

**PLANNING APPLICATIONS COMMITTEE
ENFORCEMENT PERFORMANCE REVIEW
2015**

This report provides an update on the team's performance and successes over the period 1st January 2015 to 31st December 2015

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1. INTRODUCTION

1.1. This report provides a review of the performance and achievements of the planning enforcement team in the last twelve months from January to December 2015. The primary function of the enforcement team is to investigate breaches of planning control and to negotiate and mediate with developers, residents and their neighbours to bring about a resolution of those breaches.

1.2 The vast majority of breaches of planning are resolved through informal enforcement action i.e. direct officer negotiation with the “offender”. Unfortunately in some cases this is not possible and, therefore, where the breach has caused demonstrable harm to the amenity of the area and the offender is unwilling to rectify the breach, formal enforcement action becomes necessary.

1.3 Whilst most enforcement work is reactive, in response to reports of breaches from residents and the public, we have also undertaken a number of projects and proactive work where a clear benefit to the local community has been identified resulting from significant improvements to the appearance of the streetscene.

1.4 During the 12 month period the team received 2,017 reported breaches of planning control from the general public and councillors, and a total of 2,026 investigations were completed. Enforcement action has been authorised in 113 cases. These relate to satellite dishes, advert hoardings, roof terraces, extensions, PVCu windows, garden fences and untidy sites/properties. In addition 365 removal notices were issued for estate agents advertising boards.

1.5 The most frequent investigations include satellite dishes, roof terraces, roof extension and rear extensions, boundary walls and fences and estate agents boards.

1.6 The main reasons for closure are broken down as follows:-

- 276 Breach remedied through officer negotiation
- 6 Planning permission not required
- 279 Not Development
- 106 Permitted Development
- 147 Use is lawful (4 years/10 years)
- 74 Deemed Consent (Adverts)
- 256 In accordance with planning permission
- 36 Retrospective planning permission granted
- 7 Planning permission granted on appeal
- 86 Not expedient to take enforcement action
- 416 Enforcement Notice complied with

2. ENFORCEMENT INVESTIGATIONS - BREACH TYPES

2.1 SATELLITE DISHES

165 Cases Investigated

- 46 Planning permission is not required, use is lawful, permitted development
- 25 Remedied through officer negotiation , either relocated or removed
- 20 Enforcement Notices issued
- 23 Enforcement Notices complied with

Comment

2.1.1 The installation of satellite dishes on residential properties is a growing problem in the borough, especially following the closing down of analogue television. They can be both visually unsightly and harmful to the character and appearance of the conservation area.

2.1.2 Although planning permission is not generally required to install satellite dishes on residential properties, that is not the case in conservation areas if they are sited on the front elevation of the building. Multiple dishes are often installed on large properties sub-divided into flats and identifying those responsible can be problematic and time consuming.

2.1.3 In addition to investigating all complaints about individual satellite dishes, we are now pro-actively targeting specific problem areas where the visual harm resulting from the over-concentration of satellite dishes is greatest. Officers are currently pursuing those offenders who have not complied with their enforcement notice, as continued failure would result in prosecution in the Magistrates Court.

2.2 ROOF TERRACES

106 Cases Investigated

- 43 Planning permission is not required – use is lawful, permitted development
- 20 Remedied through officer negotiation
- 7 Planning permission granted retrospectively
- 10 Enforcement Notice issued
- 4 Enforcement Notice complied with

Comment

2.2.1 The use of a flat roof on any part of a residential property generally does not require planning permission. However, the Council does have control over development that facilitates such a use, i.e. erection of railings or other forms of enclosure and in some cases the formation of door openings. New roof terraces

continue to be of concern to local residents. Their concerns relate to overlooking and noise and disturbance. In some cases these problems can be resolved by the installation of privacy screens but where that is not appropriate the cessation of the use of the roof terrace will be sought.

2.3. BOUNDARY WALLS AND FENCES

68 Cases Investigated

54 Resolved through officer negotiation

Comment

2.3.1 Boundary wall and fences are permitted to a height of 1m on a boundary which fronts a highway and 2m in any other case OR no higher than the previously existing boundary wall or fence, whichever is the higher. Boundary walls and fences, especially in rear gardens, are a regular source of complaint. Owners, in an effort to provide privacy in their rear gardens, often seek to raise the height of their garden fences above the permitted 2 metres. This can in some case have a harmful effect on neighbouring residents.

2.3.2 Often these high fences are erected without any discussion/agreement with their neighbours. Officers therefore regularly find that they need to mediate between the two owners to seek a satisfactory compromise. In the majority of cases a compromise is found, but if not, then enforcement action can be taken if the wall/fence is considered to be harmful.

