Perkins, was appointed in January 2014 and the team was strengthened in April and June 2014 with an additional senior enforcement officer and an additional enforcement officer respectively.
- 1.4 There are a number of common misunderstandings about planning enforcement. Crucially, if a breach occurs, it does not follow that enforcement action must be taken. The decision to take enforcement action must depend on an assessment of the public interest. For example,

enforcement action should **not** be taken:

- where there is a trivial or technical breach of planning control which causes no material harm or adverse impact on the amenity of the site or surroundings,
- where the development is acceptable on its planning merits and enforcement action would solely be to regularise the development,
- where a planning application is the appropriate way forward to regularise the situation.

1.5 The government confirmed its position on planning enforcement when it published its new guidance on 'Ensuring Effective Enforcement' on 6th March 2014. This can be read online at:
<http://planningguidance.planningportal.gov.uk/blog/guidance/>

1.6 A breach of planning control is not normally 'illegal' or a criminal offence. A breach of planning control may be the result of a genuine mistake due to a lack of knowledge about planning law. A criminal offence occurs after an enforcement notice is served and the notice not adhered to. However, there are instances where a breach is a criminal offence and these include unauthorised works to listed buildings, unauthorised demolition in a conservation area and the unauthorised display of advertisements.

2.0 SERVICE IMPROVEMENTS

2.1 Since being appointed in January 2014 the new team leader has been undertaking an assessment of how the team is operating and comparing this to other London boroughs including Westminster, Hammersmith and Fulham, Camden, Lambeth, Richmond, the City of London, Haringey, Islington and Southwark.

2.2 Since being appointed the team leader has implemented a number of service improvements including:

- recruiting two additional enforcement officers;
- organising additional training for the team to develop team members' skills;
- setting new performance targets for the team members to be working to;
- setting up the Construction Working Group to bring officers from different parts of the Council together to address construction related complaints;
- clarifying various working procedures including how Planning interacts with Licensing;
- improving the team's back office systems;
- rewriting the website for the planning enforcement service, and
- setting up an online planning enforcement complaint form which can be accessed here:
www.rbkc.gov.uk/enforcementcomplaintform

2.3

The team leader has prepared a plan for the development of the planning enforcement service and the service improvements flowing from this plan will be rolled out over the next couple of years. Further service improvements will be likely to include:

- development of more electronic working for the planning enforcement team in to reduce the cost of the service, this is expected in March 2015;
- the publication of a Local Enforcement Plan which will set out what customers can expect from the planning enforcement service, this is expected in April 2015;
- better coordination between the planning enforcement service and other teams within the Council who have enforcement responsibilities, for example, Licensing, Environmental Health, Highways and Parking Enforcement;
- a clear programme of proactive planning enforcement work;
- better publicity of the planning enforcement team’s work;
- improved procedures for serving enforcement notices so that more enforcement action can be taken and more quickly; and
- improving how the team’s enforcement officers keep complainants informed.

3.0 PERFORMANCE IN THE LAST QUARTER

3.1

This report concerns the quarter for October to December 2014. The enforcement team is currently dealing with approximately 550 planning enforcement cases across the borough. In the last quarter 414 new enforcement complaints were received. This compares to 266 received in the same quarter in the previous year. This represents an increase of 56%. The types of complaints received in the last quarter and the same quarter in the previous year are as follows:

Complaint types	This quarter in 2013 (266 cases)	This quarter in 2014 (414 cases)
• building works	48%	26%
• change of use	6%	11%
• non-planning related	-	10%
• construction traffic	5%	8%
• proactive licensing-related investigations	-	8%
• listed building works	11%	7%
• breach of condition	6%	6%
• advertisements	12%	6%
• untidy sites	0%	6%
• deviation from approved plans	6%	5%
• short term lets	3%	5%
• demolition	3%	2%

3.2 There are several key observations which can be made about the above data:

- The proportion of work types the planning enforcement team is doing appears to be changing. For example, the percentage of building works complaints are down but the absolute number of building works complaints (and complaints in general) is up. This may be due to higher expectations by complainants, or a greater awareness of the planning enforcement service or more developers breaching planning control.
- The planning enforcement team has not previously proactively reviewed licensing applications to identify or apprehend potential breaches of planning control. The planning enforcement team's work with the licensing team now forms a significant proportion (nearly 10%) of the team's cases. This proportion has not been recorded or monitored previously to allow comparison.
- Complaints about construction traffic management have previously been counted with other 'breach of condition' type complaints. These are now counted separately to aid the comparison of trends in the amount of work involved in enforcing Construction Traffic Management Plans (CTMPs).
- The team is developing a suite of proactive enforcement projects including a rolling programme of routine monitoring of developers' compliance with planning conditions on planning permissions. It is understood this was done on an ad hoc basis previously and there is no data on this work for previous years. The new routine monitoring is being developed as a result of the additional resources provided for the service in 2014 and will be ready when back-of-house technical improvements are complete.
- The receipt by planning of non-planning related complaints has never previously been monitored. These are now recorded so planning can properly refer complainants' complaints to the right service and so planning can learn how complainants can be better guided on who to complain to (e.g. Environmental Health, Streetline, Parking Enforcement etc).
- More work is being undertaken by the team on 'untidy' sites. This is a key area in which the enforcement service is likely to become more proactive and is discussed further in section 3.15.
- Complaints about short term lets have previously been counted with other 'change of use' type complaints. These are now counted separately to aid comparing trends in the amount of work involved in enforcing against people who let permanent residential accommodation for periods of less than 90 days.

