



City of Westminster

## Planning & City Development Committee

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**Classification:** General Release

**Title:** Planning Enforcement Team Performance and Local Enforcement Plan

**Report of:** Director of Place Shaping and Town Planning

**Financial Summary:** None.

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### **1. Executive Summary**

- 1.1 This report provides an overview of the Planning Enforcement Team's performance over the past 5 years and provides an update on the development of a Local Enforcement Plan.

### **2. Recommendation**

- 2.1 Members are asked to note the performance of the Planning Enforcement Team over the past 5 years and to support the ongoing development of the draft of the Local Enforcement Plan.

### **3. Planning Enforcement Team Structure and Function**

- 3.1 The Planning Enforcement Team comprises a team of 18 officers with a Team Leader, x4 Area Planning Officers, x8 Senior Planning Officers, x4 Planning Inspectors and a Planning and Compliance Officer. One of the Senior Planning Officers is a recently created role, secured from ward budget funding from the Knightsbridge and Belgravia Ward. The team is largely reactive responding to complaints from members of the public regarding alleged breaches of planning control. The team investigates all breaches of planning control across the whole of the borough and is not broken down into geographical areas in the same way the Development Management Teams are broken down into North, Central and South areas.

- 3.2 Upon receipt of a complaint alleging a breach of planning control, the investigation is immediately passed to a Planning Inspector who will then have responsibility for the preliminary investigatory elements of the case. This includes but is not limited to reviewing the planning history of the property, attending the property to ascertain the facts (obtain photographs, measurements etc.) and determining who is responsible for undertaking the works/development. Once all the facts have been established, the Planning Inspector then has responsibility for drafting a report and uploading all information obtained from the site visit onto the UNIFORM database for consideration by an Area Planning Officer and Senior Planning Officer at the weekly "Morning

Meeting” process. The Inspectors work to strict timescales and are expected to undertake all site visits within 5 working days (commencing from the day after the complaint is received). If the complaint pertains to works to a listed building, the Inspector will attend the property on the same day wherever practicable to ensure that the special architectural and historic interest of the listed building is preserved, and any damage strictly limited. This is a crucial part of the team’s remit to protect Westminster’s unique and iconic heritage.

- 3.3 During the weekly “Morning Meeting” process, the Inspector’s reports are considered and where a breach of planning control is identified, warning letters are immediately drafted, and the investigation allocated to a Senior Planning Officer to progress and resolve. The complainant is also provided the name and contact details of the respective Senior Planning Officer investigating the breach of planning control. In circumstances where no breach of planning control is uncovered, letters are sent to the complainant advising of the outcome of the investigation and explaining the reasons for closure of the case.
- 3.4 Wherever possible, the Senior Planning Officer will attempt to resolve the investigation through negotiation but there are times when the negotiation becomes unnecessarily protracted or the breach is so severe (contrary to policy or having a detrimental impact on amenity) that it becomes necessary to pursue formal enforcement action. All reports drafted recommending issue of an enforcement notice (or other formal notice) are the subject of scrutiny and approval by the Director of Law. On the basis the report is approved, authority to then serve the notice is given by the Team Leader and the notice subsequently served on all persons having a material interest in the property/land.
- 3.5 The recipients of most formal notices have a statutory right of appeal, and this right is often exercised. Once an appeal is submitted, all enforcement action against the breach of planning control is effectively held in abeyance pending determination of the appeal. The Planning Enforcement Team will always robustly defend all appeals and often benefit from the support of local councillors and residents at Informal Hearings or via submission of written representations to the Planning Inspectorate.
- 3.6 Attached are some examples of the typical breaches of planning control the Planning Enforcement Team deal with daily.

