

Chipping Barnet Area Planning Committee

15th April 2019

Title	Planning Enforcement and Planning Committee Appeals Update – 2018
Report of	Service Director – Planning and Building Control
Wards	All
Status	Public
Urgent	No
Key	No
Enclosures	None
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Summary

The report provides an overview of the planning enforcement function and planning appeals overview in the period between January 2018 and December 2018.

Recommendation

1. That the Committee note the Planning Enforcement and Planning Committee Appeals Update for the year 2018

1. WHY THIS REPORT IS NEEDED

- 1.1 Members' involvement is crucial in maintaining an effective enforcement service because Members often have to be the public face of the Council when faced with issues which might require the taking of formal (or informal) enforcement action. This report has been prepared to provide an overview of the enforcement function in 2018.

2. ENFORCEMENT UPDATE:

2.1 Number of service requests

In 2018, the Council received 1948 requests to investigate an alleged breach of planning control which is a significant increase from 2017 when 1596 requests were received. In 2018, the Council completed 1899 investigations.

2.2 Formal Enforcement Action

Enforcement Action should always be commensurate with the breach. When considering enforcement action the alleged breach of planning control and associated development must be assessed against relevant planning policies and other material planning considerations.

A notice, if it is considered appropriate to serve one, must state the reason why the development is unacceptable (the same principles as a planning application). The role of planning enforcement is not to automatically rectify works without consent. Also, when considering enforcement action the Planning Authority should not normally take action in order to remedy only a slight variation in excess of what would be permitted development. The serving of a formal notice would in most cases follow negotiations with land owners to voluntarily resolve the breach and a number of cases are resolved in this way (see next section). Furthermore, the majority of cases are resolved without the need to take formal enforcement action and the table in section 2.4 shows details of such cases resolved in the last quarter.

In 2018, 195 Enforcement Notices (of all types but excluding Planning Contravention Notices) were authorised which is an increase from 135 in 2017 and an all-time high for the Council over a calendar year.

2.3 Benchmarking

The Ministry of Housing, Communities & Local Government recently released enforcement statistics for the year ending December 2018.

(<https://www.gov.uk/government/statistical-data-sets/live-tables-on-planning-application-statistics>)

According to those statistics, the Council served the most enforcement and breach of conditions notices in England in 2018.

Rank	Local Planning Authority	# enforcement notices and breach of conditions notices
1	Barnet	194
2	Brent	155
3	Newham	152
4	Westminster	124
5	Haringey	116

2.4 Cases Closed and Investigation Conclusion

Cases resolved without the need to take formal enforcement action:

	2018	2017
<u>Full compliance</u> following serving of enforcement notice	142	113
<u>Informal compliance</u> Works carried out and/or use ceased with breach resolved informally	305	320
<u>Lawful development</u> No breach of planning control was identified following investigation	885	955
<u>Breach detected</u> but harm insufficient to justify enforcement action	419	244
<u>Other</u> duplicate referrals, anonymous or withdrawn requests, dealt with through alternative legislation etc	134	239
<u>Total</u>	1899	1871

2.5 Investments in pro-active enforcement

At the beginning of 2018 and as a way to reinvest an uplift in planning fees, the planning service increased officer's capacity in the enforcement team by appointing the Council's first compliance officer.

The past year has been the first time that the Council has been actively looking for potential breaches of planning control rather than responding to requests to investigate. Barnet is one of the very few Local Planning Authorities in the country to provide such a service.

Since his appointment the compliance officer has been using data from a number of Council's departments to investigate non-compliance with planning law in a proactive manner. The data used is current data from Environmental Health HMO (EH) licensing, current data from Council Tax as well as other historic data from EH dating back to 2014.

Cross referencing of multiple data sources has proved so successful that it has been impossible for the officer to investigate all historic data due to workload number of cases generated. The number of cases that have been investigated between 1st March and 30th October is very high at 244. Of that number, 132 have been HMO's referred from EH. Work is continuing to investigate all potential breaches that have been discovered.