3.3 Officers now monitor the source of complaints i.e. who is making complaints about breaches of planning control. This has not previously been monitored but the relevant data for the last quarter is as follows:

Complaint sources	This quarter in 2013 (266 cases)	This quarter in 2014 (414 cases)
Residents	67%	54%
Council officers	18%	36%
Cases generated by proactive enforcement projects	-	1%
Councillors	8%	4%
Residents' associations	5%	2%
Others (including businesses and visitors)	3%	3%

3.4 There are some key observations which can be made about the above data:

- The significant increase in joint working between planning enforcement and the licensing team will account for some of the increase in the number of complaints made by council officers.
- Some cases are now generated by proactive enforcement work i.e. planning enforcement officers checking up on developers without a complaint having been received by a third party. In the last quarter the team have been focusing on other targets which has meant less cases have been generated by proactive enforcement projects but the team will be returning to more proactive work in the Spring.
- In the last quarter complaints by residents associations accounted for 2% of complaints (16 complaints in total) whereas in the same quarter last year complaints by residents associated accounted for 5% of complaints (20 complaints in total). The percentage figures need treating with some care as the absolute numbers are not significantly different.

3.5 Officers now monitor the reason why cases are closed. This has not previously been monitored but the relevant data for the last quarter is as follows:

Reason for closure	This quarter in 2013 (324 cases)	This quarter in 2014 (404 cases)
No breach	33%	33%
Breach resolved	29%	20%
Permission granted	14%	11%
Not expedient	10%	10%
Licensing related	0%	7%
Not a planning matter	1%	6%
Permitted development	8%	5%
Notice complied with	2%	4%
Deminimus	1%	1%

3.6 There are some key observations which can be made about the above data:

- Consistent with the same quarter last year, a third of all investigations into alleged breaches of planning control find that there is no breach. The most likely cause of this is because complainants are not checking whether permission/consent has been granted before they complain.
- In the last quarter, in a fifth of all cases, breaches were resolved by developers complying with officers' informal requests for them to cease/undo unauthorised developments.
- In the last quarter, around a tenth of all breaches were granted upon application. In such instances the government advises that enforcement action must not be taken, bearing in mind the purpose of planning enforcement is to resolve breaches and not to punish developers.
- Consistent with the same quarter last year, in a tenth of all cases it was decided it was not in the public interest to pursue enforcement action. An example of this would be if a breach were assessed and found to be an acceptable development that would get planning permission if it were applied for retrospectively. In such instances there is no tool officers can use to force a developer to apply for planning permission and this does not justify enforcement action being taken.
- Licensing-related cases, i.e. where planning enforcement officers are checking up on compliance with planning permissions for the Licensing team, these cases will always be closed once advice is issued to Licensing. Officers then pursue potential breaches of planning control when it is known whether a Licence has actually been granted and the breach is then pursued as a new case, usually a 'breach of condition' case. This practice was introduced in 2014 which is why there is no data for 2013.

3.7 The performance targets for the team for 2014-2015 had to be set in April 2014 and run to the end of January 2015 to comply with the timetable for the Council's corporate annual performance appraisals.

3.8 Over the last year the team's targets covered:

1. the speed with which cases are investigated;
2. reducing the number of old cases;
3. speeding up the issue of enforcement notices;
4. increasing the number of enforcement notices served and increasing the number of notices which are accompanied by press releases; and
5. the implementation of a series of proactive enforcement projects.

The speed with which cases are investigated

3.9 In previous years the team have had no target to drive the speed with which a case is concluded. Based on practice found in other London boroughs, the team now has a clear target that within 16 weeks of receipt,

a case is either concluded or an enforcement notice is served. This target came into effect on 5th May 2014 and the team were set a target of concluding 80% of cases in 16 weeks unless an enforcement notice has been served. There were 404 cases closed in the last quarter of which 65% were closed within the 16 week target. This is lower than the target set but a large proportion of the team's work during the last quarter was focussed on bringing very old cases to a conclusion (see section 3.10 below) and this helps explain why larger proportion of cases closed in the last quarter were older than 16 weeks old.

Reducing the number of old cases

- 3.10 There has previously been concern about the age of cases being investigated by the team. Planning enforcement cases can take a long time to conclude depending on the issues. Generally speaking, where officers' informal requests to developers to resolve a complaint are not successful an enforcement notice is required and generally the developer has a statutory right to appeal an enforcement notice. The appeals process can be lengthy and draw out the enforcement process by many months which is why those cases where an enforcement notice has been served are taken out of the 16 week target explained in 3.9 above. Nevertheless, in response to concern about the age of cases, the team were set a target for 2014-2015 (ending January 2015) to continually reduce the number of old cases over one year old. In mid-August 2014 the team had 114 cases over one year old and by the end of January 2015 the number of old cases left where action was still required was just 19. Many of the cases upon which action was taken have been subject to the service of an enforcement notice. This has been a significant achievement by the team and represents a massive house-keeping exercise in respect of the team's old cases. Many of the old cases on which enforcement action has been taken will now be working their way through the enforcement appeals process. This will bring many of the old cases to a conclusion later in 2015.