### **9 Southwick Street, W2**

In this first example, a complaint was received from a neighbour regarding the erection of a timber structure on the ground floor terrace at the rear of the building without the benefit of planning permission. Following issue of warning letters, applications for planning permission were submitted to retain the structure (Ref: 21/07706/FULL) and/or to replace it with an open-sided gazebo structure (Ref: 21/07707/FULL). Both applications were subsequently refused, and final warning letters were issued threatening formal enforcement action should the unauthorised structure not be removed. Following issue of the warning letters, the structure was dismantled and removed resolving the breach of planning control.



### **Flat A, 258 Ashmore Road, W9**

A complaint by a member of the public was received regarding a large timber outbuilding erected in the rear garden of this ground and first floor flat, which occupied most of the amenity space of the rear yard. Following action taken by the Planning Enforcement Team, including the service of an Enforcement Notice, the owner elected to submit an application for planning permission for a smaller shed, which was subsequently approved on 23rd March 2021 (Ref: 21/00493/FULL). As can be seen in the photographs below, the unauthorised timber structure the subject of the Notice has been removed and the smaller approved shed erected which is much more in keeping with its surroundings. Accordingly, the breach of planning control has been resolved.



### **104 Clifton Hill, NW8**

A complaint from a member of the public was received regarding the condition of this listed building. An inspection of the property confirmed that not only was it in a poor state of repair but that it had been the subject of unlawful alterations. Furthermore, research confirmed that the building was also on Historic England's Building at Risk register. The issue of warning letters did not result in the breach of planning control being resolved and consequently the team was left with no option but to pursue formal action and a s215 Notice was served specifying the remedial works required to improve the condition of the building. The Notice had the desired effect in that it sparked the owner into action and applications for both planning permission and listed building consent were submitted, subsequently approved and the building was not only restored to its former condition but improved. Following these works of improvement, the building was removed from Historic England's Building at Risk register.

Before





After



#### 4. Performance of the Planning Enforcement Team

4.1 In terms of performance, the planning enforcement team continues to receive regular and numerous complaints from residents and Members on behalf of their constituents. During the Covid 19 pandemic and as a direct result of the lockdowns, there was as expected, a noticeable decrease in the number of complaints received by the team. In the year 2018/19 (prior to the pandemic), 2675 reports alleging breaches of planning control were received and this reduced to 1524 in 2019/20. There was a further reduction in the number of reports received totalling 1169 in the year 2020/21. However, following the easing of restrictions, the number of reports of alleged breaches of planning control is rising steadily again and it is anticipated that this will be in the region of 1800 complaints at year end on 31 March 2022. There is a clear upward trajectory with complaints being received and it is expected that this will continue and reach pre-pandemic levels of circa 2500+ annual complaints.

4.2 The team continues to deal with a large and varied caseload of live investigations and as of 30<sup>th</sup> November 2021, the team was dealing with 2671 breaches of planning control. Given the number of investigations being dealt with, it is inevitable for the reasons highlighted earlier in the report, that it will be considered necessary and expedient to pursue formal action and serve enforcement notices in some instances. The number of reports where authority has been granted for the service of enforcement notices has remained largely consistent with a slight dip in numbers in the year 2020/21 which again is attributable to the pandemic and the decrease in the volume of complaints received. By way of comparison:

2017/18: Authority was obtained for the service of 130 enforcement notices

2018/19: Authority was obtained for the service of 120 enforcement notices

2019/20: Authority was obtained for the service of 122 enforcement notices

2020/21: Authority was obtained for the service of 81 enforcement notices

2021/22: It is envisaged that by 31 March 2022, that authority will be obtained for the service of approximately 110 enforcement notices.

4.3 In terms of the appeals submitted against the enforcement notices, the team continues to robustly defend these notices and have an excellent record of dismissed appeals. The percentage success rate is as follows:

2017/18: 76% of the appeals determined were dismissed

2018/19: 86% of the appeals determined were dismissed

2019/20: 93% of the appeals determined were dismissed

2020/21: 68% of the appeals determined were dismissed

2021/22: As of the end of February 2022, 86% of appeals have been dismissed.