2.4 ROOF AND REAR EXTENSIONS

63 Cases Investigated

49 Planning permission is not required, use is lawful, permitted development,

3 Remedied through officer negotiation

10 Enforcement Notices issued

2 Enforcement Notice complied with

Comment

2.4.1 Complaints are regularly received from neighbouring residents that roof and/or rear extensions are not being built in accordance with the planning permission. This often occurs because the applicant's architect has failed to survey the property correctly, meaning that the extension cannot be erected as indicated on the approved plans, or simply that the owner has requested additional modifications. Where the Council are alerted at an early stage, then the team are able to intervene before the works are completed. Unfortunately, this is not always the case. Therefore If the developer does not remedy the breach, or submit a retrospective planning application it falls to the council

consider the harm; and whether the harm is sufficiently injurious to justify taking enforcement action to secure its removal or remedial works.

2.5 OTHERS

2.5.1 There are a number of other investigation types not mentioned above such as unauthorised changes of use, new windows, outbuildings, new shopfront, breaches of condition etc.

1,037 investigated

849 Planning permission is not required, use is lawful, permitted development, not expedient

174 remedied through officer negotiation

73 enforcement notices issued

111 enforcement notice complied with

3. APPEALS

3.1.1 Where an enforcement notice is served on an offender they have a right of appeal. (NB. There is no right of appeal against a notice relating to estate agents boards failure to comply would lead straight to prosecution). During 2015 a total of 19 appeals against enforcement notices were made. The Council successfully defended its decision to enforce on 9 appeals; 2 appeals were allowed by the Planning Inspectorate. (The remainder are still awaiting a decision).

4. PROSECUTION

4.1 Background

4.1.1 Occasionally enforcement action will lead to the prosecution of the offender in the Magistrates Court. This only occurs when the offender fails to comply with the enforcement notice or, in the case of advertisements, continually displays illegal adverts.

4.1.2 A total of 9 enforcement prosecution cases progressed to summons issued in the Magistrates Court in 2015. The estate agent board cases that were progressed through the Magistrates Court are detailed in Para 6.2. Most relate to boards being displayed within our six Regulation 7 banned areas. We have informed estate agents that the Council is exercising a zero-tolerance approach for dealing with any board illegally displayed within the Regulation 7 areas and this will result in their prosecution in the Magistrates Court. 4 other cases are ongoing.

4.2 Prosecutions of note

4.2.1 **154 Old Oak Road W12** Unauthorised use of the front garden for commercial storage.

This a residential property where the owner is storing large refrigeration cabinets in his front garden awaiting export. There are often up to a dozen units in the front garden at any time. The owner has failed to comply with the enforcement notice to remove the units. The matter was referred to the Magistrates Court, and despite two court summonses the owner failed to attend court and a warrant was issued for his arrest. At Hammersmith Magistrates Court on Tuesday, 27th January 2015, this matter was before a Lay Bench. The owner was in attendance, unrepresented. A guilty plea to the breach of the enforcement notice was entered.

Despite his failure to attend court on two previous occasions the owner was given credit for his early guilty plea and was fined £1000 for the offence and ordered to pay prosecution's costs in the sum of £866.54. A £100 victim surcharge was also imposed. In fining the owner, the Magistrates stated the use of the front garden as a commercial storage was unsightly in a residential area and caused obstruction to traffic and pedestrians. The enforcement notice has still not been complied and we are now seeking further prosecution in the courts; in the light of the previous conviction his fine is likely to be substantially higher. Update March 2016: the majority of the items from the front garden have now been cleared.

4.2.2 **51/53 Racton Road, SW6** Roof terrace

A roof terrace has been created. The owner has failed to remove the terrace in compliance with the enforcement notice. After numerous Court adjournments over the last 12 months where the defendant pleaded 'not guilty. the case was heard at the Magistrates Court on 6th January 2015. The defendant then changed his plea to 'guilty'. A fine of £4,500 was imposed, and costs of £3,599.20 were awarded to the Council. This is being pursued because whilst the owner has now removed the metal railings in accordance with the enforcement notice; he has now installed a timber trellis on two sides of the flat roof which are fixed in planters and bolted to the flat roof. We are in the process of serving another enforcement notice.

4.2.3 **43 Althea Street/70 Townmead Road SW6** Additional floor at roof level. In 2004, the owner erected an additional floor at roof level without planning permission.

4.2.4 A planning application to retain the extension was refused on 1st September 2004 and enforcement action was authorised . An enforcement notice was served on 16th September 2004 with 6 months to comply. The

enforcement notice requires the removal of the additional floor at roof level and the reinstatement of the original pitched roof as it existed prior to the extension.

4.2.5 An appeal against the enforcement notice was dismissed by the Planning Inspectorate on 21st June 2005.

4.2.6 When the owner failed to comply with the enforcement notice a summons was issued against him in March 2007. The defendant wrote to the court to state that he was too ill to attend. The hearing was adjourned until 3 April 2007 but the defendant failed to attend and a warrant was put out for his arrest.