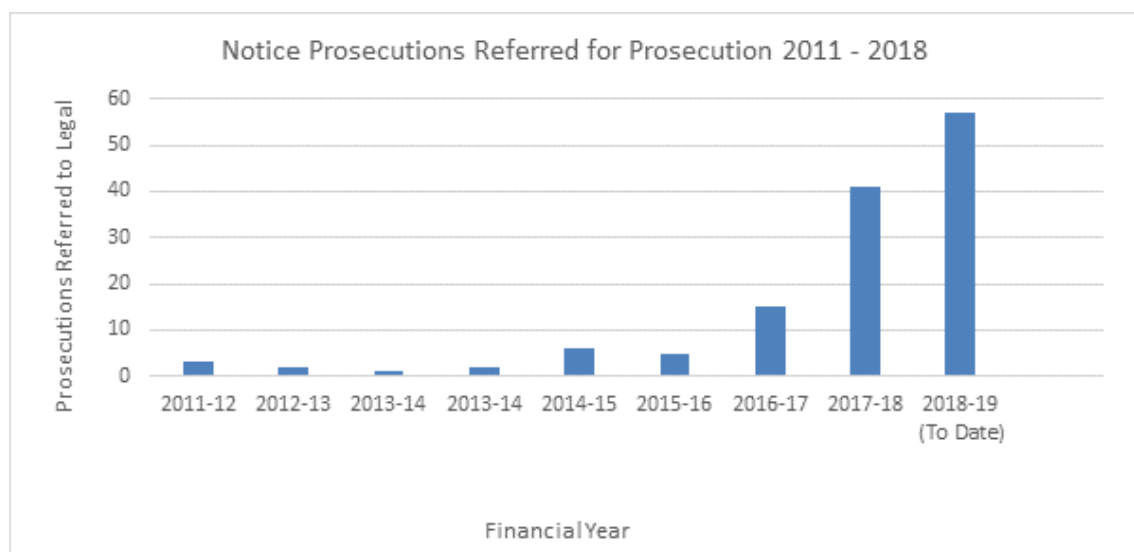
In a period of 9 months, 15 Enforcement Notices have been served and 39 planning applications to regularise works have been submitted which equates to 38.2% of applications investigated generating an application.

The benefit to the residents of Barnet is a reassurance that the Local Planning Authority is proactively monitoring and enforcing planning law. The council therefore ensures that properties have been developed in accordance with the legislation, have the appropriate approvals and where they haven't officers ensure that the necessary changes to revert to the actual planning permission or apply for planning permission to become compliant are made.

A second compliance officer is now in post to support these efforts.

2.6 Prosecutions and notable cases updates

In the past year, the Council has increased efforts in ensuring that it meets the growing need to ensure that the full force of the law is applied to those who would willingly ignore valid and justified demands for remedial works by prosecuting where there is a public interest in such action. Current levels of prosecutions are unprecedented for our authority as shown below:



Notable cases in Finchley and Golders Green

97 Hendon Way, NW2 2LY

The owner of this property converted the dwellinghouse into sub-standard flats. Retrospective permission to retain them was refused and an enforcement notice subsequently issued. The notice required the building to be restored to its previous state. It seems that the owner left the country at some point after the application and has not returned to answer charges in court despite still apparently receiving rent.

The Criminal Justice Act holds that where a defendant has absconded from the country and has not therefore attended court to answer a charge made against

him the prosecuting authority may seek confiscation in the absence of a conviction. The Council was successful in its request and the owner was ordered to pay back a sum of £223,751.31 that was received in unlawful rent. The Council may seek enforcement through bailiffs and retain a large proportion of the money realised.

Notable cases in Hendon

5 Sturgess Avenue, London, NW4 3TR

The case concerned the unauthorised erection of a single storey rear conservatory extension. The freeholder was convicted and sentenced to £1,000 fine and ordered to pay prosecution costs of £3,862.60. The service of a summons prompted the owner to comply with the notice. The conservatory has been demolished. The challenges that the case involved was the defence attempt to force the Council into withdrawing the prosecution by providing it with sham evidence allegedly invalidating the notice. The Council investigated the evidence thoroughly and unveiled the fraud which resulted in a successful prosecution.