#### 4.4 Table Showing Performance of WCC Over Past 5 Years

Year	Reports alleging a breach of planning control received	Authority Obtained to serve an Enforcement Notice	Appeal Success Rate	Investigations Closed
2017/18	2988	130	76%	2515
2018/19	2675	120	86%	2512
2019/20	1524	122	93%	2017
2020/21	1169	81	68%	1602
2021/22	1800*	110*	86%*	1800*

\*: anticipated numbers expected as of 31 March 2022.

- 4.5 By way of comparison, the Head of Planning Enforcement at Camden Council (our neighbouring borough) has provided the following statistics over the same period.

**Table Showing Performance of Camden Council Over Past 5 Years**

<b>Year</b>	<b>Reports alleging a breach of planning control received</b>	<b>Authority Obtained to serve an Enforcement Notice</b>	<b>Appeal Success Rate</b>	<b>Investigations Closed</b>
2017/18	1205	41	77%	1297
2018/19	1145	120	62.5%	1353
2019/20	1128	143	65%	1121
2020/21	1247	92	79%	1051
2021/22	1187*	105*	84%*	904*

\*: numbers as of 16<sup>th</sup> March 2022

- 4.6 In terms of the overall totals for the same 5-year period, Westminster's planning enforcement team received a total of 10,156 reports alleging a breach of planning control compared to Camden's total of 5,912. Westminster therefore receives on average 42 per cent more complaints than that of Camden. In terms of the number of investigations resolved and closed, Westminster closed a total of 10,446 compared to Camden's 5,726 which represents 45 per cent more closures. Authority to serve Enforcement Notices is reasonably consistent across both boroughs with Westminster obtaining authority to serve 563 Notices compared to Camden's 501. Westminster's success rate in defending appeals against service of the Notices stands at 81.8 per cent compared with Camden's 73.5 per cent.

- 4.7 Planning Resource recently published an article based on figures published by the Ministry for Housing, Communities and Local Government (MHCLG) as it was then known in relation to planning enforcement statistics covering the 12 months to March 2021. Overall, the number of Enforcement Notices issued across the country was 2,996, a drop of 24 per cent from 3,933 issued in 2019/20. What is interesting to note is that about 15 per cent of English planning authorities issued no planning enforcement notices at all in 2020/21. The figures reveal that London boroughs accounted for nearly four in ten (37 per cent) of Enforcement Notices issued in England in 2020/21. They also accounted for four of the top five and seven of the top ten local authorities ranked by the number of Notices issued.

As can be seen in the table below, Westminster ranked fourth in the country for Enforcement Notices served in the 12 months to March 2021.

Rank	Planning authority	Enforcement notices issued
1	Barnet	127
2	Brent	126
3	Ealing	105
4	Westminster	92
5	North Warwickshire	70
6	Camden	64
7	Haringey	59
8	Redbridge	54
9	Bradford	53

10	Herefordshire, County of	50
11=	Barking and Dagenham	49
11=	Buckinghamshire	49
13	Havering	48
14	Hillingdon	43
15	Lambeth	42
16	Bromley	40
17	Barnsley	35
18=	Colchester	33
18=	Epping Forest	33
18=	Waltham Forest	33
18=	Wokingham	33
22	Wandsworth	29
23=	Hackney	27
23=	Cornwall	27
25=	Cambridge	26
25=	Hammersmith and Fulham	26
25=	Brighton and Hove	26

## 5. Local Enforcement Plan Justification and Indicative Timescales

- 5.1 The current direction of travel of Central Government recognises that there is a need for local planning authorities to have stronger planning enforcement. In the White Paper, “Planning For the Future”, there is a presumption and/or recognition that stronger enforcement is needed and it states as follows :-

*“As part of the implementation of our planning reforms, we want to see local planning authorities place more emphasis on the enforcement of planning standards and decisions. Planning enforcement activity is too often seen as the ‘Cinderella’ function of local planning services. But local communities want new development to meet required design and environmental standards, and robust enforcement action to be taken if planning rules are broken. As local planning authorities are freed from many planning requirements through our reforms, they will be able to focus more on enforcement across the planning system.”*