4.2.7 In the following 7 years there were another planning application, another arrest warrant, 2 arrests and the defendant remanded on bail, 28 adjourned court hearings and various sick notes until on 2nd October 2014 the defendant attended the City Of London Magistrates' Court where he pleaded not guilty. The case was not completed, a second hearing took place on 21 January 2015, the defendant attended but due to his ill health the matter has been adjourned until 28 and 29th May 2015.

The Judge found the case proved. She indicated that she was not convinced by the defendant and his witnesses who, in her view, tended to 'cherry pick' which pieces of evidence which suited them and to misinterpret those which did not. The owner was fined £12,000 and ordered to pay £19,276 and a victim surcharge of £200. The total of £31,476 is to be paid within 3 months. A site visit has confirmed that the notice has still not been complied with, the matter is to be referred back to the courts.

73 Rylett Crescent W12 Dwelling House in the rear garden.

In February 2013 the planning enforcement team investigated reports that a building was being erected in the back garden of No. 73. Rylett Crescent. Council officers visited the site and ascertained that a 2.2 metre high fence had been erected behind the main house separating it from its garden. A new building was under construction which covered the entire garden up to the boundary with the bungalow at No 73A. The former small shed had been demolished, but two of its walls had been incorporated into the new building. The owner told officers that he had sold No.73 and intended to reside in the new building as a single dwellinghouse. Officers advised the owner that the works required planning permission and that, in their opinion, it was unlikely that permission would be granted as it was overdevelopment of the site. The owner was instructed to remove the building and the fence. The Council received information that the owner had a serious illness; in response we confirmed that no further action would be taken against the unauthorised development at that time, provided that no further works were undertaken at the property.

Officers revisited the site to discover that the owner had recommenced building work and had completed the building. The owner advised that the main house

was sold and he now intended to live in the dwelling under construction. On 20 July 2013 the Council issued an enforcement notice (Ref: 2013/00098/ACTWKS) No appeal was made against the notice and it became effective on 3 September 2013.

The notice required the demolition of the building, and removal of all associated materials from the land and the reinstatement of the garden within six months. This period passed without compliance with any of the requirements.

In April 2014 the Council advised the owner that he was liable for prosecution in the Magistrate's Court for failing to comply with an effective enforcement notice. His brother informed the Council that he was undergoing medical treatment for a serious illness and was living in the building with his son. The council agreed to hold a prosecution in abeyance during the medical treatment. However, in that time a certificate of lawful development was submitted for the erection of a single storey building in the rear garden in connection with its use as a single dwellinghouse (ref:2014/04857CLE). On the basis that the use as a single dwelling had been in situ for more than 4 years. This was clearly not the case as previous to February 2013 only a shed had been in situ. This application was refused and an appeal submitted; all proceedings were held in abeyance as during which time it would not have been possible for the Council to secure a prosecution.

The appeal was dismissed on 4th January 2016 and the enforcement notice upheld. Officers wrote to the owner to advise once again that he is now liable to prosecution and that the notice must be complied with by 4th April 2016. In response, a claim has been submitted to the High Court to challenge the Planning Inspector's decision. Officers are now waiting to hear whether the owner will be permitted to continue with his challenge.

5. PROACTIVE ENFORCEMENT

5.1 SATELLITE DISHES

Barons Court Road,
Palliser Road
Sinclair Road
Sinclair Gardens

5.1 ADVERTISEMENT CONTROL

The Planning Enforcement Team are continuing with their pro-active stance on advertisements in order to visually improve the street scene. This includes the removal of illegal advert hoardings on residential buildings, discontinuance of unsightly hoardings that have accrued deemed consent under the 10 year rule and the removal of illegally displayed estate agent boards.

i) ILLEGAL ADVERTISEMENT HOARDINGS

In 2015 there were no instances of advertisement hoardings being displayed on new sites. However, if there is a change in the manner in which the site is displayed then this may breach the regulations, making the replacement advertisement hoarding illegal. This was the case at 208 Fulham Palace Road when a non-illuminated poster panel advertisement was changed to an internally illuminated box hoarding. The Council considered the display of the internally illuminated hoarding to be dominant and harmful to local amenity and served a notice to remove the illegal display. This has been complied with.

ii) DISCONTINUANCE ACTION ON ADVERTISEMENT HOARDINGS

The Planning Enforcement team are continuing their proactive programme of discontinuance action. This involves identifying lawful sites used for the display of advertisement hoardings that benefit from “deemed” consent (more than 10 years display) but not “express” consent. Advertisement hoardings that are considered to be significantly injurious to amenity may be removed by the Council using these discontinuance powers.

This process is more protracted and time consuming than the removal of illegal advertisements and inevitably results in the Council having to defend the service of the notice at appeal.