Speeding up the issue of enforcement notices

- 3.11 Until mid-November 2014 all enforcement notices were served by Legal Services. This involved a considerable amount of liaison between Planning and Borough Development and Legal Services and had resource and timing implications. Based on practice found in other London boroughs there is no reason why Planning and Borough Development cannot serve its own notices without involving Legal Services unless specialist legal advice is required. A considerable amount of work has been undertaken in the last few months to prepare the team for serving their own notices from mid-November 2014, mostly involving complex back-office technical changes as well as staff training which took place in October and November 2014. It is anticipated that this shift in responsibility will speed up the issue of notices and should increase the number of notices which can be served which will make the team more effective. The team has now absorbed most work normally undertaken by Legal Services. Officers are reviewing whether this indicates a need for additional resources in the Planning Enforcement team.

Enforcement notices served and press releases issued

3.12 Historically, many enforcement cases have been resolved by informal negotiation. Whilst this can avoid conflict, it can have a significant impact on resources and can elongate the time taken to conclude a case. If initial informal approaches fail, serving an enforcement notice can be a more efficient use of officer time and sends the right message to the outside world that planning enforcement is taken seriously by the Royal Borough. Additionally, the publicity that can be generated by an enforcement notice can also help raise the profile of planning enforcement and prevent breaches of planning control by others as awareness of planning enforcement increases. Therefore, the team have been set a target of serving a minimum number of notices and preparing a minimum number of press releases to maximise the impact of the enforcement notices being served. In the last quarter 64 enforcement notices have been served. A list is attached as Appendix 1. Table 1 below compares the number of enforcement notices served in the last quarter of 2014 with the same quarter in the previous five years.

Table 1	2014	2013	2012	2011	2010	2009
Notices served	64	12	8	2	9	11

3.13 Table 2 below compares the number of enforcement notices served between 1 February 2014 to 31 January 2015 with the same period in the previous five years. In the last five years the average number of notices served by the team was 35. In the last year the team have increased that number by more than four and half times as much. This is a significant achievement and sends the right message to the outside world about how serious planning enforcement is taken by the Royal Borough. Officers attribute a significant part of this success to the increase in resources provided for the team (see section 2.2 of this report).

Table 2	2014-15	2013-14	2012-13	2011-12	2010-11	2009-10
Notices served	162	56	29	22	37	30

3.14 Attached at Appendix 2 are the press releases from the last quarter. The team are focusing on issuing press releases to publicise the Council's tougher approach to breaches of planning control and it is envisaged this approach helps communicate the right message to the development industry. A cautious approach is required for issuing press releases as these are not best used when the recipient of a notice may successfully appeal the Council's decision.

Proactive enforcement projects

3.15 With the additional resources provided by the two additional officers in the team, as well as serving more notices (see above) the team is working on several proactive enforcement projects. These projects include:

- developing a consistent procedure for enforcing Construction

Traffic Management Plans;

- checking up on developers' compliance with conditions imposed on planning permissions;
- targeted action on untidy areas and areas with groups of poorly maintained buildings (current pilot projects are running on Warwick Road and in the Royal Crescent area);
- taking a hard line on particular types of advertisements displayed without consent;
- a publicity campaign began at the start of 2015 to raise awareness of listed buildings and the responsibility that comes with owning a listed building or undertaking works to a listed building (see Appendix 3; and
- sharing more information with other Council departments and other local planning authorities about common enforcement problems and rogue developers.

4.0 NOTABLE CASES

Enforcement quality audits

- 4.1 A sample of Enforcement Action Quality Audit photo sheets are appended to this report at Appendix 4. These show a selection of cases where there is a clear visual result of the team's work demonstrated with 'before' and 'after' photographs.

Prosecutions

- 4.2 In November 2014 Cranbrook Basements pleaded guilty to displaying adverts on their sites at 2 Abingdon Villas and 10 Brunswick Gardens, without advertismen consent. (See Appendix 2). The company were fined £1,000 for the adverts at 2 Abingdon Villas with £1,750 costs and £1,000 for the adverts at 10 Brunswick Gardens with costs of £1,500 and a victim surcharge of £100.

Press notices

- 4.3 Attached at Appendix 2 are the press releases from the last quarter.

5.0 CONCLUSION

- 5.1 The last quarter demonstrates the significant change in the approach to enforcement by the planning enforcement team over the last year. Key achievements have been the number of notices served, more than four and half times the average for the previous five years, and the progress made in reducing the number of year-old cases where action had no action had been taken from 114 to just 19. With the additional resources provided for the planning enforcement service, a more proactive and tougher approach is being taken against breaches of planning control. The Committee is asked to note the contents of this report.

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Background Papers used in the preparation of this report:

No background papers were used

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