- 5.2 With the liberalisation or de-regulation of the planning system and increased emphasis on “permitted development” subject to conditions and limitations; there inevitably will be greater emphasis on planning enforcement to not only ensure that the conditions and limitations are adhered to but that the development is implemented strictly in accordance with approved plans. Furthermore, the National Planning Policy Framework (NPPF) encourages Local Planning Authorities to publish a local enforcement plan (LEP) to manage enforcement proactively, in a way that is appropriate to their area. The LEP will therefore outline how the planning enforcement team will monitor the implementation of planning permissions and in particular the discharge of conditions including pre-commencement conditions and ensure strict compliance with the terms of these conditions.
- 5.3 As an aside, the planning enforcement team recently (as of 1 February 2022) introduced a new system of monitoring pre-commencement conditions. Where planning permissions are granted subject to pre-commencement conditions, new investigations are opened, letters issued to the relevant parties reminding them of the need to discharge the condition in advance of any development commencing on site. It is hoped that by adopting this proactive stance that fewer breaches of planning control will occur whereby development commences in advance of the requisite conditions being discharged. This will prove particularly helpful in reminding applicants of the requirement to discharge condition/s pertaining to the Code of Construction Practice.



These are often a cause of particular concern to residents once demolition commences on site.

- 5.4 The LEP would provide our residents and businesses with clarity on the processes and procedures the planning enforcement team will follow when investigating alleged breaches of planning control. It would also provide assurances that all reported breaches of planning control are investigated in a proportionate and transparent way, having regard to development plan policies and all other material considerations. This would help to manage public expectations and outline realistic timescales on how long resolution of breaches of planning control may take.
- 5.5 It is envisaged that as part of this process, there would be an opportunity to highlight the various planning enforcement tools/action that may be taken, confirm the rights of appeal and the appeal process and outline that in some instances (when in the public interest) that prosecution action may be necessary.
- 5.6 The LEP will also provide an opportunity to outline which breaches of planning control may be prioritised, those that cause the most harm (be that on amenity or our heritage assets) and those that align with “City for All” priorities. It would also present an opportunity to highlight emerging issues like shisha smoking and the gig economy (delivery depots, Uber Eats, Supper London etc.)
- 5.7 Given the impetus on early engagement with residents and businesses, it is proposed to consult as widely as possible with Westminster’s community on what breaches of planning control should be prioritised. Whilst it is not possible to predict the outcome of this engagement, it may well be the case that different areas (Wards) have different priorities and the LEP would need to reflect these distinct elements. It is though proposed to liaise with the new Director of Communities to ensure that any consultation is done at an early stage and that it reaches all parts of the Council’s rich and diverse community.
- 5.8 The indicative timescale to produce and adopt the LEP is likely to take between 10 and 12 months.

## **6. Financial Implications**

- 6.1 None.

## **7. Legal Implications**

- 7.1 None.

## **8. Conclusion**

- 8.1 The planning enforcement team continues to deal with all alleged breaches of planning control in a transparent and consistent manner and always seeks to expedite resolution of the breach. Where negotiation fails to resolve the breach amicably, formal notices are issued, and the team robustly defends these notices on appeal.
- 8.2 Given Central Government’s apparent renewed focus on strengthening planning enforcement, it is an opportune time to consider drafting and publishing a Westminster LEP. Planning enforcement provides integrity to the planning system and will provide both residents and businesses with the assurance that planning permissions are not only undertaken in accordance with the approved drawings but that all conditions the subject of the permission are strictly complied with. The LEP will also help to manage

expectations of the service and prescribe in detail the processes and procedures we are required to follow when investigating suspected breaches of planning control.

**If you have any questions about this report, please contact: Roald Piper  
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