9 Notices served

99 Fulham Palace Road, W6
111 Fulham Palace Road, W6
113 Fulham Palace Road, W6
106 Goldhawk Road, W12
120 Goldhawk Road, W12
541 Kings Road, SW6
214 New Kings Road, SW6
112-114 North End Road, W14
204 North End Road, W14

2 Notices complied with and Advert Hoardings removed

106 Goldhawk Road, W12
250 Munster Road, SW6

15 Appeals

8 Decision pending

99 Fulham Palace Road, W6
111 Fulham Palace Road, W6
113 Fulham Palace Road, W6
120 Goldhawk Road, W12
541 Kings Road, SW6
214 New Kings Road, SW6
112-114 North End Road, W14
204 North End Road, W14

7 Appeals Dismissed (100% success)

120 Goldhawk Road, W12
683 Harrow Road, NW10
225 Munster Road, SW6
236 Munster Road, SW6
250 Munster Road, SW6
253 Munster Road, SW6
255 Munster Road, SW6

Comment

The Planning Enforcement team work closely with the borough's amenity groups and particular thanks should be given to the Fulham Society and the Hammersmith and Fulham Historic Buildings Group who have consistently provided strong support for the Council's decision to issue a discontinuance notice during the appeal process. This collaborative approach reinforces to the Planning Inspectorate the view that the advertisement hoarding is substantially harmful to local amenity and has ensured the continuing success of the programme (a 100% success rate at appeal).

iii) ESTATE AGENTS BOARDS

Regulation 7

Councils may apply to the Secretary of State to impose a direction removing the deemed consent rights of estate agents to display their "for sale" or "to let" boards. In order to gain approval for a direction, Councils must show that the existing regulations are inadequate to ensure that areas are not blighted by clutter from excessive numbers of estate agent boards. In 2012 the Lakeside/Sinclair/Blythe Road and Barons Court Regulation 7 Areas were renewed for a period of 10 years. The planning enforcement team submitted an application to the Secretary of State in June, to renew the direction covering 4 Regulation 7 Areas (Avonmore & Olympia, Gunter Estate, Hammersmith Grove and Harwood Road) that had been in place since October 2010. The application was submitted following consultation with residents and amenity groups. The

response was overwhelmingly in support of the application. Update: a positive decision has now been received granting the direction for a further 10 years. This came into effect on 21st March.

Regulation 7 areas are monitored by officers and residents are also able to report boards to us at a dedicated email address boards@lbhf.gov.uk. Officers have taken a “zero approach” in seeking the prosecution of agents displaying boards in these areas. This has been very successful and the result has been that all areas remain virtually free of boards. This has been a very popular initiative with the general public and has resulted in significant visual improvements in the streetscene.

Prosecution of Estate Agents

Due to the “zero tolerance” approach there have been very few instances of illegal boards being displayed within these protected areas. In total, only 6 boards have been displayed within all of the six Regulation 7 Areas this year. A summons has been issued on the following agents and we are awaiting the outcome of the prosecution.

In Regulation 7 Areas

Kinleigh Ltd

- **22 Bolingbroke Road – Found guilty and fined £800 plus £500 costs**

Kinleigh Ltd Folkhard Hayward

- **30 West Kensington Mansions, North End Road – Found guilty and fined £1250 plus £500 costs**
- **33 Richford Street - Found guilty and fined £750 plus £550 costs.**

Lawsons and Daughters

- **36 Vereker Road - Found guilty and fined £1500 plus £500 costs**

Featherstone Leigh

- **102 North End Road – Found guilty and fined £750 plus £500 costs**

Portico

- **123 Hammersmith Grove – Found guilty and fined £800, plus £532 costs.**

Outside of Regulation 7 Areas

The Planning Enforcement team have also been actively identifying and seeking the removal of estate agents boards that are being displayed illegally i.e. still being displayed after a property has been sold or let , or multiple boards. In 2015 a total of 578 estate agents board were investigated and 365 of which were illegally displayed boards were removed using this initiative. This initiative will also continue.

5.2 EYESORE PROPERTIES AND SITES

44 investigated
13 remedied
24 investigations concluded
9 S215 Notices
4 Notices complied with

5.3.1 The investigation of untidy sites and premises is jointly carried out by planning enforcement and the private sector housing in Public Protection and Safety division. The teams liaise on a regular basis to review progress and agree the most effective actions to achieve the best solution.

6. CONCLUSION

The Planning Enforcement Team remains primarily a reactive service in dealing promptly with complaints (service requests) received from the general public. However, the Team will continue to progress with its proactive initiatives which have been strongly supported by residents, members and the general public.

Improvements in the Council's Planning Enforcement website ensures that the general public have much greater access to our services with the facility to report online all possible breaches of planning control. Complainants details will continue to remain confidential thereby removing any fears that the general public may have in reporting illegal planning activity.