7 Glebe Crescent, London, NW4 1BT

The case concerned the unauthorised conversion of a single family dwelling into four flats. Two refused planning applications, one dismissed appeal and further prolonged Company's failure to act upon the notice led to the prosecution. Only the service of a summons prompted the real estate company (the owner) to comply with the notice before the trial. The property has been reverted back to a single family dwelling. One of the challenges that the case involved was the change of ownership throughout the process of enforcement. The Council had to prove the current owner's knowledge of the notice which required close cooperation with other Council's departments (Land Charges) and thorough examination of archives when preparing evidence. Upon the successful prosecution, the case has been committed to Crown Court for Confiscation Proceedings with an estimate of financial benefits of £61,598.05

Notable cases in Chipping Barnet

1 Kings Close, London, NW4 2JU

The case concerned the unauthorised construction of an outbuilding in the rear garden and its use as three studio flats. The real estate company (the owner) was convicted and sentenced to £10,000 fine and ordered to pay prosecution costs of £2,755.60. A requirement to demolish the outbuilding outlined in the notice remained valid. The case involved complex legal argument concerning grey areas in planning law. It also involved the owner's attempts to deceive the Council as to the nature of the development. The Council took risk in going ahead with legal proceedings considering the legal uncertainty underpinning the case. Thorough analysis of the key facts of the case and a number of announced and unannounced site visits assisted greatly in revealing the owner's criminal behaviour and brought success in court.

The Jester, Mount Pleasant

The Jester pub suffered a fire in March 2018. Following the fire the owner began demolition works. However, the demolition appeared to commence on the side of the building undamaged by the fire. Planning permission is required to demolish a pub and despite application for various schemes being made no such permission has never been granted.

Demolition works were halted after the Council's intervention and in September 2018 a 's.215 notice' was served by the Council requiring that the building be restored to its former state

The owner was unsuccessful in his appeal against the notice and the court upheld the Notice on 28 March 2019. The owner was ordered to pay the Council's costs in defending the Notice.

Restoration is required within the next 9 months

3. PLANNING APPEALS

3.1 Overview of appeal decisions

In 2018, the Council received 289 appeal decisions from the Planning Inspectorate. The number of appeal decisions was higher than in 2017 (249 decisions) but in line with volumes of 2016 (294).

Appeals following a delegated decision:

Most appeals were made against the refusal of an application authorised by officers under delegated authority. 63% of appeals made following a delegated decision were dismissed by the Planning Inspectorate. This level of performance benchmarks well nationally as 61% of appeals were dismissed in England last year:

(<https://www.gov.uk/government/statistics/planning-inspectorate-statistics>)

Appeals following a committee decision:

29 of the 289 appeal decisions made by the Planning Inspectorate in 2018 related to a decision made by Planning Committee or an Area Planning Committee. 28% of appeals made following a committee decision were dismissed by the Planning Inspectorate. This compares with 21% in 2017 (for 28 decisions) and 29% in 2016 (for 31 decisions). The performance of each committee in 2018 was as follows:

- Chipping Barnet: 13 decisions of which 3 were dismissed (23%)
- Finchley and Golders Green: 17 decisions of which 4 were dismissed (23%)

- Hendon: 8 decisions of which 3 were dismissed (37%)
- Planning Committee: 1 appeal that was allowed.

79% of these appeals related to major or minor residential planning applications, 13% to house extensions and 8% to changes of use.

3.2 Overview of cost applications

In 2018, the Council settled 11 costs claims following a full award from the Planning Inspectorate about overturns of an officer's recommendation at a Planning Committee.

3 related to decisions made by the Chipping Barnet Planning Committee, 3 by the Hendon Planning Committee and 5 by the Finchley and Golders Green Planning Committee. There are 5 outstanding claims that remain to be settled.

4. REASONS FOR RECOMMENDATIONS

4.1 Not Applicable

5. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

5.1 Not Applicable

6. POST DECISION IMPLEMENTATION

6.1 Not Applicable

7. IMPLICATIONS OF DECISION

7.1 Corporate Priorities and Performance

7.1.1 Not applicable

7.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

7.2.1 Not applicable

7.3 Social Value

7.3.1 Not applicable

7.4 Legal and Constitutional References

7.4.1 Not applicable

7.5 Risk Management

7.5.1 Not applicable

7.6 Equalities and Diversity

7.6.1 Not applicable

7.7 Consultation and Engagement

7.7.1 Not applicable

5.8 Insight

5.8.1 Not applicable

8. BACKGROUND PAPERS

8.1 None